

RESOLUTIONS

OF

THE GENERAL ASSEMBLY OF SOUTH CAROLINA,

*In relation to the controversy between the States of New York and Virginia,  
on the subject of surrendering fugitives from justice.*

FEBRUARY 7, 1842.

Ordered to be printed.

GENERAL ASSEMBLY OF SOUTH CAROLINA.

*Report of the Committee on the Judiciary, on so much of the Governor's message, and the accompanying documents, as relates to the controversy between New York and Virginia, and the bill on that subject, which were referred to that committee.*

The Committee on the Judiciary, to whom was referred so much of the message of his excellency, the Governor, as relates to the controversy between the States of New York and Virginia, with the accompanying documents, and a bill relative to the same subject, beg leave to submit the following report :

The subject which has engaged the deliberations of your committee, involves a grave and delicate inquiry, as to the duties and rights of the States of this Confederacy, under their compact of union, and it has claimed their most earnest consideration. Their inquiry, and the bill which has been committed to them, are suggested by the controversy that has unhappily arisen between the authorities of New York and Virginia.

Three persons of color, having their domicil in New York, and trading to Virginia, were, in 1839, charged with a violation of the criminal law of that State, in having feloniously abducted in their vessel on its departure, the slave of one of her citizens. These felons having returned to the State of New York, were formally demanded by the Executive of Virginia, in pursuance of the constitution and laws of the United States.

The Executive of New York, waiving exception to the regularity of the demand, as well as objection to the completeness of the evidence on which it was founded, declined to comply with the requisition, on the ground that the laws of New York do not recognise the right of one man to hold property in another ; and that stealing a slave in the commonwealth of Virginia, is not an offence within the intendment of the constitution of the United States.

This unexpected and alarming determination of the Executive of New York, and his views of the constitutional obligations of a confederate State, were communicated by the Executive of Virginia to the General Assembly

of that commonwealth. That department of the Government of Virginia, after mature and wise deliberation, pronounced, in solemn resolutions, the refusal of the Executive of New York to comply with the requisition of the Executive of Virginia, a "palpable and dangerous violation of the Constitution and laws of the United States." It announced its well-considered and earnest determination, not to acquiesce in the course of the Executive of New York, and to enact such legislation as would suffice, to protect the property and rights of the citizens of Virginia.

The General Assembly of Virginia requested the Executive to renew his correspondence with the Executive of New York, call upon him respectfully, to calmly review the grounds of his refusal, and to present the subject to the Legislature of New York for its consideration. This duty was promptly, and delicately performed by the Executive of Virginia. The request was made known to the Legislature of New York, by the official organ of that State, and that body apprized that Virginia appealed to its sense of justice and of duty to a co-State. How was that appeal regarded in the response of New York? The committee to whom the subject had been confided, expressed its concurrence in the views of the Executive Department, pronounced its construction of the federal constitution, the only exposition of that charter which consists with the sovereignty of that State, and the rights of her citizens, and was discharged from the further consideration of the subject.

Contemporaneous with this proceeding, was the enactment of a law, bearing the specious but delusive title, "An act to extend the right of trial by jury;" an act which is the most alarming and dangerous form, in which fanaticism or folly has made its assaults on our domestic institutions.

This statute provides, that in proceedings to recapture a fugitive from service or labor, the claim to the service of such alleged fugitive, his identity, and the fact of his escape from another State, shall be determined by a jury; that the State shall provide counsel for the slave, witnesses attend in his behalf, and that the fees of officers for summoning the jury, and the fees of the jurors and court, shall, in all cases, be paid by the claimant. It provides also, that if any judge or other officer, shall issue a certificate for the removal from the State, of any fugitive from labor, except in the manner prescribed by this statute, he shall be guilty of a misdemeanor, and be punished; and that an attempt to remove such fugitive, without the authority of law, shall incur a forfeiture of five hundred dollars to the party aggrieved; that it shall constitute the crime of kidnapping, punishable by imprisonment in the state-prison, for a term not exceeding ten years. It is a further provision of this statute, that the writ of *habeas corpus*, to arrest the fugitive from service, shall not be issued until delivery to the officer to whom the application shall be made, of a bond, with two sufficient sureties, inhabitants and freeholders of that State, with condition to pay the costs of the proceeding, and two dollars weekly, for the support of the fugitive, so long as he shall be detained by the proceeding on *habeas corpus*; and that if the verdict of the jury be against the claimant, he shall pay all the expenses of the proceeding, and shall pay to such fugitive one hundred dollars, and the damages he may have sustained. It is not the least obnoxious feature of this statute, that it seeks to confine the adjudication of these questions to juries, and to preclude the consideration of them by the judiciary of that State, as is evinced by the imposition of restrictions on the claimant's right

of appeal, which greatly impair that right, if they do not render it utterly nugatory.

