

# SENATE.....No. 31.

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## Commonwealth of Massachusetts.

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IN SENATE, Feb. 3, 1845.

The Joint Special Committee, to whom was referred the Message of His Excellency the Governor of the 6th ult transmitting certain documents from the State of South Carolina, and a letter from the Honorable Samuel Hoar, have considered the same, and ask leave to report the accompanying Resolve and Declaration appended to it.

By order,

C. F. ADAMS.

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Forty-five.

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### RESOLVES

Concerning the Treatment of Samuel Hoar by the State of South Carolina.

*Resolved*, That the Declaration annexed be adopted as the act of the Commonwealth of Massachusetts, and that His Excellency the Governor be hereby authorized to transmit one copy of the same to the President of the United States, and one copy to the Governor of each of the States constituting the United States of America, excepting only the State of South Carolina, with a respectful request that the same be submitted to the consideration of the Legislatures of the United States and of the States respectively.

*Resolved*, That His Excellency the Governor be hereby authorized to transmit to the Executive Government of the State of South Carolina a copy of the Declaration which has been addressed by Massachusetts to each of the other States of the Union.

## DECLARATION.

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The State of Massachusetts now addresses each of her sister States of the North American Federal Union, and, in the presence of all Christian nations, of the civilized world, and of an omniscient, all-seeing Deity, the final judge of human action in States as in individuals, enters her earnest and solemn

### P R O T E S T

against the hostile acts of the State of South Carolina.

Massachusetts thus arraigns South Carolina, because, disregarding the comity acknowledged by all civilized communities as the rule of conduct towards one another, and defying the express stipulations of the Constitution of the United States, a compact into which her citizens voluntarily entered with those of the other States composing the Union, she has, for a period of time now embracing a quarter of a century, persisted and still persists in executing a system of legislation, aggressive upon the rights of her sister States, and has refused to submit her action to be judged by the tribunal specified by that Constitution as the arbiter of their disputes, namely, the Supreme Court of the United States.

This system of legislation, under the color of police laws, has been carried on by South Carolina until it has assumed all of the following principles :

First. That the State has a right to send officers on board of the ships of other States touching at her ports, with the design of distinguishing between the persons who constitute the crew, and of seizing at her sole discretion, and casting into prison such as she may specify, without the necessity of alleging against them, the commission of any crime.

Second. That the State has a right to inflict corporal punishment, by the application of the lash, to any extent, upon the persons of citizens of Massachusetts, solely because they may be found a second time in the ships of their own State touching at her port.

Third. That the State has a right to sell into absolute slavery for life, human beings, unoffending persons, freemen of Massachusetts, entitled by her Constitution and laws to the fullest security of life, liberty and property, as well when following a lawful calling on board her ships as when at home.

Fourth. That the State has a right to expel from her territory, citizens of Massachusetts going to it for the sole purpose of seeking the peaceful mode of redress for her citizens which the Constitution of the United States affords, an opportunity to appeal to the courts of the Union.

Fifth. That the State has a right to punish by fine and imprisonment any citizen coming from any other State, with the intention to question the validity of laws which assume the right to imprison, to whip and to sell the freemen of the latter, without hearing, trial or the allegation of any crime.

In former times as between independent States, the assumption of powers far more circumscribed than these, would have been met by the resort to arms. But Massachusetts is too well aware of her obligations, to endeavor to seek redress in any manner which the Constitution of the United States and the advancing spirit of Christian civilization would alike condemn. She will not give loose to a spirit of retaliation which the offence might well justify, nor even indulge in language of recrimination that would ill become the disposition she seeks to cultivate towards her sister States. It may be that, in the contests which mark the progress of the nineteenth century, she will differ from many of them in her mode of adhering to principles of vital importance to human liberty, but she will do so calmly. And though steadfast in the maintenance of her own rights, she will not seek needlessly to attack theirs. This earnest appeal to them shall not be soiled with a single expression which would ever cause a just regret to the remotest descendants of her citi-

zens. It shall claim for them the undisturbed enjoyment of all the privileges which their ancestors braved every danger to secure. But that claim shall be made to rest only upon those immutable principles of justice, of freedom and of right, which, however smothered for a time by the force of local interests or sectional passions, must in the end extort the assent of the most reluctant heart.

Five and twenty years have elapsed since the date of the first hostile act now complained of; a sufficient time for reason to resume its sway, had the policy been the offspring merely of momentary alarm and inconsiderate haste. Instead, however, of relaxing, the subsequent legislation has varied only in its severity. It must now be assumed as beyond a doubt, that South Carolina will not surrender her claim of the right to board the ships of other States, in order to pick out from her crews whom she thinks fit to suspect of evil intention, and to seize and imprison, perhaps to whip, and perhaps to sell into slavery for life these persons, if she so incline, without being under the necessity of alleging against them any crime beyond that of their appearance in those ships at her ports.

