

Speech of Mr. Bayly of Accomack, on the bill to prevent citizens of New York from carrying slaves out this commonwealth, and to prevent the escape of persons charged with the commission of any crime, and in reply to Mr. Scott of Fauquier, delivered in

27 Thomas Henry 814/726

SPEECH OF MR. BAYLY OF ACCOMACK, ON THE BILL TO PREVENT CITIZENS OF NEW YORK FROM CARRYING SLAVES OUT OF THIS COMMONWEALTH, AND TO PREVENT THE ESCAPE OF PERSONS CHARGED WITH THE COMMISSION OF ANY CRIME, AND IN REPLY TO MR. SCOTT OF FAUQUIER, DELIVERED IN THE HOUSE OF DELEGATES OF VIRGINIA, On the 25th and 26th of February 1841.

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SPEECH.

Mr. BAYLY said:

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I had hoped that this bill, which is designed to protect the rights of the citizens of Virginia from unconstitutional invasion by the state of New York, would be permitted to pass without opposition. But as this could not be the case, I rejoice that opposition to it has come from the gentleman from Fauquier, (Mr. Scott,) for in that gentleman's opposition the house has an assurance that every objection to it has been exposed. If, therefore, I successfully answer every position which he has assumed in his minute and elaborate argument, I may take it for granted that I have removed every ground of opposition to the bill. I congratulate myself that, in so important a measure as the one now before the house, I am afforded, by the argument of the gentleman, such an ample opportunity of vindicating it.

Like the gentleman from Fauquier, I approach the discussion of this measure with great embarrassment—an embarrassment growing out of the immense importance of the subject, and a knowledge of the heavy responsibility that rests upon me as the chairman of the select committee which has had it in charge. But, unlike the gentleman, I do not approach it without having bestowed upon it much consideration. Sir, I have given the subject the maturest reflection of which I am capable. I have viewed it in its every aspect. I have pondered upon it again and again. I have given it a consideration commensurate with its vast importance, and with the incalculable consequences involved in it. In considering it, I have schooled my passions—I have banished from my breast those feelings of anger and resentment which the wrongs my country has suffered at the hands of a sister state were so well calculated to excite.

Mr. Speaker, this subject has many important connexions, which, at the first view, do not meet the eye. With the indulgence of the house, I will attempt to bring before it most of them; and if in doing so I shall be found to tax severely its patience my apology must be found in the importance of the subject.

I wish to trace briefly the history of abolition in England and this country, to prove that the feeling in favour of it has increased in the non-slaveholding states, that it now prevails

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there to a fearful extent, and that it is still increasing. I desire to shew that governor Seward's course was taken, and the law of New York of the 6th of May last, which is discussed in the report of the select committee, was passed to carry out the plans of operation of the abolitionists. I wish to expose, rather more in detail than is done in the report of the committee, the dangerous and unconstitutional character of what now seems to be the settled policy of the state of New York, in reference to the subject of slavery; prove the necessity of our adopting an effectual measure to counteract it, and demonstrate that the bill before the house is such an one.

I shall only make a brief reference to the progress of abolition in England. I only refer to it at all because it is the source of the great abolition movement of the age.

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No nation has profited so much, or been so extensively engaged in the slave trade as England. No nation, for a long time, adhered to it with such obstinate pertinacity. She not only would not prohibit it herself, but she would not allow her colonies to do it. This is shewn by the history of Virginia, with which the house is too familiar to justify me in doing more than referring to the fact. The British slave trade had existed for near two centuries, when *David Hartley* moved in the house of commons, in 1776, a resolution declaring "that the slave trade was contrary to the laws of God and the rights of man." This resolution was promptly rejected. In 1783, a petition for the protection of the trade was for the first time presented in the house of commons. *Its consideration was refused.* The Quakers, with whom these efforts originated, were not discouraged. On the 7th of July of that year, six of them met in London "to consider what steps they should take for the relief and liberation of the negro slaves in the West Indies, and for the discouragement of the slave trade on the coast of Africa." The six Quakers were soon joined by the same number of philanthropists of other christian denominations. "The twelve" held meetings in London to devise means of revolutionizing the sentiment of an empire! Agents were appointed, among whom was the celebrated Clarkson, to rouse the public attention to the subject. *The pulpit and the press were enlisted. Books, pamphlets and newspapers were freely circulated.* Within a

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few years petitions to parliament were multiplied, insomuch that a commissioner was at length appointed by the government to enquire into the African slave trade; and finally, on the 9th of May 1788, the house of commons voted that they would, at the next session, take the subject of that trade into consideration.

Without pursuing the details further, suffice it to say, that this movement, originating in 1776 with *one man*, continued to gain force, until in 1807 parliament abolished the slave trade. This man was regarded at the time as a madman, and his twelve followers were denounced “as hypocrites and fanatics, and their project as visionary and delusive?” Yet in a few years they revolutionized an empire! As soon as they abolished the slave trade, in the spirit of fanaticism, which is never satisfied with one conquest, they commenced agitation in favour of the abolition of slavery in the West Indies. In this undertaking they had great obstacles to contend with. In the first place, there were powerful British interests involved in it. Besides, as slavery had grown up under the sanction of law, it was thought to be repugnant to the British constitution to abolish it without awarding compensation to the master, and the English nation could not be easily induced to indulge its philanthropy at the expense of its purse, particularly at a time when it was loaded with debt contracted in its wars of defence or ambition. During these wars, the people were too much absorbed with the excitements of them, to be interested in such a subject as the abolition of slavery. It did not, for these reasons, become a serious matter, until about the year 1824; and even then the West India planters were assured that their interests were in no danger. In that year, Mr. Canning, who was a minister of the crown, said in parliament, “that if he were asked which he would prefer, *permanent* slavery, or immediate abolition, he would answer that he would prefer things remaining as they were;” and gave as a reason for preferring permanent slavery to immediate emancipation, the incapacity of the negro to enjoy, from the want of mental and moral cultivation, the sweets of liberty; and “his duty to guard the interests of those who, by no fault of their own—by inheritance—by accident—by encouragement of repeated acts of the legislature, find their property invested in a concern exposed to innumerable hazards and difficulties which do not belong to property of another

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character—such as, if they had their option, as their ancestors had, they doubtless would have preferred.”

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At that time the doctrine of Mr. Canning was the doctrine of the English nation. But how stands matters now? [I am reading, Mr. Speaker, from an essay, written by myself and published in the Richmond Whig, in September 1833. At that early time of my life I had directed my attention to this subject, and I have carefully noted its progress since.] In nine brief years, when the circumstances of the case stand unaltered—when the negro is the same degraded and ignorant creature he was in 1824—his condition in no respect ameliorated, how changed the scene? What language do ministers now hold? We hear Mr. Stanly (a minister of the crown,) saying “that the time had gone by when parliament could decide the question whether slavery should or should not be perpetual; the question now to be decided was, what was the surest, the speediest, and the most effectual mode of procuring its final and entire abolition.” Yes, in nine short years, this unheeded rant of infuriated fanatics has been converted into “*public opinion*,” which pressing upon ministers with an irresistible force, has *compelled* them to yield, as it did in the matter of Catholic emancipation and parliamentary reform, and to consent to projects equivalent to immediate abolition. We hear Mr. Stanly, as a minister, telling parliament that “a universal and extended expression of feeling pervaded the country; and there never was a time when the determination of the public was more absolutely or more irresistibly expressed, because it was founded on that *religious* feeling—on that solemn conviction of principle which admitted of no palliation or compromise, and which pronounced itself in a voice to which no minister could be deaf.”

Thus pressed upon by a fanatical public sentiment which ministers dared not to resist—by a sentiment which would brook no compromise—they consented to projects of which none but madmen would have dreamed of ten years before. Schemes which were so rapid in their operation that they resulted, on the 1st of August 1838, in the complete emancipation of more than eight hundred thousand slaves in the British West India Islands! Yes, sir, this

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institution, which had been growing up for more than a century under the fostering care of government, was demolished in comparatively a day, by that very government, forced into compliance by a band of reckless fanatics!

Mr. Speaker, a more striking instance of the rapid growth and the uncompromising character of fanaticism could not easily be produced, than the one to which I have just alluded. One of the wisest and most practical governments on earth had encouraged and fostered an institution for more than a century, until it became one of great national importance. One Man commences a war upon it. He enlists those great levers of the moral world, the pulpit and the press. He strikes the most sensitive chords of the human heart. He appeals to man's love for freedom. He works upon his superstition. He tampers with his conscience. In the beginning he is not denounced, but he is laughed at and derided. But by him and his followers the effort is persevered in, until within the space of one man's life it is triumphantly successful, and a great national institution falls before it.* A nation, a large majority of whose people are the most miserable of slaves, ground to the dust by exactions of every character, labouring five days in the week to sustain an oppressive government, and but one to support themselves, are induced even to ask for an increase of those burdens,† already almost insupportable, to emancipate a race of beings in no respect in a worse condition than themselves, as far as substantial comforts of life are concerned, simply because being slaves they were not insulted with the mockery of being called freemen!

* Mr. Clarkson, who was one of the first agitators in favour of abolition, was present at the World's Convention in London, held in June 1840.

† The British parliament appropriated a very large sum of money as compensation to the West India planters for the emancipated slaves.

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Let me not be told that I mistake the progress of freedom for the triumph of fanaticism. Sir, it is a fact which cannot be denied, that British abolition of West India slavery, was an act of pure and unadulterated fanaticism. To prove this I need not refer to the historical truth, that during her brightest days she was the greatest slave dealer on earth, but I may rest upon the fact, that she was, at the time of West India emancipation, the greatest slaveholder in the world, and hired out her slaves for profit.*

* *Extract from the Asiatic Journal for 1838, published in London, page 221.*

“Government of Slaves in Malabar.—We know that there is not a servant of government, in the south of India, who is not intimately acquainted with the alarming fact, that hundreds of thousands of his fellow creatures are fettered down for life to the degraded destiny of slavery. We know that these unfortunate beings are not, as in other countries, serfs of the soil, and incapable of being transferred, at the pleasure of their owners, from one estate to another. No; they are daily sold like cattle, by one proprietor to another; the husband is seated from the wife the parent from the child; they are loaded with every indignity; the utmost quantity of labour is exacted from them, and the most meagre fare that human nature can possibly subsist on, is doled out to support them. The slave population is composed of a great variety of classes: The descendants of those who have been taken prisoners in time of war; persons who have been kidnapped from the neighbouring states; people who have been born under such circumstances as that they are considered without the pale of the ordinary castes; and others who have been smuggled from the coast of Africa, torn from their country and their kindred, and destined to a more wretched lot, and, as will be seen, to a more enduring captivity than their brethren of the western world, *Will it be believed that government itself participates in this description of property; that it actually holds possession of slaves, and lets them out for hire to the cultivators of the country, the rent of a whole family being two farams or half a rupee per annum?*”

But why dwell on these comparatively free slaves? The whole of Hindostan, with the adjacent possession, is one magnificent plantation, peopled by more than one hundred

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millions of slaves, belonging to a company of gentlemen in England, called the East India company, whose power is far more unlimited and despotic than that of any southern planter over his slaves—a power upheld by the sword and bayonet, exacting more and leaving less of the product of their labour to the subject race than is left under our own system, with much less regard to their comfort in sickness and age.

The success of abolition in England gave a powerful impulse to it in this country. I have shewn that the abolitionists triumphed in England about 1830. Before that time the subject had been but little agitated here, except on one memorable occasion by the citizens of the northern states. Before that time, but few of the people of those states claimed the privilege of regulating our domestic concerns for us. Until then, except on the occasion to which I have referred, when the politicians attempted to convert it to their purposes, the agitation of the subject of emancipation was confined to a few peaceful Quakers. They occasionally petitioned congress upon the subject; their petitions were promptly rejected; and nothing was heard of them thereafter. Their rejection gave rise to no agitation. But after the success of abolition in England, petitions from a different class of persons, began to pour into congress, until in 1836, Mr. Pinckney of South Carolina, in an ill-fated hour moved to refer them to a select committee. Yielding to the fatal delusion that fanatics are to be reasoned with, he undertook to argue with them in a congressional report. His vain effort resulted as he ought to have anticipated. His rebuke produced about as much effect upon the abolitionists, as did Canute's upon the waves; and the one had about as much excuse as the other for making the attempt.

Mr. Pinckney made a very elaborate and able report; but so far from its allaying excitement, as was predicted, it only added oil to the flame. Under his resolution the petitions of thirty-seven thousand petitioners were laid upon the table. In 1837 the petitions of one hundred and ten thousand petitioners were laid upon the table under Patton's resolutions. And in 1838 *five hundred thousand* shared the same fate. I have not seen any computation of the number since that time, but I presume they have increased. Here we have 7 seen that the number of petitioners had increased, in three short years, from thirty-

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seven thousand to five hundred thousand. And this only includes the number presented in the house of representatives; those presented in the senate not being taken into the estimate.

Besides this proof of the increase of abolitionists, I will refer to the increase of the votes at each successive session against the resolutions providing for laying abolition petitions upon the table without debate. The vote against Pinckney's resolutions ranged from 40 to 45. Against Patton's it was 60. Against Johnson's, at the last congress, it was 70.