Whether this course of the Executive of New York, or the legislation of its General Assembly, comports with the prescription of right, and the injunction of duty, that the constitution so explicitly enforces, in regard to our slave property, let that charter, and the laws enacted in pursuance of it, define.

The provision of the constitution is, that "no person held to service or labor in any one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor shall be due." By the act of Congress, the master of any fugitive slave, his agent or attorney, is authorized to seize and take him before a judge of the circuit or district court of the United States, or before any State magistrate; who, on proof to his satisfaction, by oral testimony, or affidavit certified by a magistrate of any State or Territory, that the person so seized, is the slave of the claimant, is authorized to give a certificate thereof, which shall be a sufficient warrant for the removal of the slave to the State from which he fled; and imposes a penalty on any one who shall hinder or obstruct such claimant in seizing or arresting such fugitive slave.

In this posture of the controversy, Virginia, having exhausted the argument with New York, and hopeless of the remedies which should be found in the constitutional obligations and duties of a co-State, appeals to her sister States of the South for counsel and co-operation. Standing on the outposts of southern institutions, that faithful sentinel announces the presence of danger—warns that a common foe is advancing—and calls those who have a similar polity to their defence. Her claim, her right, to lead in defence or maintenance of the rights of a confederate State, or of southern policy, has been vindicated by the incidents of her past history.

An ancient domestic institution, cherished in the hearts of the people of the South, the eradication of which would demolish our whole system of policy, domestic, social, and political, has been assailed by methods most likely to be successful. Is it a contest in which any southern State, without utter abandonment of honor and of right, of policy and duty, can assume a position of neutrality? Let other States do as they may, South Carolina has taken her stand in this great contest. Her gage of honor has been given to her countrymen, and she is not of those who know how to leave it unredeemed.

When the Federal constitution was adopted by the States, slavery existed, with but few exceptions, in them all. The right of property in slaves, and the duty of all the confederate States to respect that right in the citizens of each State, are admitted and enforced by that constitution. Congress, in discharge of its duty, has enacted laws providing safeguards, and inculcating duties in regard to this species of property. South Carolina, as Virginia, has not seen fit to change her policy, and abolish this species of property; and she will permit no State or authority to impair its value or security, and, like Virginia, she here avows her unalterable purpose to protect and defend it from all invasion and attack, come from what source they may.

That the refusal of the Executive of New York to comply with the demand of Virginia is, in the language of that commonwealth, "a palpable and dangerous violation of the constitution and laws of the United States,"

is a proposition which admits no debate. The pretension of New York, that that State, or any department of her government, may look into the statute book of another State, and pronounce upon the policy or the morality of its legislation, when called to the performance of a constitutional duty, plainly enjoined, is no less arrogant than it is violative of her federal obligations and plighted faith. The statute whose provisions have been recited is no less plainly and directly in contradiction of the constitution and laws of the United States, than is the refusal of the executive department. It is a distinct and unequivocal recognition of the right of the master to hold property in his slave, and the correlative duty of States into which he has fled, but a mere mockery of both. The impediments and hinderance which it imposes on the right to recapture a fugitive slave within the jurisdiction of New York, amount to a virtual denial of the rights of the master, and withholding his remedy. The laws of the United States define a proceeding ministerial, summary, and expeditious, which alone consists with the rights of the master. The statute of New York prescribes magisterial inquiry, and dilatory, doubtful, and vexatious litigation, the hazards of which are a denial of the remedy to the master, and impunity and protection to his slave; and the right of the master to seize and arrest his slave, as well as the duty of the magistrate to issue the certificate for removal, which are prescribed by the laws of the United States, are made high misdemeanors by the statute of New York.