In the long list of offences charged upon the mother country, as justifying the separation of the Colonies, there is not found in the Declaration of Independence one, the arbitrary character of which approaches that of the acts committed upon citizens of friendly States by South Carolina under this claim. For they make of no account whatsoever the vital principle which animated that, as it must every just struggle of a people for freedom, the principle that no man should be subjected to the loss of life, of liberty or of property, without the allegation of some offence committed, and without being heard in his defence. When the representatives of the Colonies, in 1774, addressed their first remonstrance to the people of Great Britain, they only declared that "they held it essential to English liberty, that no man be condemned unheard, or punished for supposed offences, without having an opportunity of making his defence." The idea that he could be condemned unheard, without the necessity even of supposing an offence, never occurred to them. That was a position which the most extrava-

gant asserter of the British prerogative would not, in the face of her history, of Magna Charta, of the petition of right, of the execution of Charles, of the bill of rights and the acts of settlement, have conceived it possible to assume.

Had there been no peculiar ties of sympathy, long since created, to bind South Carolina and Massachusetts together,—had they been merely upon the footing of civilized nations at peace with each other,—these acts of the former, and the principles which they involve, could have been regarded in no other light than as intended to provoke hostility. And perseverance in them, after remonstrance on the part of the latter State, would justify retaliation and even war. The recognised law of nations is clear, that an injury either done or threatened to the perfect rights of a nation, or of any its members, and susceptible of no other redress, is a just cause of war. The only justification for her conduct that has ever been attempted by South Carolina, is the plea of necessity of police regulations to her own safety. But this plea, as opposed to the rights of other nations liable to be affected thereby, however potent, cannot be carried to the extent to which that State would push it. Massachusetts denies her right under any such pretence to arrogate to herself a right of jurisdiction over the ships of Massachusetts, or condemning her citizens without appeal, simply because they are following an innocent and honest occupation on board of those ships whilst lying in her harbors. She denies her right under such pretence to violate, at her sole will and pleasure, the perfect rights of other nations, or of any their members. South Carolina may, if she think fit to press her plea, deprive the citizens of foreign States of certain privileges upon her soil which comity would grant, but she surely cannot justly claim by it to board their ships—to make distinctions among the crews of those ships—to compel whom she pleases to enter her territory against their will—to imprison them in her jails—to force the commanders to give bonds to redeem them, and to pay the expenses attending their involuntary detention—to lash them, and to sell them as slaves for life. These acts are acts of war. They have no justification in the recognised intercourse of Christian or civilized nations intending to

remain[ at peace. They lead to the last appeal between sovereigns, and to nothing else. For it is the indispensable duty of the nation thus attacked, in the persons of her citizens, to protect them in every manner possible in the enjoyment of their rights, both of persons and property, she herself being the only judge whether it be advisable or not to resort to force. This is a fundamental principle of every social compact. In accordance with this established law of government, Great Britain, which seldom neglects to interpose her arm for the security even of the humblest of her citizens in foreign countries, felt herself called upon to enter a formal complaint against the extension of the operation of these same acts of South Carolina over her subjects visiting the ports of Charleston in her ships. She remonstrated, not with that State, but with the government of the United States. She appealed to it to maintain the faith of its treaties. William Wirt, a citizen of Virginia, and afterwards of Maryland, then occupying the responsible post of Attorney General of the United States, and entitled to high consideration as a legal authority down to this day, pronounced the complaint well-founded, and the acts complained of an infraction of "the Constitution, treaties and laws of the United States, and incompatible with the rights of all nations in amity with the United States." South Carolina yielded; but, as if determined to show to the world that she conceded only to the danger of an impending rupture, and not to the conviction of her error, she only suspended the operation of her acts upon the citizens of a powerful foreign nation; whilst she persevered in executing them upon her neighbors and friends, whom it seemed less hazardous to wrong. And thus it is, that more than once, in the harbor of Charleston, citizens of Massachusetts have found, on board of the ships of a foreign State, a refuge from oppression by their fellow countrymen, which their own ought, but was unable to secure to them.

But superinduced upon these general obligations on all nations to respect the perfect rights of each other, there are special ones which South Carolina, by the voluntary ratification of the Constitution of the United States as a common form of government, assumed towards the citizens of the other States,

and among them to those of Massachusetts. Whatever may be the character of that compact, whether between the States or the people of the States, it should be a law equally imperative in its character upon all the parties to it. Massachusetts is prepared to abide by it as well in those portions which are onerous to her as in those from which she benefits. But when doing this, she expects, nay, she demands, the same rule of action from her sister States. She will never acknowledge the right of any one or more of them, under any plea whatsoever, to set themselves above the obligation of conforming to its terms, particularly in those cases which most nearly touch the privileges secured to her own citizens. It is one of the provisions of the Constitution, that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Massachusetts affirms that this provision has been set aside by the acts of South Carolina. She avers that her citizens are not allowed any privileges and immunities, who are seized, cast into prison, lashed or sold as slaves for life, without a shadow of crime defined against them on her own statute book. She denies that any thing can be called a privilege or immunity which is attended with so glaring a violation of the right of personal liberty. She now solemnly and before the face of Heaven charges upon South Carolina a deliberate and palpable breach of that condition of the common compact, and she appeals to the sense of justice and of right, both of living and future generations to answer, that **THE CHARGE IS TRUE.**