In addition to this, I will refer as proof of the increase of the abolitionists to the rapidity of the increase of the number of their societies. In May 1835, there were in the United States two hundred and twenty-five abolition societies. In 1836 they numbered five hundred and twenty-seven. The number had risen in 1837 to one thousand and six. And in May 1838, they had run up to one thousand three hundred and forty-six! I have not seen a statement of their increase since then; but doubtless they have augmented in the same ratio. These societies contained in 1838, one hundred and fifty thousand actual enrolled members. I derive these facts from the annual returns of the societies themselves.

These facts, Mr. Speaker, will give you some idea of the rapidity with which abolitionists are increasing, and of their present number; but there are others not less important. In reply to the enquiry, "What proportion do they (the abolitionists) bear in the population of the northern states? and what in the middle non-slaveholding states?" Mr. Birney, the secretary of the American anti-slavery society, and the best informed abolitionist in the country, replied:

"Within the last ten months," (the letter from which I read is dated the 8th of March 1838, and is addressed to honourable F. H. Elmore of South Carolina,) "I have travelled extensively in both these geographical divisions. I have had whatever advantage this, assisted by a strong interest in the general cause, and abundant conversations with her best informed abolitionists, would give, for making a fair estimate of their numbers. In

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the northern states, I should say there were *one in ten*. In New York, New Jersey and Pennsylvania, *one in twenty* of the whole adult population. That the abolitionists have multiplied, and that they are still multiplying, no one acquainted with the smallness of their numbers, at their first organization a few years ago, and who has kept his eyes about him since need ask.”

In the letter, he goes into details to prove these statements. In speaking of Massachusetts he says:

“The recording secretary of the Massachusetts society, stated a few weeks ago, that the abolitionists in the various minor societies of that state were *one in thirty of the whole population*. The proportion of abolitionist to the whole populations is greater in Massachusetts than in any state except Vermont.”

Of Ohio, where, a few years since, a law was passed to facilitate the recovery of runaway slaves, he says:

“Her supreme court is intelligent and firm. It has lately decided virtually against the constitutionality of an act of the legislature, made, in effect, to favour southern slavery by the persecution of the coloured people within her bounds. She has already abolitionists enough to turn the scale in her elections, and an abundance of excellent material for augmenting the number.”

A few years since, as I have already said, a law was passed in this state providing for carrying into effect the provision of the constitution of the United States, in relation to fugitives from service. This law was passed in aid of the law of congress upon the subject and is a faithful fulfilment of that state's constitutional obligation. But this law has given rise to great excitement in the state. It formed an important item in the late elections. Its repeal is most vociferously demanded. It is denounced as the “ *Black Act*.” And, should it

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be repealed, doubtless its advocates will go to another extreme and pass a law similar to the law of New York.

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I will next call the attention of the house to the rapidity with which the pecuniary means of these societies have augmented. I quote from their treasurer's report. The house will bear in mind that I give an account of the resources of only one society—the society of the city of New York:

“The annual income of the societies at large it would be impossible to ascertain. The total receipts of this society for the year ending 9th of May 1835, leaving out odd numbers, was \$10,000

For the year ending 9th of May 1836, 25,000

“ “ “ 1837, 38,000

“ “ “ 1838, 44,000

“ “ “ 1839, 47,700

And for “ “ 1840, 47,900.”

They account for the fact, that their increase was no greater the last year, by the hardness of the times; and they congratulate themselves that though their increased receipts have not been great, yet that the number of contributors had greatly increased—the contributions from a few members not being so large as before. These sums are independent of what is raised by state and auxiliary societies. Also of sums paid for the subscription to newspapers, for periodicals, pamphlets and essays, which are printed for sale. And the society boasts, that

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“The sums of money contributed to it is greater than is paid into the treasury of any one of the benevolent societies of the country.”

Here let me pause for a moment to call the attention of the house to the use which is made of these funds. The society itself tells us that these funds are used

“In paying lecturers and agents of various kinds—in upholding the press—in printing books, pamphlets, tracts, &c. containing expositions of our principles, accounts of our progress, refutations of objections, and disquisitions on points, scriptural, constitutional, *political, legal, economical*, as they chance to occur and become important. In this office (New York anti-slavery,) three secretaries are employed in different departments of duty; one editor; one publishing agent with an assistant; and two or three young men and boys for folding, directing and dispatching papers. The business of the society has increased so much of late, as to make it necessary, in order to ensure the proper dispatch of it, to employ additional clerks for the particular exigency. Last year the society had in its service about sixty permanent agents.”

What a spectacle is here presented? This parent abolition society of New York, to say nothing about its auxiliaries, has in its constant employment more officers than we have in this capitol to transact the business of this great commonwealth!

Besides this use of the funds of the society, they are employed in distributing their various publications, an account of some of which I will read to the house. I read from Birney's letter before referred to, written in March 1838:

“The ‘Emancipator’ and ‘Human Rights’ are the organs of the executive committee. The first is a large sheet, and is published weekly. The ‘Slave's Friend,’ a small monthly tract of neat appearance, *intended principally for children and young persons*, has been issued for several years. It is replete with facts relating to slavery, and with accounts of hair-breadth escapes of slaves from their masters and pursuers, that rarely fail to

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impart the most thrilling interest to their little readers. Besides these, there is 'The Anti-slavery Examiner.' * * * By turning to page 32 of our 4th Report, you will find that in the year ending 11th of May 1837, the issues from the press were—bound volumes 7,877, tracts and pamphlets 47,250, circulars, &c. 4,100, prints 10,490, 'Anti-slavery Magazine,' 9,000, 'Slave's Friend' 131,050! 'Human Rights' 189,400, 'Emancipator' 217,000. These are the issues of the American anti-slavery society from their office in this city. Other publications of a similar character are issued by state societies and individuals. The 'Liberator,' in Boston; 'The Herald of Freedom' in Concord, N. H., 'Zion's Watchman,' and 'The Coloured American,' in this city, (New York.) The latter is conducted in its editorial and other departments by coloured citizens. * * * Then there is the 'Friend of Man,' in Utica. The 'National Enquirer,' in Philadelphia. The 'Christian Witness,' in Pittsburg, and 'The Philanthropist,' in Cincinnati. * * * * Many of the religious journals that do not make emancipation their main object, have adopted the sentiments of abolitionists, and aid in promoting them. * * * * * A large and fast increasing number of *the political* journals of the country have become, within two years, if not the avowed supporters of our cause, well inclined to it. Formerly, it was a common thing for most of the leading PARTY PAPERS, especially in the large cities, to speak of the abolitionists in terms signally disrespectful and offensive. Except in rare instances, and these, it is thought, only where they are largely subsidized by southern patronage, it is not so now. The desertions that are taking place from their ranks, will in a short time render their position undesirable for any who aspire to gain influence or reputation in the north."

Mr. Speaker, is there one individual within the sound of my voice whose attention is not arrested by these facts? Is there one, who, in the face of them, can say that a strong feeling of hostility to our domestic institutions does not pervade the northern states? Is there one who doubts that a most active and insidious warfare is carried on against those institutions? A most malignant fanaticism must prevail in those states. How else, in these days of universal pecuniary pressure, do the abolitionists command such ample funds? If the people were not deeply excited, such large contributions of money, in such times,

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would not be made. If the subject was not one in which they took the deepest interest, so many publications could not be sold or read. The subject of slavery is one with which these people have no lawful authority to interfere. Therefore they are not responsible for its existence. It is a matter with which they have no concern of any sort; and yet we see the most flourishing societies in the country—the most powerful in numbers and means—ramified into every portion of an entire section of this confederacy, devoting themselves with zealots' perseverance to its discussion. We see them bringing to bear upon us every means of attack. Openly assailing us, even through legislative enactments, when that mode of warfare promises to be effectual; and silently and secretly, and insidiously sapping and undermining our institutions, when that system is more likely to be successful. Every means is resorted to, in order to excite the passions of the vicious, and to tamper with and pervert the consciences of the good. Even the child is not to escape their arts. Publications especially designed for him, are gotten up—in which are inculcated, not the lessons of virtue and patriotism, but of intolerance and faction. Publications in which they are taught not to feel a patriot's attachment for every portion of their country, but to hate the fairest section of it. In the spirit of the father of his country, they do not teach their children that the union of these states is the palladium of our liberties; that it was ordained to establish justice and insure domestic tranquillity; that it originated in feelings of brotherly love, pervading every section of the country, which had been strengthened by the common dangers and common triumphs, in the war of the revolution; and that the Union itself cannot survive the feelings in which it originated. But they teach them to regard the inhabitants of the most patriotic divisions of it, as monsters in human shape, inflicting every sort of injury and oppression on their fellow man. Upon their tender minds are engrafted sentiments and feelings incompatible with the Union. Sentiments which cause them to regard us as unfit national associates for them; and which renders them dangerous associates for us. And all this is done in the name of patriotism, virtue and religion!

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What will be the bitter fruits of these efforts with the rising generation time alone can definitely determine; but what they will be, may be conjectured from the effects which kindred efforts have produced upon the present. When adult intellects were to be dealt with, we have seen with what facility they have been prevented and poisoned. Look to the composition of most of the legislatures of the northern states for the last few years. There is scarcely one of them which has not been under the control of abolitionists. I know of but one, New Hampshire, she stands gloriously alone. Massachusetts and Vermont outstrip all others. Scarcely a session of their legislatures passes without their doing something offensive to us in relation to this subject, over 2 10 which they have no control. But why refer to other instances, when the course of the state of New York is before us? The proceedings of her authorities for the last two years establish one of two things: either that the state is in the hands of abolitionists, or what is just as bad, if not worse, in the hands of those who are willing to injure and insult us, and trample upon the constitution and laws to conciliate them. If the abolitionists were powerless, as is alleged, the governor and legislature of the largest state in the Union would not trample in the dust the obligations of the national compact, and their oaths to sustain it, to propitiate them.

Mr. Speaker, I put it to the candor of this house to say, if I have not established the proposition with which I set out, that the feeling in favour of abolitionism has increased in the non-slaveholding states; that it prevails there to a fearful extent, and that it is still increasing. But, sir, I should do very inadequate justice to the subject were I to stop here. The world seems at this time to be labouring under a monomania upon this subject, with which our country is only suffering in common with others. To establish this, and to bring before the house other evidence of the activity and art of the abolitionists, I ask its attention to the proceedings of The World's Convection, as it is ambitiously called. This convention assembled in London in June 1840. There were 493 delegates present. They were from every part of the United Kingdom, France, Spain, the United States, Hayti, the British West Indies, the Mauritius, Sierra Leone and other parts of the world. Distinguished members of the British parliament and of the French chamber of deputies took the lead

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in this convention. In reply to the question how Englishmen could affect slavery in the southern states of this Union, they were told "That the abolitionists of the United States demanded the aid of public opinion of the religious and literary influence of England." How this literary influence is to be brought to bear I need not inform the house. Under the operation of our copy right laws, the trash of the English press is circulated throughout the country to the exclusion of every thing else. And I am not left by the convention to conjecture how the religious influence of England is to operate. I quote from a minute account of the proceedings of the convention:

"The Rev. John Angell James brought up from one of the committees a series of resolutions on church discipline as connected with slavery. These resolutions which were *unanimously* adopted, after an animated debate, are grounded on the recognition of the 'essential sinfulness of slavery.' 'They declare that it is the incumbent duty of christian communities to separate slaveholders from their communion; and that christians ought to have no fellowship with slaveholders.' 'This bow,' they say, 'is not drawn at a venture, but with sure aim at the very heart of the monster. Drive out American slavery from the presence of the sanctuary, and its doom is sealed.'"

This, Mr. Speaker, is a part of the plan of operation. The slaveholder is to be put under the ban of the church, and excommunication is to be his doom. What influence these efforts are to produce, those can answer who know the control which the church has exerted, in every country, over the consciences and actions of its members. Its authority knows no rebuke, and it inculcates doctrines which admits, in the language of Mr. Stanly, "of no palliation or compromise."

Besides these facts, the proceedings of the World's Convention disclose others of a most important character. Facts which establish what I have asserted, that this abolition fanaticism pervades almost every nation of the earth. After encouraging and profiting by it for centuries, all of a sudden they seem to be awakened to its sinfulness. With an inconsistency, which could characterize fanatics alone, they grind to the dust their own

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subjects, and at the same time preach up crusades against African slavery. France, we are told, is pledged to emancipation. "The only question is the time and the mode." Denmark has already commenced the work. Holland and Sweden have but 11 few slaves, and they will be carried along by the influences operating around them. Spain must follow—she is Catholic. The pope has lately come out against slavery. No one at all acquainted with history need be told of the superstitious influence which the Church of Rome exerts over her devotees. While these states were colonies, the King of England refused to sanction laws prohibiting the slave trade. Now the Queen's husband presides at an abolition meeting!

Mr. Speaker, I do not wish to play the alarmist. Were I to attempt it, I should meet with any thing but sympathy from the members of this house or their constituents. But, sir, the people of the southern states of this confederacy ought not to be inattentive to what is passing around them. These facts must arrest their attention, if they do not excite their vigilance.