If, in the final determination of the Executive of New York, and the delay which attended his communications in his correspondence with the Executive of Virginia, a disregard of the obligations of the constitution, and a spirit inimical to the slave property of the latter, be not apparent, they are manifest in every feature of the obnoxious statute which has been reviewed.

Interest, duty, and honor, imperiously demand that South Carolina announce to the authorities of New York that so soon as that State shall break its solemn faith to Virginia, so soon shall be cancelled our constitutional obligations as to her. When a State shall have been disappointed of those rights and remedies for which stipulation was made when the compact of Union was adopted, then will the painful but imperative duty of protecting her rights, in her own way, have been imposed upon her. This State, having a common purpose and common interest with Virginia to uphold the federal constitution, by exacting compliance with its obligations, is prepared to make common cause with that commonwealth in the maintenance of her rights.

As the chief danger to our slave property arises directly from the commercial intercourse which is permitted the citizens of States like New York, having no similar interest, our enactments should be specifically directed against the means that have been resorted to, and are most likely to be embraced by those who assail it. The peculiar character of that property, its immense value, and the facility for abducting it, by those who trade to our ports, are considerations which should determine us to a course of decisive and effectual legislation. These views have suggested to your committee the expediency of imposing such restrictions and obligations upon those who would benefit by our commerce, as will enforce the simple duty of not molesting us in the enjoyment of our property. This species of legislation is commended by your committee as not only free from well-

founded constitutional objections, but as promising the greatest security to us which is probably attainable.

If this species of legislation be supposed to contravene the constitution or laws of the United States, your committee venture to believe that the competency of the State to make it depends on principles neither of recent origin nor questionable acceptance. The basis of the whole doctrine of State rights is the assumption that the constitution of the United States is a compact between sovereign States. From this postulate results the concession of that constitution—that the powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. If the power delegated to the United States be also prohibited to the States, or in its nature and essence exclusive, it is not pretended that it can be exercised by a State; but if the delegated power be not of this category, and be not expressly prohibited to the States, it is a power which may be concurrently exercised by the States and the United States. The ablest commentators and the most distinguished jurists concede that this is the just and accepted construction of powers that are by the States delegated to the United States. Of this latter class is the power of the United States to regulate commerce.

If, then, the regulation of commerce be within the competency of the States, as well as of the United States, inquiry arises whether there is any law of the latter regulating commerce to which the bill proposed by your committee would be repugnant. In determining whether there would be collision between the bill proposed and a law of Congress affecting commerce, the question would be, whether there is a constitutional repugnancy and incompatibility; as mere inconvenience cannot, by implication, be permitted to divest a right of sovereignty. Occasional interference in the exercise of a concurrent jurisdiction is not enough to infer constitutional contradiction and the exclusion of State authority. The right of the States to enact regulations that affect commerce, and even impose restraints upon it, is illustrated by quarantine laws, port laws, inspection laws, and others of like nature. But your committee are not apprized of any law of the United States regulating commerce, with which the bill proposed would be found to conflict.

But the bill proposed by your committee, as they conceive, does not seek to regulate commerce, and cannot be said, with propriety, to affect it in anywise. It proposes a measure of mere municipal police—a regulation of that species which no one has denied to the States.

But although it may be conceded that the legislation proposed does not contravene the power of Congress legitimately to regulate commerce, yet it may be supposed that it does not consist with the privileges and immunities that are granted by the federal constitution to the citizens of a State, in all other States of the Union. To this point it will be permitted your committee to address a brief argument. Without such provision in the constitution of the United States as that here alluded to, it would have resulted, from the sovereignty of the several States, that the citizens of each would bear to all the other States the relation of aliens, and be subject to the inconveniences and disabilities of that relation, and to confer upon them, not citizenship itself, but the rights of citizenship, were its purpose and object. But the privileges and immunities contemplated are fundamental in their nature, and embrace, in the language of an eminent jurist, "protection by the Government, the enjoyment of life and liberty, with the

right to acquire and possess property of every kind, and to pursue and attain happiness and safety, subject to such restraints as the Government may justly prescribe for the general good of the whole."