But had South Carolina any justification to make of her acts beyond the tyrant's plea; did she join issue with Massachusetts upon the question, who are the citizens of each State entitled to enjoy the privileges and immunities referred to in the Constitution; did she deny that the persons whom she claims the right to seize, to imprison, to whip or to sell, without question, although admitted to belong to Massachusetts ships, are Massachusetts citizens, there is provided for her under the compact to which she made herself a party, a grave tribunal, to which, in the last resort, every controversy between the States may be brought to a peaceful end. The Constitution assigns



to the judicial power of the United States the province of deciding controversies between two or more States, between a State and citizens of another State, or between citizens of different States. Massachusetts has taken every measure possible to induce South Carolina to submit this question of the validity of these laws, so far as they apply to her citizens, to that power. The great object expected to be gained by the employment of a special agent was, that the necessary measures might be perfected within the territory of South Carolina, where only they could be taken, to procure an ultimate decision. If Massachusetts be wrong in her view of her rights, she has no reason from the constitution of that final tribunal to expect a scruple of partiality in her favor to weigh in arrest of judgment. But whether wrong or not, she has offered, and does offer, to abide by the award, whatever it may be. And she insists upon her right, under the obligations of the common compact, to demand the assent of South Carolina to her proposal. It is one of the most solemn considerations attending this controversy, that that State has been willing to intrench herself behind every technical obstacle to such a decision; that her citizens, when called professionally to take the ordinary steps to forward it in the federal courts, have all declined so to do; that she has now finally prohibited them from accepting any similar trust; and that she has thought proper to threaten with personal violence in order to deter from acting, an individual sent from Massachusetts to do what her own citizens have refused to do. The evidence necessary to prove her intent, is then at last complete. It must be assumed that South Carolina now deliberately refuses to recognize the authority of the federal tribunal. She sets herself above the restrictions of the Constitution which she agreed to sustain, and perseveres in the execution of her will at whatever cost. If it be once assumed that the government of the United States has not either power or will to interpose, it becomes a grave question to consider, whether the citizens of Massachusetts can much longer remain bound by their obligations to South Carolina under the compact. Such is the legitimate consequence of the policy she has thought it proper to pursue. Massachusetts presents this view to each of the States, without

seeking to encourage any use of the unfortunate liberty which it might be construed to give.

It is true that once an attempt was made in the Congress of the United States to sustain by an elaborate report upon strictly constitutional ground, the position which South Carolina has assumed. And inasmuch as that State, though refusing to submit the argument upon which it rests to the judgment of the Federal Court, has taken the same general basis for the resolutions passed by her Legislature, it acquires a degree of importance which may bring it within the notice of Massachusetts. The argument is, that by the clause of the Constitution granting to "the citizens of each State *all* privileges and immunities of citizens in the several States"—South Carolina is bound to extend to them only the same degree of privilege and immunity that she does to her own population at home "under the like circumstances." Hence it must follow, that if she retain to herself the right to seize, imprison, lash and sell as slaves for life, without charging the commission of any crime or giving them any hearing; any part of her freemen, she may constitutionally claim to exercise the same power over the freemen of other States "under the like circumstances." With all the inhumanity that ordinarily attends a code of slave laws, there will scarcely be found in them any authority for such a proposition as this, and if there were, its publication in the face of the Christian world would at once be its condemnation. No. Free negroes are safe from personal harm even in South Carolina, so long as they obey the laws and commit no offence. But the free negroes of Massachusetts are liable, whenever they come into the harbors of Carolina in the vessels of Massachusetts, to be seized, cast into prison, whipped and sold for slaves, notwithstanding that they may manifest no disposition whatever to touch her soil, or to commit the smallest act likely to draw down upon them a suspicion. Are then the cases parallel even upon the reasoning presented, and does South Carolina, by her own construction of the Constitution, extend to the citizens of each State *all* privileges and immunities which she grants to her own "under the like circumstances"?

But the construction admitted for the sake of the argument, when analyzed, is proved fallacious to the last degree. It has been made to rest upon a definition of citizenship nowhere found in the numerous works upon government which have usually been recognized as authority during the last century, but drawn from a judicial opinion of a court in the State of Kentucky. It is due to the present question to quote it entire as it stands in the original defence.