Before I dismiss the reference to the facts disclosed by the proceedings of this World's Convention, allow me to call the attention of the house to one of an important character. The account to which I have already referred states: "From a census, expressly taken for the use of the convention, of the fugitives from American slavery, they are found to amount to 15,000, and these numbers are daily augmenting." O'Connell proposes that these shall be placed by the British government "on the footing of political refugees." Those who know O'Connell's influence in the British government, and are acquainted with the fact that Prince Albert presides at abolition meetings, can form some idea of the chance of success of this scheme.

I have thus, Mr. Speaker, given the house an imperfect and I fear tedious account of the present extent of abolitionism. I will now ask its attention for a moment, to the plan of operation of the abolitionists in this country. I do this to trace governor Seward's course,

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and the action of the legislature of New York, directly to their influence, if not to their dictation. This I am prepared to do, with a certainty which will defy doubt or refutation.

When the abolitionist is asked what he expects to gain by the discussion against slavery at the north, where it does not exist, and amongst people who have no legal control over the matter? When he is asked what hope he has of convincing southern men, if that be his object, of the sinfulness of slavery, when they will not let him approach them? He answers, (I quote from the annual report of the New York abolition society for 1838, page 108):

“Such objections have been numerous from the outset. But they misapprehend the scope and power of our plan. It is true, that the conviction of the mass of slaveholders by reason and argument, directly and exclusively applied to them, is a task utterly hopeless. So intelligent abolitionists have ever regarded it. To apply arguments to the mass of slaveholders, with any prospect of success, certain obstacles and shields must be removed out of the way— *there must be a regeneration of opinion in the rest of the world.* All this is embraced in the plan of our society. The main application of truth first to be made was to the minds of those least interested against it. Action upon the south was rather intended to draw forth facts in relation to slavery which should produce results elsewhere. The seed sown there was not expected to vegetate till the surrounding atmosphere should be made sufficiently warm. The great work lay and still lies at the north. What has thus far been achieved is a demonstration that free states can be, and probably soon will be, abolitionized—that a majority of the people of all sects and parties will hold and avow the sentiments professed by the anti-slavery societies. The practical question which now arises is— *What effect will such a state of things have upon the slavery of the south?*”

This question is answered at great length, and with great minuteness in the report from which I am reading. The position that abolitionism at the north will only confirm the south in its present attitude, is first argued against. They insist that as soon as the north is completely abolitionized, the south will follow:

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“Men,” they say, “often cordially and sincerely embrace an opinion in its prevalence which, in the infancy of its power, they utterly opposed and defied.”

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The report then goes into a specification to shew how the north is to operate upon the south:

“Bring up sufficient counter-interest to those which now drive them to oppose abolitionism.”

“The first great interest which the abolitionized north will bring to bear upon the south is that which belongs to the power and patronage of the federal government. The north has a majority of the people, a majority of seats in the house of representatives, and she can have a casting vote in the senate, for she is absolutely able to appoint both the president and vice-president. *This power she ought and will wield, in all constitutional ways, against the common foe of our country.* Here a motive of immense power will be presented to the politicians of the south, and she is singularly prolific of politicians. Whatever may be said of the insufficiency of this power when exerted alone, it cannot but be efficient in connexion with others. Let it not be said that the controversy will thus become a merely sectional one—the whole north against the whole south. It should not be forgotten that a great portion of the people of the south, in some states a majority, were for abolitionists, *when they even have slaves.* These people never go to the polls, and perhaps never will, but the moment government begins to sympathize with them, they will have their representatives in congress. They will then form too important an object in the political horoscope to be neglected.”

The argument is then presented that the present high price of slaves is the great obstacle to emancipation. Destroy their value, say the abolitionists, and you dispose the south to abolition:

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“The ascendancy of abolitionism at the north will, for numerous reasons, decrease the value of the slave. To keep up the value of them, it is necessary that employment should be found for them, increasing in the ratio as the slaves themselves; and to give this employment, far more capital is required, than to employ free labour. Where is this capital to come from? From the free states? But will it go from the free states after slavery is put upon the footing with *piracy*? Who will then accumulate a fortune by slavery, with a view of spending it at the north? They will as soon think of doing it in another and not worse species of *piracy*. Who will then invest his capital in southern lands and slaves? The great stream of enterprize and capital which has heretofore set from the north to the south, giving value to slaves, will be cut off. Should this not result from the aroused conscientiousness of the capitalists, it will from their apprehensions. Who will buy an estate, *the title* to which is generally considered worthless.”

But I dismiss minor points and come at once to the main one. The discussion of the subject of abolition at the north *and in congress*, they say, will decrease the value of the slaves, by

“The interest which they themselves will take in the discussion. In spite of all precautions, the slaves will become acquainted with what so deeply interests them; and so far as they do, self-respect will be regenerated—an excellent and profitable sentiment for a *free labourer*, but ruinous *to the slave*. It was the testimony of the planters of Jamaica before the British parliament that their slaves became acquainted with all that passed in respect to them in the mother country, and were thereby too much excited to fill the places of slaves with slavish obedience.”

The knowledge of the slave, that a portion of the whites are exerting themselves for his emancipation, upon the ground that he is illegally held in bondage, will make him, they say, impatient in his servitude. It will make him sullen and moody. It will incite him to indulge dreams of freedom in another land which he can never enjoy in his own. He will be reduced to a condition in which his master cannot rely upon his labour. He will be

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disposed to run away; and at a time when his services can be least spared. The master will be subjected to constant and heavy expense to recapture him. He will thus become to his owner a source of vexation rather than comfort, of trouble and expense rather than profit. To establish these facts there is copied in the report the following extract of a letter from a man at the south to whose sister a gentleman of New York had sent two abolition pamphlets:—"Do you remember the two books you sent out to my sister by me? My two black boys, William and Jim, who lived better and easier than I did, read them, and in consequence run off, and after eleven days riding, and \$267 cost, I got them, and now their place is wretched by their own conduct, as I sold them at a loss of \$900 to a trader." The report then goes on to urge that to increase the desire and disposition of the slave to run away to the greatest possible pitch, it is necessary that the northern states should adopt such a course of policy as to render his recaption impossible after he has escaped there. The effect which such a course of policy would produce, in decreasing the value of slaves is then minutely exemplified. The report then urges upon the northern states to pass laws, providing such a mode of trial in the case of fugitives from labor, as will enable them to raise the question of the legality of the bondage in which he is held. It is true that in the proceeding authorized by the constitution of the United States, the question of the right of the slave to freedom does not arise. It is true that the master is only required to shew that the slave was held to service in the state from which he fled, without shewing that he was legally held to service—that question could only be tried in the state from which he fled. It is true that the master is only required to produce *prima facie* proof of ownership, without being put to a formal assertion of his rights by a suit at the common law.* But these abolitionists say that one man cannot be the property of another, and that he can only be held to service or labour *by a contract* freely entered into by him. And they insist that such laws shall be enacted as will enable the courts to pass upon the question of the legality of slavery. What care they that such a law would be repugnant to the constitution. They insist that the law of congress is unconstitutional, and they rely upon the opinion of Chancellor Walworth of New York in the case of Jack *and* Martin, 14 Wendell, and of Chief Justice Hornblower, in the case of Nathan Himesley *vs.* Maywood,

Speech of Mr. Bayly of Accomack, on the bill to prevent citizens of New York from carrying slaves out this commonwealth, and to prevent the escape of persons charged with the commission of any crime, and in reply to Mr. Scott of Fauquier, delivered in <http://www.loc.gov/resource/lhbcb.01798>

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as authority. They further urge the passage of such a law by the northern states, upon the ground that the laws of some of the southern states permitting slavery are unconstitutional, and that the slave ought to have an opportunity to test them whenever he escapes to the north. They say that “the citizens of Virginia and Maryland have no right by their own constitutions to hold slaves in their own territory, *much less to recover them from other states.*” They, by the following reasoning, undertake to establish this proposition:

* Story on the Constitution, vol. 3, p. 676.

“In the constitution of Virginia there exists a declaration of rights of equal force with that contained in the constitution of Massachusetts. We give them side by side:

VIRGINIA.

“All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely the enjoyment of life and liberty, with the means of acquiring and processing property, and pursuing and obtaining happiness and safety.”

MASSACHUSETTS.

“All men are born free and equal, and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties, that of acquiring, pos??ssing and protecting property; in fine, that of seeking and obtaining their safety and happiness.”

“Now, the constitution of Massachusetts, by virtue of the above cited article, was held by its courts to have abolished slavery, and since 1780 it has not existed in that commonwealth. Hence, if the doctrine of Massachusetts was sound, slavery is at this moment, unconstitutional in Virginia. But an unconstitutional law is no law. When a person is claimed before an upright magistrate, who believes in the Massachusetts doctrine, as a

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slave of a citizen of Virginia, he must necessarily be released. The claimant can bring no law of Virginia which will not be set aside by its own supreme law. The citizens of Virginia and Maryland have no right by their own constitutions to hold slaves in their own territory, much less to recover them from other states. So much for the two principal border states.”

I do not doubt but that the courts of New York will carry out these views, if the law of that state of the 6th of May last is permitted to remain upon her statute book. Acting under that law, they would be sustained by high judicial authority in doing it. The decision of the district court of the United States for Connecticut in the Amistad case, would sustain them in doing what the constitution and the law of congress does not authorize, in going behind the fact that the fugitive was held to service in the state from which he fled, and in investigating the legality of the claim to that service. And the decisions of the highest judicial tribunals of Massachusetts, would authorize them to pronounce slavery in Virginia unconstitutional and illegal.

The decision in the Amistad case was procured by the abolitionists. The facts of that case are briefly these: Two Spanish subjects had purchased a large number of slaves in Havana, and under a permit of the authorities of Spain, in which each slave was named, they started with them in the schooner Amistad from that place to another port in Cuba. After they were out a few days, the negroes rose upon the white persons on board. The captain, his *slave* and two seamen were killed. The negroes got possession of the vessel, and compelled two Spaniards who were wounded to navigate her. By altering the steering at night, they contrived to bring her on the coast of the United States, instead of carrying her to Africa, as required by the negroes. She was captured by the brig Washington and carried into New London. The Spanish minister demanded that the vessel, negroes, &c. should be surrendered to their owners, under our treaty with Spain. That treaty provides that “all ships and merchandize of what nature soever, which shall be rescued out of the hands of pirates or robbers on the high seas, shall be brought into some port of either

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state, and shall be delivered to the custody of the officers of that port, in order to be taken care of and restored entire to the true proprietor.”

The abolitionists immediately took the case in hand, and all their sympathies were at once excited in favour of these negroes. It is true their hands were wreking with the blood of white men. It is true they stood before the court as murderers and assassins. But they were black and their victims were white. That was enough to excite the sympathy of the abolitionist. Subscriptions were gotten up for their defence. An advertisement for this purpose was inserted in a New York paper, and in these times of pecuniary pressure, twelve thousand dollars were subscribed in a few hours! The abolitionists insisted before the court that these negroes were not legally held in bondage in Cuba, because they had been imported since the prohibition of the slave trade. The Spanish minister insisted that the courts of the United States had no right to inquire into the validity of the Spaniard's title to these negroes under the laws of Spain; if they were held there as property that was sufficient for the court; and the validity of their title, under the Spanish laws, could only be tried by Spanish tribunals. But the court decided otherwise; held that they were illegally held as slaves in Cuba; and the judge disgraced himself by falling into the cant of the abolitionists in his judicial decision, and declaring that “although they might be stained with crime, yet they should not sigh in vain for Africa.”

I have shewn that the law of New York of May last, which is discussed in the report of the committee, is just such a law as the abolitionists desired; and it will also be seen for what purpose they desired that it should be enacted.

But before I proceed further, and while I have the report of the abolition society in my hands, I will refer to a portion of it which contradicts an assertion which we constantly hear made. We constantly hear it said that the abolitionists do not desire to incite the slaves to insurrection. In noticing the argument that the efforts of the abolitionists would encourage insurrection, the report says:

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“If a ray of hope penetrates their gloom, though the chink through which it passes be never so small, it will banish all thought of insurrection while it shines. Though while hope of relief from some quarter holds out, the slave will abstain from rebellion, it is not 15 to be expected that they will continue to do so if this hope shall fade away. Once let them come to an understanding of their rights, and the master will be forced to the alternative of giving them, or of suffering them to be taken. Though our business is with the master—though it is for him and his political equals we print and lecture—yet we have now pledged ourselves to present, *what it is impossible should be presented*, the slaves from getting knowledge that we are printing and lecturing. After our operations have, for a fair probationary space, displaced all thoughts of insurrection by a better hope of deliverance, if the masters disappoint that hope, the consequences must be upon their own heads.”

The report from which I have been reading was made in the city of New York, in May 1838. In it the abolitionists shew that it is a matter of the utmost importance for the success of their plans that the northern states shall be made a refuge for fugitive slaves. To make them so, it was necessary that laws should be enacted rendering the recapture of fugitive slaves impossible, and that the executive of the state should take such a course in reference to fugitives from justice, as would offer impunity to such persons as should encourage and aid their flight. To accomplish these purposes it was necessary that they should get control of the executive and legislative departments of the government. Hence, in states where slavery did not exist, we have witnessed, what, until now, was unintelligible, that the sentiments of candidates for even state offices, in regard to abolition, was made a test in their elections. The condition, bitterness and blindness of party politics has enabled them to get control of the government of most of the northern states. The abolitionists are powerful in numbers, as I have shewn, and they are still more powerful in position. The two great political parties in the country are nearly equally balanced; and the abolition faction hanging between them is enabled to give the preponderance to which ever party it may join. It was necessary to conciliate abolitionists to gain power, and being gained it could only be retained by absolute subserviency to them.