But your committee presume the question is not whether the citizens of each State should enjoy in every other State the privileges and immunities that are conferred on its own citizens, but whether a State can make discriminations between its own citizens. If it be ascertained that a State may bestow on classes of its own citizens privileges and immunities that are not common to the mass, then it is apprehended the point is made clear. The qualification of the elective franchise which exists in some of the States, and once existed in this, the eligibility to office, charter laws, and the right to practise the learned professions, are examples of the power of a State to create distinctions among her citizens, and many others might be embraced in the enumeration. The principle is, that a State cannot deprive the citizens of another State of the privileges and immunities of which it cannot divest its own citizens. But discriminations between citizens of a State and those of other States are of frequent occurrence in all the States, and the right to create them is of unquestionable validity.

But the bill proposed by your committee seeks merely to take from the citizens of other States the immunity which is not enjoyed by citizens of this State, and to impose upon them restrictions which are endured by its own citizens.

South Carolina has, however, declared, in the solemn form of legislative enactment, her views of these provisions of the constitution, as well as of her police regulations; and as they have not yet been impugned, your committee take leave to decline further vindication of them. By the statute of 1823, any vessel from another State or foreign port, having on board any free negroes or persons of color, as cooks, stewards, mariners, or in any other capacity, is prohibited from entering any port or harbor of this State, under sanctions which have been found adequate to the suppression of the evil that was sought to be corrected. Let, then, those whom it may concern to know the policy of this State, and her interpretation of her rights as a member of these United States, consult her statute-book; and, if they are wise, they will not offend against her policy or her institutions.

In testimony of the high confidence which South Carolina reposes in the counsels of Virginia, and a manifestation of her determination to co-operate with that commonwealth and other States in maintaining, by all proper methods, an institution in which she has a common interest, your committee beg leave to report the bill referred to them, which is a copy of the Virginia law.

1. *Resolved*, That this Legislature view with regret the constructive meaning of the constitutional provision respecting "fugitives from justice," and "fugitives from service," asserted by the executive and legislative authorities of the State of New York in the year 1840.

2. *Resolved*, That, in the opinion of this Legislature, the forced and dangerous construction put upon the 4th article of the constitution of the United States, and the pretension to control its operation by the State of New York, as indicated by the positions of her Executive in the progress of the late controversy with Virginia, and the proceedings of her Legislature pending the same, should be repudiated and discountenanced by every State in the Union, as destructive of the faith pledged in the constitution,

and ultimately subversive of that State sovereignty upon which they profess to be founded.

3. *Resolved*, That the Governor be requested to communicate to the authorities of Virginia the high sense entertained by this Legislature of their moderation and respectful forbearance in conducting the recent unhappy controversy with the State of New York, of the justness of the position assumed by Virginia on the assurance of the hearty co-operation of South Carolina in all proper measures to vindicate her rights as a State, and to protect the property of her citizens.

4. *Resolved*, That copies of the report and resolutions adopted by the Legislature, together with a certified copy of the bill, when passed, be furnished by the Governor of this State to the Governor of Virginia, and the Governors of the several States of this Union, and to our Senators and Representatives in Congress, to be laid before that body.

IN THE HOUSE OF REPRESENTATIVES,  
December, 14, 1841.

*Resolved*, That the House do agree to the report.

*Ordered*, That it be sent to the Senate for concurrence.

By order :

T. W. GLOVER, C. H. R.

IN THE SENATE, December, 17, 1841.

*Resolved*, That the Senate do concur in the report.

*Ordered*, That it be returned to the House of Representatives.

By order :

W. E. MARTIN, C. S.

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STATE OF SOUTH CAROLINA.

*An act to prevent the citizens of New York from carrying slaves, or persons held to service, out of this State, and to prevent the escape of persons charged with the commission of any crime.*

1. *Be it enacted by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same*, That it shall not be lawful for any vessel of any size or description, owned in whole or in part, or commanded or navigated, by any citizen or resident of the State of New York, or any such vessel owned in whole or in part, commanded or navigated, by any other person than an actual inhabitant and resident of this State, and departing from any port in this State for any port in the State of New York, to depart from this State, or out of any bay, river, creek, or other water course, of this State, until said vessel has undergone the inspection provided for in this act, and until the other provisions hereof, shall have been complied with : *Provided*, That nothing herein contained shall apply to any foreign or national vessel.