“The term citizen is derived from the Latin word *civis*, and in its primary sense signifies one who is vested with the freedom and privileges of a city. If we go back to Rome, whence the term citizen had its origin; we shall find in the illustrious period of her republic, that citizens were the highest class of subjects to whom the *jus civitatis* belonged, and that the *jus civitatis* conferred upon those who were in possession of it all rights and privileges, civil, political, and religious. When the term came to be applied to the inhabitants of a State, it necessarily carried with it, the same signification, with reference to the privileges of a city; and it is in this sense that the term citizen is believed to be generally, if not universally, understood in the United States. This, indeed, evidently appears to be the sense in which the term is used in the clause of the Constitution which is under consideration; for the terms “privileges and immunities” which are expressive of the object intended to be secured to the citizens of each State in every other, plainly import, according to the best usages of our language, something more than those ordinary rights of personal security and property, which, by the courtesy of all civilized nations, are extended to the citizens or subjects of other countries while they reside among them. No one can, therefore, in the correct sense of the term, be a citizen of the State who is not entitled, upon the terms prescribed by the institutions of the State, to all the rights and privileges conferred by those institutions upon the highest class of society,” &c.

Upon a similar idea of citizenship, South Carolina rests the declaration made by her government on the sixth of December, 1844, in these words :

“*Resolved*, That free negroes and persons of color are not citizens of *the United States* within the meaning of the Constitution, which confers upon the citizens of one State *the* privileges and immunities of citizens in the several States.”

Massachusetts takes issue before the world with South Carolina upon this position. She maintains the definition to be false, the conclusion from it to be dangerous, and the resolve which rests upon it to be an essential perversion of the terms of the Constitution which it purports to quote.

Had the Kentucky court turned to the preamble of that Constitution under which it acted, in these words: “We, the representatives of *the people* of the State of Kentucky, in convention assembled to secure to *all the citizens* thereof, the enjoyment of the right of life, liberty and property, and of pursuing happiness, do ordain this Constitution,” &c.—would it then have ventured to maintain, in the face of the republican people of that State, that they meant to secure the advantages spoken of only to “the highest class of their society”?

Did it mean to infer that because there may be free persons in a State who do not enjoy *all* the privileges and immunities conferred upon the highest class of her society, they are not citizens, and are therefore entitled to claim none at all? Hence, that the State in which they live, may at pleasure seize, imprison, order to be beaten with a lash, or sold into slavery for life, all such free persons, without the necessity of alleging against them the commission of any crime?

The court of Kentucky obviously meant to justify no such inference. It construes the terms “privileges and immunities” in the Constitution “to import something *more* than ordinary rights of personal security and property which the courtesy of all civilized nations extends to the subjects or citizens of other States.” But if this be at once admitted, how comes it that South Carolina can draw from it any justification for the depriving whom she may think fit from other States, even of those “ordinary rights which the courtesy of all civilized nations would extend to them”? The definition seems to presume something more to be secured than the absolute rights of strangers,

“subjects or citizens of other States.” The conclusion drawn from it, not merely gives them something less, but utterly denies them any right whatever. The result of the whole would seem to be, that a portion of the people of Massachusetts or the other States of the Union, instead of gaining any new “privileges and immunities” by the adoption of the federal Constitution, must have been actually deprived by it of those which they would have had without it.

But Massachusetts has learned the doctrines of liberty in no such schools as these. She claims to be a republic, and not an aristocracy. Her Constitution, formed in the midst of the fiery trial of the Revolution, breathes the spirit of the fathers of her freedom. It declares “all men born free and equal, and having certain natural, essential and unalienable rights.” The seventh article of her Declaration of principles affirms, “government to be instituted for the common good; for the protection, safety, prosperity and happiness of the people, and not for the profit, honor, or private interest of any one man, family, or any one class of men.” The tenth says that “*each individual* of the society has a right to be protected by it, in the enjoyment of his life, liberty and property, according to the standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary.” There is not a word in it about “the highest class of society.” Citizenship, according to it, embraces all the members of the social system. who, while contributing to its burdens, earn the right to its protection. The duty of the State is imperative to shield against wrong the humblest of its members not less than the proudest. So far as her Constitution is concerned, she recognizes no distinction of rights between the two.