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I have thus shewn how it is, that the abolitionists have got control of the government of New York; and having control of it, that the public functionaries have implicitly entered up their edicts, though in defiance of the constitution. Gov. Seward in furtherance of their plan of warfare upon our rights and property, declares that the person who entices our slaves from us commits no offence; and that if he escape to New York no punishment shall await him. And the legislature of the state passes a law which makes the recapture of the slave himself impossible. Thus, has the action of the governor of New York, and of the legislature of that state, been traced directly to the influence of the abolitionists.

Mr. Speaker, I designed to point out the most mischievous consequences which would be most likely to the course of the governor of New York; and also to examine, somewhat more in detail than is done in the report of the select committee, the provisions of the law of New York which is discussed in it. But I forbear to do so. I have already extended my remarks to a length which I did not wish; and I have yet a good deal of ground to go over. I earnestly entreat such members of the house as have not read that report, to give it a careful perusal, particularly that part of it which discusses the law of New York of the 6th of May last. And I also beg them to read the report which I had the honor of making from the select committee of last winter. It is to be found in the acts of assembly of 1840, page 155. In this latter report, the fallacy and dangerous tendency of the course of governor Seward is discussed.

Important, therefore, as this branch of the subject is, I must content myself with the summary which is made of it in the reports of last winter and this. In the report of last winter it is said:

“The positions of the governor of New York, when carried to their legitimate results, lead to consequences of a most frightful character, and which, as it seems to your committee, could not have been duly weighed by him. The governor of New York says, it is no offence to steal a slave, because one man cannot be the property of another, and cannot, therefore, be the subject of theft. If, for these reasons, it be no offence to steal a slave and

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carry him to New York, it would be none to steal him and carry him to Louisiana. Surely, in such a case, it would make no difference whether the thief steered north or south after committing his robbery.—The consequence is, if a citizen of New York were to come into this state, inveigle a cargo of our slaves on board his vessel, under the pretext that he meant to take them to some ‘land of liberty,’ and should carry them to Louisiana and sell them in the New Orleans market, and should thereafter take refuge in New York, he would be free from arrest, and could not be made to expiate his crime. And without wishing to make any unjustifiable attack upon the citizens of any state of this Union, your committee would be wanting in candour, if they expressed a doubt that such a case, if the course of the governor of New York should be persevered in, would be of probable and frequent occurrence. There are bad men in every country who will commit offences when they can profit by it, and do it with impunity. But what is still more probable, (if the course of the governor of New York be acquiesced in,) is, that those deluded enthusiasts at the north, who, in pursuit of something they know not what, are spending thousands and thousands in efforts which they must see, if they be not blinder than any one, except a fanatic, ever yet was, can never accomplish their object, will attempt to make those efforts practically efficient, by coming into our state and making it a labour of *virtue* to *steal* our slaves and convey them to a more galling bondage than they now suffer, in the northern states.

“Suppose one of those northern fanatics, who believing that the shedding of the blood of the wives and children of southern slaveholders, would be but an acceptable offering in the eyes of God, should come among us, and after inciting our slaves to insurrection, and aiding and abetting them in it, should escape into New York, consistency would compel the governor of New York to refuse to deliver him up for trial and punishment. He would say one man cannot be the property of another. These negroes, therefore, were held in illegal bondage, and the person who aided them in their effort to throw it off, only performed a meritorious action.”

There are other consequences which might be pointed out. Suppose a master should attempt to correct his slave, and the slave should resist, and carry his resistance to

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violence. Under the doctrine of governor Seward, he would not be guilty of any offence. If he be not the property of the master, he has no right to correct him, and were he to do it, the common law right of self-defence would justify resistance and violence.

I must again entreat the house to refer to the report of the select committee for the provisions and the character of the law of New York of May last, for I cannot do more here than read the summary of it from that report:

“In its first section it provides ‘that the claim to the service of the alleged fugitive’ shall be tried by a jury. Take this provision of the law in connexion with the doctrine avowed by the governor of the state, and sanctioned by the state, ‘that one man cannot be the property of another,’ and what prospect would a master have of getting a verdict in his favour under any circumstances. Can it be believed that a jury could ever be impannelled, upon which the active abolitionists of New York could not get one man to act upon a principle deliberately avowed by the executive, and sanctioned by the state? In that contingency, a verdict in favour of the claimant would be impossible. The 6th section makes the finding of the jury conclusive, gives an appeal to the slave as a matter of right, and denies it, under any circumstances, to the master. But if by mere possibility a verdict should be rendered in favour of the claimant, the 7th section provides a pretext for the rescue of the slave, by declaring that without any unnecessary delay he shall be removed out of the state ‘*on the direct route*’ to the state from which he fled. The 8th section provides, that if the verdict is in favour of the slave, that he shall never thereafter be molested; and that if any person shall remove him out of the state, ‘*under any process or proceeding whatever,*’ he shall be deemed guilty of kidnapping, and upon conviction, shall be imprisoned in the state prison for a term not exceeding ten years. This provision is obviously designed to deter the master from applying to the federal judiciary, and punish him if he take the slave out of the state, even by virtue of its process. The 9th section secures the slave every advantage of legal defence at the cost of the state; the 10th makes the claimant liable for the costs of the trial, Should he be unsuccessful, as he could not but be and the 11th makes him responsible for a large portion of them in any event. The 12th requires the complainant,

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before he commences his proceedings, to give bond in the penalty of one thousand dollars, with two securities, 'inhabitants and freeholders of the state,' conditioned to pay all costs and expenses, to pay two dollars a week for the keeping of the slave during the proceedings; and in the event that the verdict of the jury is against the claimant, that he shall pay a l costs and expenses, the fugitive's as well as his own, and in addition pay the fugitive one hundred dollars and all damages, which he may sustain! Which damages might be assessed by a jury, composed of abolitionists. The 15th ensures interminable delays, by authorizing the slave at any time to take out commissions to examine witnesses in other states; while the same privilege is denied 17 to the master. The 16th section is designed to annul that clause of the act of congress, which authorizes any state magistrate to issue a warrant for removing a fugitive slave to the state from which he fled. The 17th punishes with a heavy fine and imprisonment in the penitentiary, any person who shall attempt to remove a slave from New York by any such warrant; and inflicts like penalties on any one who shall exercise his right of recapturing his slave wherever found; or seize him under the law of congress."

The provisions of this law speaks for itself; but to shew the hostile feeling in which it was adopted, I refer to the circumstances attending its passage:

"After the proceedings of the general assembly of Virginia were communicated to the legislature of New York, Mr. Mann, a distinguished member of the house of assembly of that state, introduced the following resolution, viz:

“ *Resolved*, That the legislature has seen with deep regret, and decidedly disapproves and condemns the efforts of many misguided individuals in the northern states to interfere, without right, and in violation of the principles on which the constitution of the United States was established, with the domestic institutions of our sister states at the south: thereby disturbing the domestic peace of the states, weakening the bonds of our Union, and sowing the seeds of its dissolution.’

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“Another member having the floor, made a most violent speech against the resolution; and, to cut off reply, demanded the previous question, which was sustained by his party. Under this gag, the resolution was voted down: by 40 yeas, to 57 nays; but the abolition majority did not stop here. Subsequently, they introduced and passes the law which I am discussing. This act was originally introduced into the house of representatives. Mr. Roosevelt moved to amend it, so as to provide ‘that so far as respects the penalty of imprisonment in the state prison, it shall not be construed to extend to any claimant of a fugitive slave who shall have obtained the certificate of a judge or other officer, authorizing the removal of such slave, pursuant to the act of the congress of the United States, in such cases made and provided.’ This amendment was adopted by a vote of 47 to 37.

“The bill then went to the senate. The section exempting southern men from ten years confinement in the penitentiary, proceeding, according to the act of congress, to recapture their runaway slaves, did not suit the spirit abolition. So the senate struck out the provision added upon Mr. Roosevelt's motion in the house; and more effectually to enforce what that section was designed to prevent, there were added the 16th and 17th sections of the bill. For the character of these sections, I refer to the report of the special committee.”

Thus amended, the bill passed the senate by a vote of 15 to 4; and was concurred in by the house, by a vote of 42 to 31.

Having said thus much in relation to the wrong which we are suffering at the hands of New York, and of the origin of her measures, I beg leave now to call the attention of the house to the character of the remedy proposed. In discussing it, I shall adopt the order of the gentleman from Fauquier, (Mr. SCOTT) and follow him step by step through his argument.

What we complain of is, that the policy of New York endangers our slave property, by offering impunity to those who entice away and carry off our slaves, and by encouraging the slave himself to run away, by making his recapture impossible, The remedy proposed meets the mischief by providing against their running away, and against their being stolen

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from us. I will not go into a minute analysis of the bill. It is in the hands of members, and its provisions are simple and plain. It provides that no New York vessel shall depart from our waters until she is inspected, to see that no slaves are concealed on board. It requires the captain or owner, or some person for them, of all vessels owned in New York, to give bond with security, that they will not take any slaves out of the state, without the authority of the master. And it offers standing rewards to all pilots and other persons who shall detect any such vessel in carrying or attempting to carry any slaves out of the state. All of the expenses of the inspection &c. to be borne by the master or owner of the vessel.

The direct effect of the law will be to prevent the escape of slaves in vessels, and that is their principal avenue of escape. The captain and owner of all New York vessels, having given a heavy bond not to take any slaves out of the commonwealth, will not attempt it for fear of detection, (though it may not be very probable,) by which he will forfeit his bond. He will know that 3 18 a high reward is offered to any person, even one of his own crew, who shall detect him in any such attempt; and that all pilots, under a strong pecuniary stimulus to vigilance, are made centinels to guard our property; and the standing reward will make every man in society a watch upon him. The indirect effect of the law will not be less beneficial. It will have a tendency to create in New York a counter party to the abolitionists. The commercial portion of the community will see that they are subjected to harassing and expensive regulations in consequence of measures adopted by their state authorities to conciliate them; they will insist that their interests shall not be injured, that the abolitionists may be indulged in relation to a matter with which they have nothing to do, and over which they can assert no rightful control. I have already shewn that the great source of strength of the abolitionists is their position. Their support being necessary to party success, the politicians have not been fastidious as to the means of securing it. They were willing to do anything to please them, as long as it did not offend any of their constituents, even though in doing it they violated the constitution of the U. States. But as soon as they find that they cannot indulge the abolitionists without offending another and more worthy class of society, they will pause in their aggression. Nay they will be forced to repair those they

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have already made. When the commercial men find that the burdensome regulations of this bill will be repealed as soon as those measures of New York which have made them necessary are abandoned, they will require that justice shall be done us. They will see that we are right in protecting ourselves against unconstitutional aggressions, and they will not complain of those measures of protection, but of those acts which made them necessary. But if the influence of the bill will not be sufficient to cause New York to retrace her steps, and it shall be carried into effect, it will encourage our own coasting trade. And as soon as the trade is thrown into the hands of our own people, our property will be comparatively safe, for we are in no danger of their carrying it off.

Having thus shewn the principal features and recommendations of the bill, I will turn to the objections made to it by the gentleman from Fauquier. And I cannot withhold the expression of my regret, that in his long argument, I heard so little to approve, and so much to which I must attempt a reply.

The gentleman, very early in his remarks, with a view I presume of giving weight to them, said that his constituents had as large an interest in this question as the constituents of any other member upon this floor; and complained that though they were thus interested, the bill afforded them no protection. I take issue with him. I know his county is a large slaveholding county; but its geographical position secures it from most of the mischiefs emanating from the course of New York. His county not only does not lie upon any water course, but there are populous counties between him and navigation. Though the negroes in his county may run away, they do not frequently, I presume, escape to New York; and if they do, it must be by getting to the rivers and escaping in vessels. They can, from his county, much more easily get to other non-slaveholding states. It is different with us who are near the sea, the bay and navigable rivers, which are swarming with New York craft. We are directly exposed to all the mischiefs resulting from the course of that state.

But does the bill afford the county of the gentleman and others similarly situated, no protection? It certainly tends to prevent the escape of slaves to New York in vessels. This

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is admitted. Will they ever go there in any other manner? They cannot get there, except in vessels, without going through non-slaveholding states; and after getting to Pennsylvania, for instance, as those from the gentleman's county would do, or to Ohio, there would be no motive to go to New York. If they feared pursuit, they would 19 sooner go to Canada. They could do it as easily, and there they would be more secure from re-capture. Besides, if the effect of the bill will be, as I contend it will, to open the eyes of the people of New York, and cause her authorities to retrace their steps, will not his constituents, equally with mine, reap the advantage of it?

I think that this bill will afford protection to every section of the commonwealth—a protection which will be in the ratio of their exposure. It is the best measure which has suggested itself to me, and I have anxiously pondered upon the subject. Nevertheless, I am not wedded to it. My only wish is, to adopt the most efficient and least objectionable remedy. If, therefore, the gentleman will propose a better plan, one which shall afford greater protection to his people, I pledge myself to go for it, and with zeal too. He will not find in me an opponent prepared “to find or forge a fault;” but an active and zealous coadjutor.