2. *Be it further enacted*, That no such vessel as is hereinbefore described, shall sail from any port in this State, or depart from the jurisdiction of this State, until such vessel shall have been inspected by an inspector, or other person authorized to act under the provisions of this act, to see that no slave, or person held to service or labor, in this State, shall be concealed on board of such vessel, and until the commander thereof shall have received a certificate of inspection from such officer ; and if any such vessel

shall depart from this State without such certificate of inspection, the captain or owner thereof, shall forfeit and pay the sum of five hundred dollars, to be recovered by any person who will sue for the same in any court of record in this State, by indictment or information, or by action of debt in the name of the Governor, for the benefit of such person, on the bond hereinafter required to be taken.

3. *Be it further enacted*, That whenever any vessel, owned in whole or in part, or commanded or navigated, by any citizen or resident of New York, shall come into this State, no matter from what port, it shall be the duty of the inspector, or other officer hereby authorized to act, to take and keep possession of said vessel, until the master or owner, or some other person for him or them, shall have executed a bond, payable to the Governor of this State, with two or more sureties, satisfactory to the officer taking the bond, inhabitants of this State, in the penalty of one thousand dollars, conditioned to pay and satisfy all judgments which may be rendered in consequence of the violation of any of the provisions of this act; and particularly to pay and satisfy the owner of any slave which may be carried away in such vessel, the full value of such slave, with all other damages sustained thereby by such owner; or if the captain or master of such vessel shall allege his inability to give security, then it shall be his duty to deliver up the papers of his vessel to the inspector, to be retained by him till the departure thereof, and shall moreover make affidavit before some magistrate, that he will not depart with his vessel, or suffer the same to sail from the port or harbor in which she may be, until the inspection hereby required shall have been completed; and moreover, that he will not carry, or suffer to be carried, out of this State, any person, in violation of the provisions of this act. And if the captain or owner, or some other person for them, shall fail or refuse to comply with the foregoing requisitions, the said inspector or other officer, or any police officer by him appointed for that purpose (authority to appoint whom is hereby given to such inspector or other officer), shall take and hold possession of said vessel, until she is about to depart out of the jurisdiction of this State; and during the time such vessel shall be in possession of such officer, he shall be entitled to demand and receive the sum of three dollars per diem, to be paid by the captain or owner thereof; and for payment of which the vessel shall be liable, and she may be held until the same be paid: *Provided, nevertheless*, That the master or owner of each of the vessels constituting the several lines of packets now trading, or which may hereafter be trading regularly between Charleston and New York, may be permitted, instead of giving a bond on each arrival in this State, to give one bond in the penalty of one thousand dollars, conditioned to pay and satisfy all judgments which may be rendered in consequence of the violation of any provision of this act, at any time within one year from the date thereof.

4. *Be it further enacted*, That no pilot, acting under the authority of the laws of this State, or other person, shall pilot out of the jurisdiction of this State, any such vessel as is described in this act, which has not obtained, or shall not exhibit to him, the certificate of inspection hereby required; and if any pilot, or other person, shall violate the provisions of this act, he shall forfeit and pay the sum of not less than ten, nor more than one hundred dollars, one half of which shall go to the informer, and in default of payment, the person so convicted shall be imprisoned not less than one month, nor more than three months



5. *Be it further enacted,* That every pilot, or other person, who shall detect any such vessel in attempting to depart from this State, without such certificate of inspection, or shall detect or discover on board of any vessel whatever, any slave, or person held to service or labor, in this State, or any person charged with the commission of any crime, under the laws of this State, such slave or person being therein concealed in order to depart, or be carried out of the jurisdiction of this State, shall be entitled to a reward of five hundred dollars, to be recovered by action of debt, upon the bond hereinbefore required to be executed in the name of the Governor, for the benefit of such pilot or other person, if any such bond shall have been given, and if not, by action of debt in the name of the pilot, against the owner or master thereof, and the said vessel shall be moreover liable for the payment of the same, and may be attached for that purpose.