It is not then as “citizens of the United States,” as the State of South Carolina pretends, but because they are citizens of Massachusetts, that this State claims the guarantee of the Constitution of the United States to protect her people against wrong in the harbors of Carolina. That instrument explicitly enough says, that “the citizens of *each State*,” not the citizens of the United States, for there are no such persons, excepting

as they are primarily citizens of some smaller body politic, "shall be entitled to *all* privileges and immunities," not to *the* privileges, as the resolve of South Carolina states it, "of citizens in the several States." The citizens of Massachusetts are entitled in South Carolina to *all* the privileges which citizens of South Carolina themselves enjoy. What the precise extent of those privileges are, it is unnecessary here to inquire, so long as it must be conceded that they cover immunity from gross wrongs. So long as South Carolina arrogates the right of seizing, imprisoning, whipping and selling as slaves for life, any member of the social system of Massachusetts without cause assigned, hearing or trial, just so long is that immunity referred to in the Constitution wholly set at nought. Neither is it material to the question what the social position of the oppressed persons may be in Massachusetts. They do unquestionably every year exercise the privilege of voting conceded to all citizens; but if they did not enjoy it, they would be in no worse position than are all women or children under twenty-one years of age. On this or any similar score, it is not within the competency of South Carolina to make arbitrary distinctions among her people. It is enough that they are human beings, endowed by the Deity with "certain natural, essential, unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties." Massachusetts contracted for their security under the guarantee of the Constitution of the United States, and South Carolina has broken the contract by setting it aside.

The principle which South Carolina has assumed goes to this length, that she denies the right of other States to decide for themselves who are or are not their own citizens. She claims the power to distinguish between them, to exclude from the title whom she sees fit, and to take from these at will all rights, privileges and immunities excepting perhaps the right to life. If this construction of the clause in the Constitution be for a moment conceded to be correct, then has every State in the Union the same right to specify and limit the class of persons in other States whom she will recognise as entitled to privileges and immunities of citizens within her borders. Massachusetts, for

example, might with as much reason decide that none but the free negro of South Carolina should be considered by her as a citizen of that State entitled to the privileges and immunities of citizens, within her limits, as South Carolina does, that none but the white man of Massachusetts should be so regarded within her's. The power and the right of one State to make such a decision is co-extensive with that of the other to make an opposite one. Both make the guarantee of the Federal Constitution void and of no effect. Both vest the power of making vexatious distinctions and preferences in the very hands out of which that instrument obviously intended for the sake of the general peace to take it. Massachusetts has not on her part ever claimed any similar right. She submits to be bound by the paramount obligation of the common compact, but at the same time she requires that other States in the same position will equally submit, and she demands that the State which denies that obligation in points onerous to herself should cease to urge the performance by the rest of those conditions by which she only is to be benefited.

But not content with a simple refusal to acknowledge the validity of any rule of reciprocity between States, whether that rule be laid down by the general law of nations, or by the special conditions of a written contract, South Carolina has thought it becoming her character as a civilized community to vent her indignation upon one respectable citizen of Massachusetts who ventured to undertake the simple duty of entering her territory for the purpose of forwarding the necessary legal measures to obtain an adjudication of this controversy in the Federal Courts. She has chosen to order his expulsion from it and to accompany her order with a wilful misrepresentation of the character in which he came. She has chosen to affix penalties to the attempted performance of any similar trust hereafter. These are facts which the Laws and recorded Resolutions of her Legislature place beyond the reach of denial. Massachusetts will notice them in this connexion only that the sketch of the principles and policy of that State may be made more complete. One purpose for which Mr. Hoar was sent to South Carolina was to test the disposition of that State

to submit to the conditions of the Constitution of the United States—and it has been fully answered. In other respects the action that has been had upon the agent is of no material consequence. The dignity of Massachusetts can never be tarnished by a simple and rigid adherence to the line of her positive duties. Neither could it be heightened by retorting acts or words of impotent violence for an equally impotent insult.

There remains, however, one more duty to be performed. However confident Massachusetts may be that her preceding course has been in every respect justifiable in this controversy, yet a decent respect for the opinions of mankind would seem to require a brief recapitulation of her several acts, in order that a full and clear judgment may be formed as to the question, which of the two governments most nearly follows the line that Christian principles and the courtesy of modern civilization would prescribe.

If there be any force in the concurring sentiments of all authorities upon the nature and end of government, there is no principle more clear than this, that it is the indispensable duty of a State to do every thing within its power that may protect its members against wrong. This is a fundamental principle of the social compact. Massachusetts could never disregard it with impunity to her reputation so long as a path of living light shall remain marked out for her in the first part of her own Constitution. Founded upon the basis of equal rights among the members of her society it was not for her to be outdone in earnestness for their defence against oppression by the government of a monarchy which acknowledges no such equality. Yet Great Britain had remonstrated against the oppressive character of the laws of South Carolina upon her subjects long before Massachusetts did, and, what is more, she obtained a suspension of their operation upon them, which Massachusetts has failed to do. What the cause of the difference in the treatment of the two States could have been is difficult at this time to point out. It may have been owing to the conciliatory temper of the latter which induced her to bear for a time in silence rather than to hazard a dispute with a sister State. The citizens of the State whose rights were attacked early remonstra-



ted, and were only deterred from pursuing the question in the Federal Courts by the remonstrances of a Judge of those Courts, who assured them that the evil complained of was only temporary in its character and would be remedied by the voluntary act of the State Courts themselves. Such was not, however, the result. Those Courts, when appealed to, sustained the validity of the laws, and technical obstacles defeated a decision by that of the United States. But William Johnson, himself, a native and citizen of South Carolina, and then the Judge of the Supreme Court of the Union already alluded to, did not hesitate upon the general merits of the question, to pronounce the decided opinion that the acts complained of "trampled on the Constitution," and "implied a direct attack upon the sovereignty of the United States."