Sir, I will give up my own bantling with pleasure, if the gentleman will present me with one more comely. But I put it to him, if it is not unphilosophical and unstatesmanlike, to object to one measure, when some action is necessary, until he is prepared to offer a better?

But he seems to think that no action is necessary or proper for us at this time; and in reply to a remark of mine, made in a former stage of this debate, that we were pledged by the resolutions of last winter to efficient action, he said that he did not consider that we were so pledged, and that he certainly was not.

I do not know, Mr. Speaker, whether the gentleman considers himself pledged or not to action. At the last session, he made a speech against the 2d resolution, which, in my estimation, does pledge us to efficient action, and then voted for it. Now, I do not know

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which he regards as most obligatory upon him, his speech or his vote. But, as no other member is in his situation, and as the resolution, in its very terms, contains what I esteem a pledge, I think I may still insist that we are pledged to some action. The 2d resolution adopted by the legislature is in these words:

“ *Resolved*, That the course pursued by the executive of New York, cannot be acquiesced in; and if sanctioned by that state, and persisted in, it will become the solemn duty of Virginia to adopt the most decisive and efficient measures for the protection of the property of her citizens, and the maintenance of rights, which she cannot and will not, under any circumstances, surrender or abandon.”

Can language be clearer or more explicit? I put it to the house if this resolution is not as direct a committal to adopt efficient measures for the protection of the property of the citizens of this state, in the event that New York should persist in her course, as a legislative body could make? Has the state of New York sanctioned the course of her governor, and is that course persisted in? I have but little to add to what is said in the report of the select committee upon this point. The report, as it advanced, if I may so speak of my own production, seems to me to be conclusive. But since that report was drawn, other facts have transpired to fortify the conclusion arrived at in it. The demand for the surrender of these three fugitives from justice was made by the executive of Virginia in July 1839. Governor Seward refused to deliver them for the reasons heretofore adverted to. We remonstrate against his course. We express the conviction that it is unconstitutional, and a dangerous invasion of our rights. We declare that we will not submit to it; but being unwilling to regard the course of the executive as indicative of the policy of the state, we desire him to bring the subject to the attention of its legislature. He does so; and the legislature at its last session sustain him in the most unqualified terms. A committee is discharged from the consideration of the subject upon the ground that “the positions of the governor were sound and judicious.” But they do not stop here. We demand a redress of grievances; and our demand is responded to by an aggravation of them. We remonstrate against the course of the governor, upon the ground that it violates

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the 2d clause of the 2d section of the 4th article of the constitution of the United States, and endangers our slave property, by offering a refuge from punishment, in New York, to evil disposed persons who may steal or entice off our slaves. The legislature responds to us by violating the very next clause of the constitution, and rendering the recaption of the slave himself impossible. The greatest injury they could do us, was but half inflicted—we remonstrate against that, and they reply by making it complete! The injury is not only made complete, but they insult us in the manner of doing it. The law of New York would have been bad enough, if it had been an isolated measure But when viewed in connexion with the course of the governor of New York, and the proceedings growing out of it, it becomes absolutely insupportable. Yet gentlemen undertake to palliate the matter, and insist that we are committed to no action, and that none is proper. Sir, I have scarcely the patience to argue this point further, and I am disposed to dismiss it. But I cannot do so, without doing injustice to our moderation, and without failing to exhibit in all its enormity the course of the legislature and governor of New York.

Our report and resolutions of last winter were adopted on the 17th of March. One of the resolutions requested the governor of Virginia to open anew a correspondence with the governor of New York, requesting him to review the grounds he had taken, and to bring the subject to the consideration of the legislature of his state. This request was complied with by governor Gilmer on the 6th of April. On the 11th of that month, governor Seward communicated our proceedings to the legislature. The action which was taken in relation to them we have already seen.

Governor Seward, for various frivolous pretexts, avoids answering governor Gilmer's communication, though often urged to do so, until after the presidential election. He then replies. As to the considerations which prompted this delay, the pitiful subterfuges to which he resorted to excuse it, and the character of the councillors whom he called to his aid in preparing his reply, I will not trust myself to speak. But his reply is delayed for seven months. Then it comes, and in it we are informed that the governor adheres to his positions, and that the legislature sustains him in it. Another legislature of his

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state convenes. The subject is again brought to its consideration by the governor in communicating his correspondence with the governor of Virginia, held after the adjournment of the last assembly. In cutting up the message of the governor with the view of referring the different subjects of it to appropriate committees, his friends take no notice of so much of it as relates to his contest with us. The omission is noticed, and the subject is brought before the house, and various propositions are proposed.

In the mean time, we having assembled, the subject is referred to a select committee. As soon as it is known that the subject is under discussion in the legislature of New York, the chairman of the committee announces in this house that the committee will delay any report until the matter is disposed of by that legislature. This announcement is published in our journals, and is copied into those of New York. The legislature of that state, with a knowledge that we were awaiting their action, and that the character of ours would depend upon theirs, take the subject into consideration. It is fully and ably discussed on both sides; and after that discussion, and with the utmost deliberation, the further consideration of the whole subject is indefinitely postponed. Immediately the select committee reports, and the conclusions it arrives at are objected to, upon the ground that New York has not finally acted upon the subject! After a protracted correspondence, in which argument is exhausted, and after a deliberation for near two years, the governor positively and unequivocally, 21 without any sort of qualification or reserve, expresses his determination to adhere to his course, and two successive legislatures sustain him in the most direct, and I may add, offensive manner; and we are told that we are acting hastily, and that the contingency, upon which we declared we would adopt efficient measures of protection, had not happened!! If we are not to act now, when are we to act? If we are not now satisfied that New York has taken her stand, what will satisfy us? Are we to expose ourselves to the ridicule of the country by professing an incredulity under such circumstances? Any further attempt at negotiation, any further delay, will bring us into contempt, and convince the world that we do not mean to do any thing in the matter except to brag and bluster, and ingloriously back out of the contest. If it is to

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be abandoned, let it be done at once. In the name of my country I demand, if we are to shrink ignominiously from a vindication of our rights, that we shall not make our conduct conspicuously degrading by pretending to a disposition to defend them. He who is not now satisfied that the time for action has arrived, never will be satisfied; and so it will be regarded by every body. The gentleman says we ought to pause before we act; we ought to reflect; we ought to consult the people as to the remedy befitting the occasion.

Mr. Speaker, has there been any haste in this case? Has there been any precipitancy? It is now near two years since this difficulty arose. What has been the character of our proceedings in the meantime? Have they not been marked with the utmost moderation? Have we taken one hasty or rash step? If so, let it be pointed out. Why then this exhortation to us to pause and reflect? But we have not consulted our constituents as to the remedy. Is there a member here who doubts about the wishes of his constituents in this case? Is there one whose constituents will not unanimously sustain him in redeeming the pledge unanimously given at the last session of this assembly, that if our wrongs were not redressed we would adopt the most efficient measures of protection? Is the measure proposed more than a most efficient measure of protection? My fear, Mr. Speaker, is not that it goes beyond our pledge, but that it does not come up to it. If we do nothing, will not our constituents complain? Will they not have cause for doing so? Who can excuse himself, in doing nothing, to those that sent him here, by saying he did not know their will?

The gentleman from Fauquier, with a view, I presume, of extenuating the course of the governor of New York, which he declared to be unconstitutional and outrageous, informed the house that this controversy was to some extent forced upon him. I had heard the same thing said before, even in this state, but I was not prepared to hear it from any member of this house. The friends of governor Seward attempted to excuse him on this plea in the legislature of New York; but it was effectually put down by a member of that body. And as I cannot add any thing to the argument by which it was done, and as I am much exhausted and suffering from indisposition, which is obvious to all who hear me, I will avail myself of it, though it may not contribute to the satisfaction of the house to hear the argument of one

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of its members in a contest between Virginia and New York, answered by a member of the assembly of the latter state.

[The clerk, at the request of Mr. Bayly, then read from the speech of Mr. Jones of New York, delivered in the assembly of that state on the 4th of February 1841, the following extract:]

“It appears, sir, that three coloured persons, citizens of this state, of the names of Peter Johnson, Edward Smith, and Isaac Gansey, are charged with ‘stealing and taking from one John G. Colley, a citizen of Virginia, a certain negro slave named Isaac, the property of said Colley,’ and conveying the said slave to New York. It being alleged that they were fugitives from justice, the governor of Virginia thereupon made a demand upon the executive of this state that they should be surrendered to an agent appointed for that purpose, in order that they might be taken back to Virginia to be tried for the offence charged upon them, according to the laws of that state. The governor of the state of New York is at first disposed to dispute the legality of the manner or form in which the charge against these alleged fugitives was presented to him. But he immediately concludes to waive all the defects therein, and refuses to make the required surrender, upon the ground that ‘the offence is not within the meaning of the constitution of the United States.’ And here let me correct an error into which the gentleman from Tompkins (Mr. L. Hubbell) has fallen in regard to the commencement of this constitutional passage at arms between the executives of the states of Virginia and New York. The gentleman observed, (in his speech as reported in the Evening Journal of January 21,) ‘I charge upon her (Virginia) that in the absence of all necessity, in defiance of all danger, and in disregard of her own and our invaluable interests, *she has raised a constitutional fiction*, simply to force the executive of this state, against his judgment and his conscience, to recognize its existence.’

“Sir, is the gentleman correct in this statement? Did Virginia raise this ‘constitutional fiction,’ as he is pleased to pronounce it, or the executive of our own state? Did not the governor of New York voluntarily, and as I think unnecessarily, waive the informality

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of the charge, and place his refusal expressly upon a constitutional prohibition? If a 'constitutional fiction' was raised, the executive of New York and not Virginia is entitled to the credit of raising it. The gentleman from Tompkins will observe, on reference to the correspondence, that though a matter of but little consequence, yet he has allowed himself to fall into an error in this particular.

"It is denied by the gentleman from Albany (Mr. Wheaton,) that there was a waiver made by the governor of New York. I refer the gentleman in the first place for proof of a waiver to the language of the governor of this state, in page 44, of the published correspondence upon this subject. He observes, 'I beg leave, therefore, to state most respectfully, that *admitting the affidavit to be sufficient in form and substance* to charge the defendants with the crime of stealing a negro slave from his master in the state of Virginia, defined by the laws of that state, yet in my opinion, the offence is not within the meaning of the constitution of the United States.' If language is entitled to the credit of having a meaning at all, it seems that the above indisputably proves the fact of a waiver on the part of the governor of this state, of all defects in the affidavit upon which the charge was based; placing the refusal to make the surrender upon other and entirely different grounds. But in the second place, what construction does the governor of Virginia put upon this language. The latter observes in reply to the governor of New York, in page 47 of the correspondence: 'Had you placed your refusal to make the surrender upon the ground of the (supposed) defective affidavit upon which the demand was made, however widely I might and should have differed in opinion with you upon that subject, I would have preferred and should probably have adopted the easier plan of removing your difficulties by having it put in an unexceptionable form. But you have rendered it unnecessary for me to pursue that course or to urge any arguments in favour of the sufficiency of the affidavit. You close the door of informality by declaring, that *admitting the affidavit to be sufficient in form and substance to charge the defendants with the crime of stealing a slave,*' &c., (quoting the governor of New York's language as given above,)—and this construction of the governor of Virginia, is certainly a reasonable and correct one, and not attempted to

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be denied or controverted by the governor of New York in his future correspondence. If the executive of Virginia had drawn a wrong inference from his language, it would have been natural and proper that he should have taken pains to set himself right upon the subject. But he impliedly admits the construction to be the correct one by allowing it to pass uncontradicted.”

When the clerk had finished reading, Mr. Bayly resumed:

Mr. Speaker, I may safely leave the gentleman from Fauquier in the hands of this member of the legislature of New York. I am sure it is unnecessary for me to add any thing to what he has said; for if his argument is not satisfactory, a simple reference to the correspondence between the two executives, which is in the members' possession, will remove every doubt, and shew conclusively that governor Seward went out of his way to take the ground he has assumed.

The gentleman from Fauquier also complained that in the report of the select committee, and in the bill, I have connected with our controversy with New York, a law of that state which has no connexion with the subject.

Mr. Speaker, I again take issue with the gentleman. I not only insist that this law is most intimately connected with our controversy with New York, but so much so that it is impossible to keep it out of view without losing sight of more than half of our grievance. The connexion which the law of New York had with the subject of our controversy in its passage through the assembly of that state, is already explained in the report of the committee. Its connexion in subject matter with that controversy, is also shewn in the same report; I adverted to it too, in some detail, in my reply to the gentleman from Albemarle (Mr. Coles) a few days since; and I have made some, though not very circumstantial, reference to it in my remarks to-day. For what was that law passed? To extend the right of trial by jury to fugitive slaves? That was not the object, for there was already on the statute book of New York a law doing that. For what then was it passed, if not to make the injury

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inflicted upon us by the governor complete, and to play back upon us, as I shewed in my reply to the gentleman from Albemarle (Mr. Coles) our principles assumed in this contest? This view of the subject is so important that I would go over it again, were it not for the fact that I have already extended my remarks to a very great length, and that I am speaking, as the house must see, in very great pain. I will therefore content myself with a reference to what is said in the report of the committee, and to the views taken by me on the occasion to which I have referred.