6. *Be it further enacted,* That if, upon such inspection, or in any other manner, any slave or slaves, or person held to service or labor, or any person charged with any crime, be found concealed on board of any vessel whatever, for the purpose aforesaid, or said vessel be detected in the act of leaving this State, with any such person on board, the captain and owner shall forfeit and pay the sum of five hundred dollars, to be recovered against the obligors of the bond beforementioned, in the name of the State, in case the person so found on board be a person charged with any crime; and in case the person found on board be a slave, or fugitive from service, the captain or owner shall forfeit and pay his or her value, together with all costs, to be recovered by the owner by action of debt on said bond, in any court of record in this State, in the name of the Governor, for the benefit of such owner; and the said vessel shall, moreover, be liable for all penalties imposed by virtue of any other law of this State.

7. *Be it further enacted,* That the Executive of this State be, and he is hereby, authorized and required to appoint one or more inspectors at Charleston, Georgetown, and Beaufort, and at such other places as he shall deem it expedient for the due execution of the provisions of this act; and that in all places where no inspector may be appointed, the sheriff of the district, either in person, or by deputy, shall act as inspector, and perform all duties required by this act to be performed by an inspector.

8. *Be it further enacted,* That for every inspection under this act, the inspector, or other officer, shall be entitled to demand and receive the sum of ten dollars, for the payment of which such vessel shall be liable; and the said inspector, or other officer, may seize and hold her until the same is paid, together with all charges incurred in taking care of the vessel, as well as in enforcing the payment of the same.

9. *Be it further enacted,* That if any inspector, or other officer, shall have reason to suspect that he will be obstructed or opposed in the discharge of any duty required of him under this act, he shall have power to summon and command the force of the district, to aid him in the discharge of such duty; and every person who shall resist or obstruct any inspector, or other officer, in the performance or discharge of such duty, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined and imprisoned as in other cases of misdemeanor.

10. *Be it further enacted,* That the bonds authorized and required to be taken under this act, shall be executed before the clerk of the court of common pleas, or a magistrate of the district, and shall be lodged with the clerk of the court of common pleas of the district, and be safely kept by him in

his office. For taking every such bond, the said clerk, or magistrate, shall demand and have the fee of one dollar, to be paid at the time by the person executing the same.

11. *Be it further enacted*, That in all questions as to residence and citizenship, arising under this act, the onus probandi shall rest upon the person claiming to be a citizen and resident of this State, or any State other than New York.

12. *Be it further enacted*, That this act shall commence, and be in force, from and after the first day of May, one thousand eight hundred and forty-two; but that the Governor of this State may, by proclamation, suspend the operation of the same until the end of the succeeding session of the Legislature of this State, whenever he shall be officially informed that the Executive of New York shall have bona fide consented to comply with the demand of the Executive of Virginia, for the surrender of Peter Johnson, Edward Smith, and Isaac Gansey, as fugitives from justice; and be satisfied that the law of New York, of the sixth of May, eighteen hundred and forty, entitled, "An act to extend the right of trial by jury," has been repealed by that State.

In the Senate house, the seventeenth day of December, in the year of our Lord one thousand eight hundred and forty-one, and in the sixty-sixth year of the sovereignty and independence of the United States of America.

ANGUS PATTERSON,  
*President of the Senate.*

W. F. COLCOCK,  
*Speaker of the House of Representatives.*

SECRETARY'S OFFICE,  
*Columbia, December 20, 1841.*

A true copy of the original act deposited in this office, compared and certified by

WM. F. ARTHUR,  
*Deputy Secretary of State.*

THE STATE OF SOUTH CAROLINA.

*By his excellency, John P. Richardson, Esq., Governor and Commander-in-chief, in and over the State aforesaid.*

TO ALL TO WHOM THESE PRESENTS SHALL COME :

Know ye, That William F. Arthur whose certificate appears on the annexed papers, is deputy secretary of the State of South Carolina.

Therefore, all due faith, credit, and authority is and ought to be had and given to his proceedings and certificates as such.

In testimony whereof, I have hereunto set my hand, and caused to be affixed the seal of the State, in the town of Columbia, the twentieth day of December, in the year of our Lord, one thousand eight hundred and forty-one, and in the sixty-sixth year of the Independence of the United States of America.

JOHN P. RICHARDSON.

By the Governor :

WM. F. ARTHUR,  
*Deputy Secretary of State.*