So long as sentiments like these could be heard and tolerated in the heart of Carolina itself, as expressed by distinguished jurists, there was reason to hope that these acts, originally the offspring of fear, whose ears are always deaf to the calls of humanity or justice, would pass away with the memory of the events that occasioned them. But fourteen years elapsed. The Judge, who had been so candid in expressing his convictions, was removed from the sphere of human action, and left no echo of his voice behind him. And the apparent success of Carolina in maintaining her policy, tempted many of her sister States to follow her example. A few of them, whilst adopting her system, were careful to avoid her errors. Others were less regardful. But it is of the States of South Carolina and Louisiana that Massachusetts has the most cause to complain, because it is to the ports of Charleston and New Orleans that her ships and citizens most resort. Yet, notwithstanding that aggravated cases of wrong, endured by them, were occurring every year, it was not until 1836 that petitions were addressed to the Legislature invoking the interposition of the State. Even then the great anxiety to avoid any unpleasant collision with her sister States, led her to postpone action upon them for three years more. But her duty was not the less distinctly laid down before her, and seeing that the perseverance of South Carolina and other States in their aggressive policy was no longer to be

doubted, she directed the following remonstrance to be recorded upon her statute book :

“ Resolves concerning certain laws of other States, which affect the rights of citizens of Massachusetts.

Whereas, under the laws of several States in this Union, citizens of this Commonwealth, visiting those States for purposes of business, or driven thither by misfortune, often have been, and continue to be, though guiltless of crime, cast into prison, subjected to onerous fines, and in many instances sold into slavery ; therefore

*Resolved*, That it is a paramount duty of Massachusetts, to protect her citizens in the enjoyment and exercise of all the rights to which, by virtue of their citizenship, they are entitled.

*Resolved*, That this Legislature hereby protests against the laws in question, as invading the sacred rights of citizens of this Commonwealth, as contrary to the Constitution of the United States, and in utter derogation of that great principle of the common law, which presumes every person to be innocent until proved guilty.

*Resolved*, That His Excellency the Governor, whenever it shall be made to appear, to his satisfaction, that a citizen of this Commonwealth is imprisoned in another of the United States, on suspicion of being a slave, is hereby authorized to employ a suitable person, whose duty it shall be to procure the requisite proofs in the case, to proceed, if necessary in the opinion of the Governor, to the State where the individual is so imprisoned, to lay the matter before the proper authorities, and having obtained the release of the said individual, to bring or cause him to be brought to a place of safety ; and His Excellency is hereby empowered to draw his warrant on the treasury of this Commonwealth, to defray the expense thereof.

*Resolved*, That His Excellency the Governor be requested to transmit a copy of these resolves to the Executives of the several States of this Union, and to each of our senators and rep-

representatives in the Twenty-Sixth Congress of the United States.”

Such was the first declaration of Massachusetts upon this subject. It recognized its own duty,—it calmly and mildly remonstrated against the acts of other States, so far, and so far only, as they injuriously affected the undeniable rights of its own citizens; it authorized measures to be taken to relieve the sufferers. Further than this it did not go. It denounced no one, it insulted no one, it threatened none. Respectful in language, and strictly defensive in its tone, it rested upon the hope that something would yet be done by the voluntary act of the offending States to remedy the grievances complained of. And to the end that they might be informed, it directed a transmission of the remonstrance to the other States.

Three years more were suffered to pass,—a period of time sufficient to test the effect of this first respectful remonstrance. No measure of relaxation was proposed in any quarter. The resolves remained utterly unheeded. In the mean time, however, citizens of Massachusetts continued to suffer as before. And it became manifest that new measures were absolutely necessary to prove that the State was not disposed to surrender without a struggle a solemn and fundamental principle of her political faith. The only course that remained open was to endeavor to bring the question before the only tribunal competent to decide it, the Supreme Court of the United States. In the confident expectation that this might be readily accomplished by simply assuming responsibility for the expense of the suit, the Legislature, in the year 1842, adopted the subjoined resolves.

“ Resolves relating to the imprisonment of citizens of this Commonwealth in other States.

*Resolved*, That the imprisonment of any citizen of Massachusetts by the authority of any other State in the Union, without the allegation of the commission of any crime, and solely on account of his color, is a gross violation of the federal Constitution as well as the principles of rational liberty.