It seems to me that the gentleman loses sight of the gist of the controversy, when he says that the jury law of New York of May last has no connexion with it. Of what are we complaining? Is it that the governor of New York refuses to deliver up three free negroes for trial? By no means. The punishment of these felons is a small matter. It has frequently occurred, that demands for the surrender of fugitives from justice have not been complied with, and we have never made a serious matter of it. But we complain that the governor of New York has put his refusal upon grounds which offers impunity to persons enticing and carrying our slaves out of the state; that he thereby encourages the offence, and consequently puts our slave property in jeopardy. We remonstrate against his course upon this ground, and bring the subject before the legislature of his state. They not only sustain the governor in this aggression—they not only refuse to control him in a course, by which impunity is offered to those who may entice our slaves from us, but they pass a law, in the teeth of our remonstrance, and seemingly in answer to it, by which the recapture of the slave thus enticed away is made impossible. But, for the reasons I have given, I must avoid further detail upon this point.

The gentleman insists that the bill before the house is a measure of retaliation. He refers to the last section, which postpones its operation for some time as proof that it is so; and he asks if such a course is likely to bring New York to her senses.

Mr. Speaker, there is nothing of retaliation in the bill; and of all the clauses of it, which strip it of that character, the last is most conspicuous. The bill is entirely protective in

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its provisions. There is not one feature of it framed with a view of injuring New York; there is not one which that state, by her own conduct, has not made necessary for our protection. If the bill were to go into effect at once, there would be nothing of the “*lex talianis*,” in it. There would be nothing evincing a disposition to inflict one injury to avenge another. But the last section postponing its operation for some time to come, shews, not a disposition to do wrong for wrong, but a spirit of the utmost forbearance. Notwithstanding the governor of New York has deliberately taken his course, and pertinaciously adhered to it, in spite of our remonstrance; notwithstanding he has been sustained in it by two successive legislatures, under the most offensive circumstances, yet we in a spirit of moderation, because the measure will be burdensome to New York, delay the operation of our protective measure until the governor has had ample time to retrace his steps; and until another legislature has had an opportunity of acting. New York has it in her power at any time to suspend the operation of 24 our law, simply by complying with her constitutional duties; and the gentleman insists that the clause of the bill conferring upon her this privilege, proves it to be a measure of retaliation. We pass the bill because New York has made it necessary for our protection, and we allow her, in effect, to repeal it whenever she removes the necessity for it. And this is retaliation. This is acting harshly.

Is this bill calculated to bring New York to her senses? Eminently so, in my opinion. Until we do something to make this subject a practical one, the citizens of New York will take no interest in it. Until then, they will regard the whole controversy as a war of words about abstractions. Do we not see that the press of that state already takes this view of the question? And have we not seen them strengthened in it, by a repetition of it in a leading press of this state? The people of New York are eminently a practical people, and you never will be able to bring them to a serious consideration of any question which does not involve practical results. As soon as they see that we regard the course of their functionaries of so dangerous a character as to compel us to adopt measures harassing to them, they will enquire into the matter. And can any one doubt what will be their conclusion? Unless every feeling is extinct which ought to characterize the people

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of every portion of this union, justice will be done us. A very large portion of the people of that state have already expressed their conviction that their functionaries are wrong. Their wisest jurists express this opinion. Chancellor Kent, so distinguished for his learning, and a friend of governor Seward's, does not hesitate to express this opinion, as he has done in the last edition of his Commentaries. Under these circumstances, do gentlemen believe that the people of New York will allow their authorities to persevere in a course equally at war with her duty and her interest, simply because we now take a mild and forbearing measure of protection? This would shew a state of feeling in New York which I am not willing to believe exists there. The gentleman seems to expect that we are to treat New York as a spoiled child, who is not to be checked in its mischief, lest, forsooth, you may make her pout and fret.

The gentleman contends that this law is to operate upon the people of New York; he enquires what they have done, and asks if we are prepared to punish the innocent for the guilty. He insists that the legislature has not acted, and he enquires of me, if I am prepared to assert, that the re-election of governor Seward, after he had taken his stand against us, shews that the people coincide with him; and is a sanction by them of all his absurd notions.

I have never known the ground taken, but upon two occasions, that the success of a candidate in an election, in which is involved many issues, shews that the people agree with him in all of them. The friends of Gen. Jackson insisted, that his re-election in 1832, was a verdict of the people against the recharter of a national bank; and Mr. Clay has lately taken the ground in the United States senate that the election of Gen. Harrison was a decree of the people against the divorce of bank and state. It so happens that I did not acquiesce in these views on either occasion. Together with the gentleman, I repudiated the idea in Jackson's time. Did he agree with me in repudiating it on the latter occasion? As I dissented from the position on the only two occasions, when I have known it seriously taken, it is unnecessary for me to say that I do not agree in it now.

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But though I am not prepared to say that the re-election of a public officer is a sanction by the people of all of his acts, yet I am prepared to say that there is no way by which the sentiments of a state can be made known in a case like this, except through her public functionaries. We cannot know the state of New York in a contest like this, except through her public authorities. How else is the will of a state to be ascertained? Would the gentleman have the people of the state polled upon the subject? Will nothing short of this satisfy him? If so, he had better give up the contest at once. If the public functionaries who hold and wield the power of the state, do it in a manner to injure us, it is of no moment that the people disapprove unless they will interfere in the matter.

The gentleman urged with great zeal that he saw in this bill “the edge of the weapon which was to rend this Union.” He said that it squinted at disunion—it had an awful squinting at disunion. He stated that he supposed I thought I was recommending the bill when I informed the house that I had assurances from private sources, that the measure would be followed up by the other southern states interested: but that so far from its producing that effect with him, it excited his suspicions. The avidity with which it was clutched at by certain politicians made him distrust its wisdom.

Mr. Speaker—The weapon, the edge of which the gentleman sees in this bill, is like the dagger of Macbeth, it has no existence except in his own distempered imagination. Sir, I am a friend to the Union, so long as it continues what our fathers made it. There is no member of this house who is more so. This sentiment is not only founded in feeling, which is as strong as any other member's, but in interest. If gentlemen will but look at the position of my county on the map, he will see that there is no section which would suffer more in the event of a violent rupture. We are Virginians every inch of us, in feeling; but we are separated from our brothers by the Mediterranean of this continent. Let the strife come when it may, we will be in the hottest of it. In any event, whether we should be thrown with the north or the south, we would be a border county and suffer all of the scourges incident to that condition. But, I am an ardent friend of the Union, as a means not as an end. I am

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friendly to the Union as long as it shall continue to be the palladium of our liberties; but I shall become its deadly enemy when it shall be converted into an engine of oppression. As long as it is a Union founded in affection, I will cherish it; but when it shall be only maintained by force, I would strike it to the dust. I am a friend of the Union, but I am the enemy of consolidation. And if I should ever be forced, which Heaven forbend, to choose between disunion and consolidation, I would prefer the former. I would rather that the temple of liberty should be scattered in ruins, than become the abode of tyrants. I would rather take my chance for liberty 'midst anarchy, than quietly lie down in the chains of despotism. It might survive the one, it could not survive the other. I would rather be hunted as a beast of the forest, and die with the consciousness that I died free, than to live in peace as an abject subject of a usurper.

I am a friend of the Union, but because I am so, I am not to be frightened from protecting myself from aggression, and the constitution itself from violence, by the chimera of a dissolution of it. The gentleman says there is a class of politicians who are too fond of calculating the value of the Union. Sir, there is another class who are forever conjuring up visions of a dissolution, whenever the states propose to do any thing for their own protection. Let a doctrine of state rights be advanced. Let a gentleman intimate that he thinks the states have *any rights*, worthy of being called such, and at once the wolf cry of disunion is raised. There are set phrases always ready for such occasions. In mock heroicks, we are asked, "Who shall calculate the value of the Union! Learn to calculate the value of liberty, and then you may talk about calculating the value of the Union."

There are two standing themes with such politicians, "*a dissolution of the Union*," and "*vague abstractions*," which, like patent medicines, are used on all occasions, and not in very varied doses. We must be mistaken for children or timid women, else it would not be supposed that we could be frightened from our propriety by this "raw head and bloody bones" of a dissolution 4 26 solution of the Union, which is so often conjured up and stalked across this hall.

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But it seems I let out a most terrible plot of treason, when I informed the house that I was assured from private sources, that if we took our stand on the provisions of this bill, we would be promptly sustained by the other southern states.

The 4th resolution, which was passed at the last session of the general assembly is in these words:

“ Resolved, That the governor of Virginia be requested to open a correspondence with the executive of each of the slaveholding states, requesting their co-operation in any necessary and proper measure of redress which Virginia may be forced to adopt. ”

In obedience to our request, governor Gilmer opened this correspondence; and from some of the states replies have been received from their public functionaries, but not from all. I inform the house that I am assured from private sources, that the request of the general assembly, that the slaveholding states will co-operate with us, will be promptly complied with, as soon as we have adopted our measure of redress; and behold! I am told that I have communicated most frightful information.

The gentleman argues that the bill will be inefficacious; and to prove it to be so, he relies upon what is said upon this point in the report of last winter. He quotes this sentence from that document: “Besides, it would be difficult to enforce it (an inspection law,) in an effectual manner. A vessel might be inspected one hour, and the next take a slave on board and be off. This would be the case particularly in the navigation of our long rivers.” Mr. Speaker, I admit the difficulty. I do not contend that the law will afford us perfect protection. Like every other law which was ever framed by any human tribunal, it is not perfect. I do not believe that it, or any other law can be made so. The question is not whether the bill is perfect, but whether a better one can be proposed. I insist that the gentleman is precluded from opposing this bill, upon the ground that it will be difficult to enforce it in an effectual manner, until he can offer one less objectionable.

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That the house may not attach too much weight to what is said in the report of last winter upon this point, I beg leave to state under what circumstances it was drawn. As soon as this subject was referred to a select committee at the last session, as the chairman of it, I immediately busied myself in feeling the pulse of the house, to see what would be done. I soon found that a majority was opposed to any decisive action at that time. The members regarded the course of governor Seward as so outrageous, that they were disposed to believe that he would not adhere to it; and if he did, he would be controlled by the legislature of his state. It is known to this house that I did not concur in these views. It is known that I predicted, standing in this place, that that would occur which has occurred. Nevertheless, finding that I could not do all I desired, I was determined to accomplish all I could. Hence I recommended the course adopted at our last session.

When I sat down to draw the report of that session, I did it with the understanding that we were to content ourselves with making an appeal to New York to do us justice. To enable us to make this appeal with any force, I thought unanimity was necessary. To procure this, it was necessary to reconcile those who urged decisive action at once, and those who were unwilling to go further than a remonstrance. Drawing the report with a view to accomplish this purpose, I confess I did not scan the different measures proposed with very great minuteness. But it is evident from the report itself, that a law similar to this was then my favourite remedy. Nevertheless, I did not then think that an inspection law could be framed which would be so well guarded as the one now under discussion. I did not set down to draw the bill without 27 much reflection; and I flatter myself I have been enabled to make it an efficient remedy. At the last session, the bond feature of the bill did not suggest itself to me. I regard that as its most important feature, for the reasons I have given. Nor did it occur to me, that the pilots could be made, with so much efficiency, guards and watchmen for us.

[At this point Mr. Bayly was about to commence his reply to the argument of Mr. Scott against the constitutionality of the bill; but he was interrupted by Mr. Chapman, who

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said that it was evident that the gentleman was very much exhausted, and as he was approaching a very important part of his argument, with his permission he would move an adjournment. Mr. Bayly gave way and the house adjourned. On the next day Mr. Bayly continued his speech as follows:]

Mr. Speaker, on recurring to my notes, I find that I omitted to notice on yesterday, several points made by the gentleman from Fauquier, (Mr. Scott.) Most of them are immaterial, and I will not detain the house to refer to but a few of them. The gentleman said that the bill was crudely drawn, and insisted that if a ship of war, commanded by a resident of New York, were to arrive within our waters after its passage, our inspector would be required to take possession of her, provided the captain did not give the bond; and he undertook to draw the ridiculous figure which our inspector would cut in taking possession of a line of battle ship, and muzzling her “dogs of war.”

In the first place, I contend that the gentleman's construction is not correct. Every law must be construed with an eye to the object of it; and a ship of war would not come within the provisions of this bill. But suppose I am wrong in this, and the gentleman is right, it is no objection to the bill, for it is now open to amendment, and four words inserted in it would remove the difficulty. This is a conclusive answer to this and all similar objections. I will take no farther notice of them than to say that the gentleman from Fauquier is the last man who ought to start them, for he it was who moved to come out of the committee of the whole, where there existed the greatest latitude of amendment.

Mr. Speaker, without noticing minor difficulties started by the gentleman from Fauquier, I will proceed at once to the constitutional objection; and to this part of the discussion I beg the earnest attention of the house. If the constitutional objection be well founded, it is fatal to the bill. If we cannot protect ourselves without violating the constitution, I for one am opposed to doing it in that way; I would prefer at once to throw off its shackles, rather than, living under it, violate its provisions.

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The states of this Union are sovereign and independent, united by the constitution of the United States, which is a compact between them, and are possessed of all powers which belong to such states, excepting those, the exercise of which is delegated to the general government. This is a proposition which it is not necessary to establish by argument in this legislature. If any moral proposition can be settled, this one is not open for controversy here. The compact itself provides that all powers not delegated nor prohibited to the states, are reserved to the states or the people.

It is not denied that we may pass this bill, unless we be prohibited from doing so by the constitution of Virginia, or the constitution of the United States. The gentleman has not taken the ground that it is prohibited by the Virginia constitution; but as I have heard the idea expressed in private by members of the house, that it was in conflict with our bill of rights, I will make a few remarks upon that point. The section of the bill of rights which is supposed to contain the prohibition, is in these words: "That general warrants whereby any officer or messenger may be commanded to search suspected places, without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described, and supported by evidence, 28 are grievous and oppressive, and ought not to be granted." The language of the section itself, as well as its history, shews that it is not designed to apply to a case like this; and that it is meant as a restraint upon the executive and judiciary, rather than upon the legislature. This clause of our bill of rights, and a similar one in the constitution of the United States, have a common origin. They are little more than the affirmance of a great constitutional doctrine of the common law. And their introduction into our constitution, was doubtless occasioned by the strong sensibility excited both in England and America, upon the subject of general warrants almost up to the eve of the American revolution. Although special warrants upon complaints under oath, stating the crime and the party by name, against whom the accusation is made, are the only legal warrants upon which an arrest can be made, according to the law of England, yet a practice had obtained in the secretary's office ever since the restoration, of issuing general warrants to take up without naming any person

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in particular, the authors, printers and publishers of such obscene or seditious libels as were particularly specified in the warrant. When these acts expired in 1674, the same practice had continued in every reign, and under every administration, except the four last years of Queen Ann's reign, down to the year 1763. The general warrants so issued, in general terms, authorized officers to apprehend all persons suspected without naming or describing any person in particular.*

* Story's Commentaries, vol. 3, page 748.

It is evident, therefore, from the history of the provision, as well as the language of it, that it is meant only as a restraint upon officers, and not for a case like this. The next provision is in similar terms:—"In controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred." Yet it has never been doubted, that the legislature may constitute chancery courts.

The provision in the constitution of the United States, though similar, is in stronger terms, yet it has never been construed to prevent such searches and seizures as are authorized by the custom-house laws—some of which go a great deal further in this respect than the bill before the house.

The bill not being in conflict with the constitution of Virginia, the next question which arises is, whether it is in conflict with the constitution of the United States. The gentleman from Fauquier contends that the power to pass this bill is granted to congress, in exclusion of the states, in the clause authorizing congress to regulate commerce; and that it is prohibited to them by the second clause of the 2d section of the 4th article of the constitution. And to sustain him in the opinion that it is unconstitutional, he refers to the report of the committee of last winter—particularly the sentence in which it is said—"To bring it (an inspection law,) perhaps within the constitution it would have to be general". That sentence is not meant to assert positively that to bring an inspection law within the constitution, it would have to be general. At the time it was written, I entertained

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no such opinion. But I have already adverted to the circumstances under which the report was drawn. On this point there were then, as now, two sets of opinions in this house. Some supposed that unless the law was made general in its operation, that it would be unconstitutional; others entertained a different opinion. I could not, therefore, assert or deny the proposition without provoking the opposition of the one class or the other. Therefore it was that I introduced in that part of the report, and in the subsequent paragraph of it the word “ *perhaps*.” And that it was wisely introduced in the last instance was proved by the fact that the gentleman himself was scarcely restrained, as I well remember, from making war upon that part of the report by its introduction.

29

But the report of last winter asserts the constitutionality of the measure positively. 3d. The proposition to appoint inspectors. This has much to recommend it. In the first place, the remedy is specific to the wrong. *It is clear of all constitutional difficulty*. The principle upon which such a law would be founded has been frequently recognized. In point of time, first in the recognition of the validity of quarantine regulations, and last in the law prohibiting the transmission of incendiary publications by mail.”

Is the bill prohibited by the 2d section of the 4th article of the constitution of the United States? That section is in these words:—“The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.” Speaking of this provision in the constitution in his Commentaries, judge Story says:—“It is plain and simple in its language, and its object is not easily to be mistaken. Connected with the exclusive power of naturalization in the national government, it puts at rest many of the difficulties which effected the construction of the article of the confederation. It is obvious, that if the citizens of each state were to be deemed aliens to each other, that they could not take or hold real estate or other privileges, except as aliens. The intention of this clause was to confer on them, if one may so speak, a general citizenship.”

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The difficulty of the gentleman seems to me to originate in a misreading of the clause of the constitution. The clause is not, as I understood the gentleman to read it: "The citizens of each state shall be entitled to all privileges and immunities of the citizens in the several states." Were that the clause, it might with more plausibility be contended that this bill is in conflict with it. The provision as it exists in the constitution was designed to give to the citizens of the several states the "*rights of citizenship*," and not to put all of the citizens of the United States upon the same level, and confer on them equal rights. This would be wholly destructive of state governments. The question is not, therefore, whether the bill makes a discrimination between the citizens of the several states; but whether it infringes any right of citizenship—any right which a man as a member of civil society, cannot be deprived. This view is obviously correct; and it has been sustained by repeated judicial decisions. In the case of *Morris & Campbell*, 3 *Harris & M'Henry*, p. 553, which arose under the statute of Maryland, authorizing attachments against the property of non-residents, and which could not be sued out against residents, Judge Chase in deciding the law to be constitutional, said:

"Privilege and immunity are synonymous or nearly so. Privilege signifies a peculiar advantage, exemption, immunity; immunity signifies exemption, privilege.

"The peculiar advantages and exemptions contemplated under this part of the constitution, may be ascertained, if not with precision and accuracy, yet satisfactorily.

"By taking a retrospective view of our situation antecedent to the formation of the first general government, or the confederation in which the same clause is inserted, one of the great objects must occur to every person, which was the enabling the citizens of the several states to acquire and hold real property in any of the states, and deemed necessary as each state was a sovereign and independent state, and the states had confederated only for the purpose of general defence and security, and to promote the general welfare.

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“It seems agreed, from the manner of expounding or defining the words immunities and privileges, by the counsel on both sides, that a particular and limited operation is to be given to these words, and not a full and comprehensive one. It is agreed it does not mean the right of election; the right of being elected, the right of holding office. The court are of opinion it means, that the citizens of all the states shall have the peculiar advantage of acquiring and holding real as well as personal property, and that such property shall be protected and secured by the laws of the state in the same manner as the property of the citizens of the state is protected.”

Judge Washington, in the circuit court held the same doctrine, in deciding the case of *Corfield* and *Coryell*, which arose under a law of New Jersey, in which the constitutionality of the following provision came in question:

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“That it shall not be lawful for any person, who is not at the time an actual inhabitant and resident in this state, to rake or gather clams, oysters, or shells in any of the rivers, bays or waters *in* this state, on board of any canal, flat, scow, boat or other vessel, not wholly owned by some person, inhabitant of, and actually residing in this state; and every person offending herein, shall forfeit and pay \$10, to be recovered, &c., and shall also forfeit the canoe, flat, &c., employed in the commission of such offence, with all the clams, oysters, shells, rakes, tongs, tackle, furniture and apparel in and belonging to the same.

“The seventh section makes it the duty of all sheriffs and constables, and permits any other person to seize and secure any such canoe, flat, &c., and immediately to give information thereof to two justices of the peace of the county where such seizure shall have been made, who are required to meet at such time and place as they should appoint for the trial thereof, and to hear and determine the same, and in case the same should be condemned, it should be sold by and under the order and direction of the said justices, who, after deducting the costs and charges, should pay one half the proceeds to the

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collector of the county in which such offence was committed, and the other half to the persons who seized and prosecuted the same.”

In deciding this case the learned judge first answered the objection that it was an unconstitutional regulation of commerce, and then the objection, that it conflicted with the 2d section of the 4th article of the constitution. On this point he said:

“The next question is, whether this act infringes that section of the constitution which declares that ‘the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?’

“The enquiry is, what are the privileges and immunities of citizens in the several states? We feel no hesitation in confining this expression to those privileges and immunities which are, in their nature, *fundamental*; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: 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 obtain happiness and safety; subject, nevertheless, to such restraints as the government may justly prescribe for the general good of the whole.”

“But we cannot accede to the proposition which was insisted on by the counsel, that under this provision of the constitution, the citizens of the several states are permitted to participate in all *the rights* which belong exclusively to the citizens of any other particular state, merely upon the ground that they are enjoyed by those citizens; much less, that in regulating the use of the common property of the citizens of such state, the legislature is bound to extend to the citizens of all the other states the same advantages as are secured to other citizens.”

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These authorities sustain me, I think, in the position which I have taken. The question is not, whether this bill imposes restrictions upon the citizens of New York, which are not imposed upon the citizens of Virginia; but it is, whether we impose restrictions in it upon the citizens of that state which we have not the right to impose upon the citizens of this. In a word, whether the bill deprives citizens of New York of privileges of which a man in a free government cannot be deprived.

We could not suspend the writ of *habeas corpus* as to citizens of New York; we could not say they should not hold real estate in this commonwealth. These are rights of citizenship of which we cannot deprive our own citizens, and of which we could not, therefore, deprive the citizens of New York. For the same reason we could not say they should not sue in our courts, though we may say, as in fact we do say, that they shall not do so without giving security for costs, even though we do not require it in similar cases from our own citizens.

We may discriminate between our own citizens and citizens of other states, provided, in making that discrimination we do not deprive them of any privilege of which a citizen cannot be deprived. In fact, our civil code is full of laws discriminating, not only between non-residents and citizens, but between different classes of our own citizens.

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There is a discrimination, Mr. Speaker, in favour of the profession to which you belong. No one but a licensed attorney can bring a suit or plead in court except in his own cause. We never grant an act of incorporation in which we do not make discriminations. One set of individuals, who may be invested with banking privileges, issues a currency which circulates as money, when all others are prohibited from doing so under heavy penalties. But I will only refer to one more instance, because it is the most striking of all—the elective franchise. That privilege is the most inestimable of all others. In fact it includes all others. The privilege of selecting those who are to make the laws under which we live is the greatest privilege of a freeman. Yet, in regulating the right of suffrage, we do discriminate between different classes of society; and whatever difference of opinion

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there may be as to the propriety of doing it, there can be none as to the power. The fact that this discrimination is made in the state constitution can make no difference. It was adopted since the federal compact was ordained, and we have no more right to make an unconstitutional discrimination in a constitution than we have in a law. But the right of suffrage, before the adoption of our state constitution, was regulated by statute, and in it even a greater discrimination was made.

We make discriminations between different classes of our own citizens, and we make still greater ones between them and non-residents. Attachments may be issued against non-residents, and their property sold, under circumstances in which similar proceedings cannot be had against residents. We require security for costs of non-residents, when we make no such requirement of our own people. In passing ferries tolls are often demanded of non-residents, when no such demand is made upon residents. All of these are discriminations. But I will content myself on this head as I did on the last, and for the same reason, with referring to the instance of the elective franchise. We deny, and so do most, if not all, of the states, to non-residents the right of voting in our elections. We thus deprive them of the greatest of all privileges. They may have every other qualification; but if they do not have that of residence we exclude them from the polls. Our right to do this, notwithstanding the provision of the constitution which I am considering, has been solemnly tested in Virginia. Mr. Custis of Arlington, having the property qualification in Virginia, claimed the right to vote in her elections; and he relied upon this very clause of the constitution of the United States, as preventing Virginia from excluding him from it. The case came to the court of appeals; and the constitutionality of the discrimination was solemnly affirmed.

But I will not press this view of the subject farther. Concede the doctrine contended, that we cannot discriminate between our own citizens and those of other states, and you obliterate state boundaries; melt them down into one mass; and make separate state sovereignty an ideal existence.

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This bill so far from depriving the citizens of New York of any privilege or immunity, of which we cannot deprive our own citizens, only puts the citizens of the two states upon an equal footing. If a citizen of Virginia takes a slave out of the state, he is responsible for so doing in his person and his property. Double the value of the slave can be recovered from such offender, for the payment of which not only all of his own property is liable, but if he be a master of a vessel, the liability attaches to her too, although he may not own a timber of her. Our citizens cannot violate our laws and escape with impunity; and this bill is designed to place citizens of New York, as far as practicable, in the same condition.

The gentleman from Fauquier contends that the bill is a regulation of commerce; and that the power to do that is exclusively vested in congress.

Admit it to be a regulation of commerce, which I only admit for the sake of the argument, and still I insist that we have the power to pass it.