*Resolved*, That whenever His Excellency the Governor shall be applied to in behalf of any citizen imprisoned as aforesaid, and it shall appear to him, by a representation under oath, made by any creditable person, that such citizen so imprisoned is held in prison on account of his color only, it shall be the duty of the Governor forthwith to take all suitable and proper measures to cause such citizen to be discharged from his imprisonment, and the legality of such imprisonment to be tried and determined by the courts of the United States, and His Excellency the Governor may draw his warrant upon the treasury of the Commonwealth to defray any reasonable and necessary expenses thereby incurred.

*Resolved*, That His Excellency the Governor be requested to transmit a copy of these resolves to the Governors of the several States to be communicated to the Legislatures thereof.”

The hopes excited by the adoption of this measure, that the question of the validity of these Laws might be carried up to the federal court for adjudication proved vain, for the reason that the sufferers under them could not hope for any aid upon the spot to make themselves heard in Massachusetts through the bars of their prison-house. Those of them who were fortunate enough to be attached to ships, preferred to follow them rather than to run the risk of being detained to await the result of a difficult suit, without any protection from the laws of the State in which they were, and those who were not so fortunate were scarcely likely to be ever heard of again as freemen, to make any complaint whatsoever. It soon became clear that another effort was necessary of a different kind. And still obeying the clear obligations of her Constitution, Massachusetts once more went forward in the cause of the defence of her citizens. Upon the petition of a large number of most respectable citizens, that a new attempt might be made having for its object the employment of high professional assistance in the ports of Charleston and New Orleans, in behalf of the sufferers, and for the sake of promoting a decision in the Courts of the United States, the following resolves were adopted in 1843.

“Resolves relating to the imprisonment of citizens of this Commonwealth in other States.

*Resolved*, That the perseverance of many of the States in the Union against all remonstrance on the part of Massachusetts, in seizing and imprisoning her citizens without the allegation of any crime, is calculated to weaken the confidence which she has in the good disposition of those States to maintain their engagement to the Constitution of the United States inviolate.

*Resolved*, That His Excellency the Governor, with the advice and consent of the Council, be authorized to employ an agent in the ports of Charleston, in South Carolina, and New Orleans, in Louisiana, for a term of time not to exceed one year, for the purpose of collecting and transmitting accurate information respecting the number and the names of citizens of Massachusetts who have heretofore been, or may be during the period of his engagement, imprisoned without the allegation of any crime. The said agent shall also be enabled to bring and prosecute, with the aid of counsel, one or more suits in behalf of any citizens that may be so imprisoned at the expense of Massachusetts, for the purpose of having the legality of such imprisonment tried and determined upon in the Supreme Court of the United States.

*Resolved*, That His Excellency the Governor be authorized to draw his warrant to cover any necessary expenses incurred in carrying into effect the foregoing resolves, after the same shall have been audited and allowed by the council, to be paid out of the public treasury.”

The object of these resolutions was two-fold. First, to gather some facts by which a judgment might be formed how extensive the practical evil, so far as it affected citizens of Massachusetts, actually was. Secondly, to secure the long cherished purpose of trying the question of the validity of these laws before the constitutional tribunal. In order to carry out the intent of the State, the Governor, for the time being, communicated with gentlemen of professional distinction, residing in the specified ports, and solicited them to assume the trusts thus conferred.

They, without exception, declined to act. It became evident that, so far as citizens were concerned, who were under the influence of public opinion in their respective States, there could be no hope of coöperation. But up to this time the State had interposed no direct obstacle to the execution of the design of Massachusetts, nor had it declared its determination to resist it. One more opening then remained which might lead to an amicable result. The duty of Massachusetts still continued imperative to leave no act undone which could yield a reasonable hope of protection to her people. It was, therefore, determined that a citizen of Massachusetts should be sent at once to take the necessary measures to promote an amicable appeal of the controversy to the highest tribunal of the Union, and thus to test the disposition of South Carolina to continue bound by the terms of the Constitution of the United States. This was done by one further and last act of legislation. In 1844 a new resolve was passed in these words :

“Resolve concerning the imprisonment of citizens of this Commonwealth in other States.

*Resolved,* That His Excellency the Governor, with the advice and consent of the Council, be hereby authorized to employ an agent for the port of Charleston, in South Carolina, and an agent for the port of New Orleans, whose duty it shall be to reside in said port, for a term of time not exceeding one year, for the purposes specified in the resolves relating to this subject, passed on the twenty-fourth of March, in the year one thousand eight hundred and forty-three. And that His Excellency the Governor be hereby authorized to draw his warrant to cover any necessary expenses incurred in carrying into effect this or the aforementioned resolves, after the same shall have been audited and allowed by the Council, to be paid out of the public treasury.”

Under the authority conferred by this resolve, the Governor of the Commonwealth appointed Samuel Hoar, a respected citizen of Massachusetts, the agent for the port of Charleston, to

perform the duty specifically assigned him and no more. That gentleman repaired to Charleston, endeavored to commence upon his task, and simply because he attempted so to do, was driven by threats of personal violence of a mob from the territory of South Carolina. And the Legislature of that State subsequently sanctioned the act of the people, by recording on her statute book an order for the expulsion, as a dangerous emissary of sedition, of this single, inoffensive, unarmed man. And the same Legislature has passed a law making it a highly penal offence in any person, whether citizen or stranger, ever to attempt the like again.

The pacific object of Massachusetts was not attained by this result, it is true. But the failure was absolutely necessary to be shown to the world before her duty was entirely fulfilled. It is now clear, beyond the possibility of contradiction, that South Carolina denies the authority of the Constitution of the United States, annuls her obligations under it towards one of her sister States, and refuses to abide even by the rules of comity that govern the pacific intercourse of civilized communities.

And now, upon a review of all the proceedings of Massachusetts, she challenges the world to show that she has done any act in connexion with this subject which it was not her indispensable duty to her citizens to do for their protection, or which any State has a just right to complain of her for doing. Neither has there been a word placed upon her statute book which she has occasion to regret. Her remonstrance has been grave, respectful, reasonable. Her measures have been moderate, strictly lawful, conciliatory, in a spirit of truth and peace. Questions like this must go into the history of the age—they must be finally tried by a standard which the passions of a moment, however potent, will never reach. Let posterity decide whether South Carolina will be entitled, with any justice, to say thus much.

There is, however, above and beyond all the considerations heretofore presented, one to which Massachusetts now earnestly invokes the attention of her sister States. The compact formed between them all by the federal Constitution, is the living and shining testimony of the nineteenth century to the

truth of the theory of liberty with law. She adjures them not to favor any course of action which must ultimately show it a solemn lie. She adjures them not to permit a case of injury to the rights of the people of any State to find no constitutional mode of redress whatsoever. If one of the States constituting this Union, assume to place herself in a hostile attitude to citizens of any other; if she refuse to listen to respectful remonstrance, long and patiently continued; if she deny the authority over her of clear stipulations in the contract to which she voluntarily consented; if she set herself beyond the reach of tribunals specially appointed to decide upon controversies between the States; if she treat with insult and contumely the bearer of a simple proposal to promote an adjudication of the dispute, and if she threaten with the terrors of the law all persons who seek to repeat it hereafter, then is it plain that so far as that State is concerned, the onerous conditions of the Constitution have no longer any binding power over her. The Congress of the United States having tolerated the doctrine in an official form, that "they have no means of affording relief," and that "the States which enacted them are alone competent to strike these laws from their statute book," and the arm of the federal judiciary having been paralyzed, in this instance, within the territory of South Carolina, it appears plain, if the general government, contrary to its obvious duty, and to the neglect of rights guaranteed by the Constitution, should continue to sustain the position heretofore assumed, that Massachusetts and every other State aggrieved, will be denied any remedy unless it be by throwing herself back upon the original inherent rights of her citizens to defend themselves. It becomes, then, a solemn question to decide, whether South Carolina, which has wilfully and deliberately defeated Massachusetts of a legitimate use of one of the provisions of the compact, designed to yield to the citizens of the latter that protection against wrong which they have a right to demand, has not voluntarily forfeited all title to insist upon the execution by the citizens of Massachusetts of those other provisions by which she peculiarly benefits? Massachusetts reserves her decision upon this point. Her obligations to the remaining States, and her duties to herself, for-



bid her risking, by any hasty step, the hazard of still greater evils than those which she desires to remedy. She cheerfully acknowledges that patience under the infliction of this gross and glaring wrong, is her present duty, not towards South Carolina, but towards the pacific States. But the same duty impels her in the most impressive form to record her PROTEST against the commission of that wrong. She will follow no example of violence that may be set to her. But if the assumptions for the moment, successfully made by South Carolina in this instance, should be repeated, and other States, deluded by her example, should insist upon the execution of all the conditions of the Constitution advantageous to themselves, whilst they refuse to comply with the less favorable ones, it is scarcely necessary for Massachusetts to repeat the prediction of the learned jurist of South Carolina, that "retaliation will follow," and all the other and worse evils that come in its train. The most admirable form of government which the wit and patriotism of man ever devised to develop his energies and to promote his happiness, must become the victim of his lawless passions. Massachusetts will do nothing voluntarily to hasten so deplorable a result, or rather she will sacrifice much to avert it. But she will do her duty to her people, whether in the less or the more favored condition of society. She will never relax in her demand of all the rights which belong to her as a State and a member of the Union, or in the exertion of her utmost energies in support of the undying principles of justice and liberty among men, the base of her social edifice, cemented in the blood of many of its founders, as they are the pride and the honor of modern civilization.