32

As I have already said, these states are sovereign, and they possess all power which is not exclusively delegated to congress by the constitution of the United States or prohibited to the states. This is declared in the 10th amendment to the constitution itself. Whenever a power not in its nature exclusive, is granted to the general government, and not prohibited to the states, it is concurrent in congress and the state legislature. This position will not be denied. If it should, I might refer to the 32d No. of the Federalist, or, indeed, any other work on the constitution, as authority to sustain it. The power to regulate commerce is delegated. Is it delegated to the general government exclusively? The terms of the grant are not exclusive. They are not more so than in other grants, where the power is admitted to be concurrent. The language of the constitution is, congress shall have power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." There is nothing in the terms of this grant more exclusive than in the one empowering congress, "To provide for organizing, arming and disciplining the militia?" Yet this latter power has always been held to be concurrent. Nor is the power exclusive

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in its nature. There are but few powers of the general government which are in their nature exclusive. Such powers as have their origin in the constitution, are of that class, for instance, the power of exclusive legislation for the District of Columbia, and the power to borrow money on the credit of the United States. Perhaps there are others, such as those which have an extent and operation when exercised by a state beyond its territorial limits; as in the case of naturalization. And even in this case, it would not be held to be exclusive, but for the clause of the constitution securing to citizens of each state all the privileges and immunities of citizens in the several states, notwithstanding the terms “uniform rule” are employed.

The powers which are exclusively vested in congress are few, those which are concurrent are numerous. To enumerate them would not be difficult, though, perhaps, useless. The power to lay and collect taxes, call forth the militia, &c. are of that character. All powers which are granted to the national government, should be construed to be held by it concurrently with the states, except in those cases where they are prohibited to the states in express terms, or by inevitable implication. In the spirit of this rule, it has been conceded, that though congress is authorized to establish *uniform* laws on the subject of bankruptcy, the power over that subject would be a concurrent power, and that the states might pass bankrupt laws if they did not impair the obligation of contracts. And it has been decided even, that they may pass a law discharging the contract if it be entered into subsequent to its enactment. A stronger case than this could not be instanced,—for it might here be urged with much force that the power granted to congress to establish *uniform* laws of bankruptcy, would be frustrated, if a concurrent power was conceded to the states. Surely the terms of the grant in this instance are much stronger than in the grant of the power to regulate commerce.

If the grant of the power to regulate commerce to the general government is not in its nature exclusive, the argument is at an end, for it will not be contended that it is prohibited to the states in express terms. The only restriction upon the states in this particular is contained in the prohibition upon them, that they shall not enter into any treaty or compact

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with each other, or with a foreign power, nor lay any duty on tonnage, or on imports or exports.

The very fact that these restrictions are made, proves, that but for them, the states might exercise the power in the instances prohibited, and it also proves that in all cases to which the prohibition does not extend, the power exists. For authority on these points, I might refer to the case of *Livingston vs. Van Ingen*, 9th Johnson's Reports, in which Chancellor Kent decides that the power to regulate commerce is a concurrent one.

33

If the power to regulate commerce be concurrent, the next question is, does the bill before the house conflict with any *subsisting* congressional regulation of commerce. If there be no such regulation in existence at this time, there is nothing to restrain our action. The fact that congress may pass one hereafter, cannot produce that effect. In the language of Chancellor Kent:

“We have nothing to do in the ordinary course of legislation with the possible contingency of a collision, nor are we to embarrass ourselves in the anticipation of theoretical difficulties, than which nothing could in general be more fallacious. Such a doctrine would constantly be taxing our sagacity to see whether the law might not contravene some future regulation of commerce or some moneyed or military operation of the United States. Our most simple municipal provision would be enacted with diffidence, for fear we might involve ourselves, our citizens and our consciences in some case of usurpation. Our safe rule of construction and of action is this, that if any given power was originally vested in this state, if it has not been exclusively ceded to congress, or if the exercise of it has not been prohibited to the states, we may then go on in the exercise of the power until it comes practically in collision with *the actual* exercise of some congressional power.”

Should the bill before the house become a law, will it conflict with any existing law of congress? I need not enquire whether it will interfere simply with some congressional

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regulation; for it might, interfere, and yet the law stand. The question which must yield in the case of a collision between two laws passed under a concurrent power, does not arise, until the conflict is found to be of such a character that the two laws cannot stand together. This is the view of the best commentators upon the constitution.

In the 32d No. of the Federalist, it is said:

“The power granted to the Union is exclusive where the existence of a similar power in the states would be *absolutely and totally contradictory* and repugnant.”—“Or where a power is granted to the Union with which a similar authority in the state would be *utterly incompatible*.”—“It is not a mere *inconvenience* in the exercise of a power, but an *immediate constitutional repugnancy* that can, by implication, alienate and extinguish a pre-existing right of sovereignty.”—“The exercise of a concurrent jurisdiction might be productive of *occasional interference* in the policy of any branch of administration, but would not imply any direct contradiction or repugnancy in point of constitutional authority.”

No law of congress has been or can be produced, with which the bill before the house *is utterly incompatible*.

But I take higher ground and call for the production of the congressional regulation with which this law would even *interfere*. The industry of the gentleman from Fauquier has not enabled him to produce such an one; for I am sure, upon a re-examination, he will admit that the section of the law in relation to coasting vessels can have no application to this case.

There are two classes of vessels known to our laws, those engaged in foreign commerce, and those engaged in the coasting trade. There are distinct regulations applicable to each class. I will not detain the house on this point farther than to name one instance of this sort. A vessel in the foreign trade is compelled to clear every voyage; a coasting vessel only clears once a year. The act from which the gentleman read, first divides the country into three great districts with which the coasting trade may be carried on. The first includes

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all the district on the sea coast, &c. between the eastern limits of the United States and the southern limits of Georgia; the 2d, all the districts on the sea coast, &c. between the river Perdido and the western limits of the United States; and the 3d, all ports, harbors, &c. between the southern limits of Georgia and the river Perdido. After making this division of the districts, the law goes on to say:

“Every vessel, of the burthen of twenty tons or upwards, licensed to trade between the different districts of the United States, may carry on such trade between the districts included within the great districts, respectively, and between a state in one, and an adjoining state in another great district, in manner, and subject only to the regulations that are now by law required to be observed by such vessels, in trading from one district to 5
34 another in the same state, or from a district in one state to a district in the next adjoining state, any thing in any law to the contrary notwithstanding.”

This is the section relied upon to shew that the bill before the house cannot be carried into effect without conflicting with a law of congress.

But it is obvious that it is only designed to provide that such vessel is only to be subjected to coasting regulations in contradistinction to such as apply to a different class of vessels; and is not meant to prohibit the states from making such police regulations as their safety may require. Besides those contained in this act, there are many other regulations superseded by the states. The port charges, the quarantine regulations, &c. might be instanced; and their constitutionality is not questioned.

If the power to regulate commerce is concurrent and may be exercised by both congress and the states, this argument is at an end, for it is not and cannot be shewn that the bill interferes even with any congressional regulation of commerce, much less that it conflicts with any such regulation.

The argument thus far, is conducted upon the supposition, that this bill is a regulation of commerce; and that the power to pass it can only be derived from the power to regulate

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commerce. This position has only been conceded for the sake of the argument. I utterly deny both propositions contained in it.

In the first place this bill is not a regulation of commerce. It does not interfere in any way with commerce. What is commerce? It is defined to be the “exchange of one thing for another; the interchange of commodities, trade or traffic.” This bill does not affect commerce, but *navigation*. And the power of congress over that subject is only incidental. No direct power is given to congress over navigation, and it only possesses such power as is incidental to the power to regulate commerce. There can be no doubt that the states possess a concurrent power over navigation—a power which is only restricted so far as they are prohibited by the constitution of the United States from laying any duty on tonnage. This restriction implies that but for it the states would possess even the right to lay tonnage duties; and that in all other instances the power exists in the states in full force. It is the power of the states over navigation which has enabled them to pass pilot laws. The constitutionality of these laws, not only have not been questioned, but it has been admitted by congress in the adoption of them. The adoption of them by congress presupposes their constitutionality.

It surely will not be contended that the states cannot enact any laws which may interfere with laws of congress passed under incidental powers. Such a doctrine would deprive the states of all power of legislation. The laws of congress passed to carry into effect the incidental powers of the general government are exceedingly numerous. They cover nearly the whole field of legislation. This proposition is too clear to need or admit of illustration.

So far from its being true that the states cannot pass any law interfering with laws of congress, enacted under incidental powers, the reverse of the proposition is true. A law of congress, passed under an incidental power, which should conflict with a statute of any state, which was necessary for the protection of the property of its citizens, would itself be unconstitutional. Congress has power to pass such laws, to carry into effect its granted

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powers, as are “ *necessary and proper* ” for that purpose; and it can pass none others than such as are both necessary and proper. Now, I hold that no law of congress passed to carry into effect one of its powers, would be a proper law, which would conflict with a state law that was necessary for the protection of the property of its citizens. If congress could carry into effect its power, in any other way, it would be bound to do it.

I have shewn that this bill is not a regulation of commerce. It does not affect commerce. It does to some extent affect its incident navigation; but it 35 does not conflict with any existing law of congress upon that subject. We are not to anticipate, for the reasons given, that any law of congress will in future be passed conflicting with it.

Admit, for the sake of the argument, that congress possesses the exclusive power to regulate commerce; that the states can enact no such regulation; and that this bill does interfere with commerce. Yet I contend that all this does not prove the bill to be unconstitutional. It is not proved to be so, until it is shewn that the power to pass it can only be derived from the power to regulate commerce. If the power may be derived from another source within state authority, we may pass the bill although it may affect commerce very considerably. It is no new idea that laws passed under different powers, may interfere with each other, and yet be constitutional. In our complex system cases of the sort will be of frequent occurrence. In the case of *Gibbons & Ogden*, Judge Marshall said:

“The idea that the same measure might, according to circumstances, be arranged with different classes of powers, was no novelty to the framers of our constitution. If a state, in passing laws on subjects acknowledged to be within its control, and with a view to those subjects, shall adopt a measure of the same character with one which congress may adopt, it does not derive its authority from the particular power which has been granted, but from some other, which remains with the state, and may be executed by the same means. All experience shews, that the same measures, or measures scarcely distinguishable from each other, may flow from distinct powers; but this does not prove

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that the powers themselves are identical. Although the means used in their execution may sometimes approach each other so nearly as to be confounded, there are other situations in which they are sufficiently distinct to establish their individuality.”

“But the inspection laws are said to be regulations of commerce, and are certainly recognized in the constitution, as being passed in the exercise of a power remaining with the states.

“That inspection laws may have a remote and considerable influence on commerce, will not be denied; but that a power to regulate commerce is the source from which the right to pass them is derived, cannot be admitted.

“They form a portion of that immense mass of legislation which embraces every thing within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as all laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, &c., are component parts of this mass.”

It will be seen that the learned judge admits that inspection laws have a considerable influence upon commerce, and are recognized in the constitution itself as being passed in the exercise of a power remaining to the states. The language of the constitution is,

“No state shall lay any imposts or duties upon imports or exports, except what may be absolutely necessary for executing its inspection laws.”

The power to pass inspection laws is not given, but recognized to exist already.

This bill is not passed with a view to regulate commerce; and the authority to pass it is not derived from the commercial power. It is enacted to protect the property of the citizens of this commonwealth, and the power to pass it is derived from the state power to enact all

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laws which are necessary for that purpose. The bill is enacted for a purpose not within the jurisdiction of congress.

There are a variety of laws which affect commerce more directly than the measure before the house, the constitutionality of which are admitted. By our pilot laws, all vessels of a particular size are forbidden to depart from the state without taking a pilot on board, or paying his fees. But it may be said that congress has adopted the pilot laws, and hence it is that they are valid. So far from this being the case, the adoption of them by congress presupposes their constitutionality. Congress only possesses delegated powers, and it cannot exercise them by adopting, in general terms, the laws of another government. But the law of congress not only adopts the state laws already in existence relating to pilots, but it adopts prospectively such as may thereafter be made. Surely this act is predicated upon the concession that the states have the constitutional power to pass these laws. An act of congress cannot confer a power of legislation upon the states which they would have had without it.

The same may be said of quarantine laws. They are passed under the power of the states to protect the health of its citizens; and they are admitted to be constitutional by those who deny the states the power to regulate commerce, although they interfere with commerce to a very great extent. In the same case to which I have referred, judge Marshall said:

“The acts of congress, passed in 1796 and 1799, empowering and directing the officers of the general government to conform to, and assist in the quarantine and health laws of a state, proceed, it is said, upon the idea that these laws are constitutional. It is undoubtedly true, that they do proceed upon that idea; and the constitutionality of such laws has never, so far as we are informed, been denied. But they do not imply an acknowledgment that a state may rightfully regulate commerce with foreign nations, or among the states; for they do not imply that such laws are an exercise of that power, or enacted with a view to it. On the contrary, they are treated as quarantine and health laws, are so denominated in the

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acts of congress, and are considered as flowing from the acknowledged power of a state to provide for the health of its citizens.”

If the states may detain a vessel in entering her ports, to protect her citizens from disease and pestilence, surely she may inspect her before she departs, to see that the property of the citizen is not illegally carried away.

But the inspection laws, the constitutionality of which is not questioned, are still more in point. They are very numerous, and I will not detain the house by referring to them in detail. In our tobacco inspection law we require every master of a vessel coming into our waters with the view of shipping tobacco, to take an oath, that he will not carry any uninspected tobacco out of the state. Have we not the same power to require a bond as an oath? The one is a religious obligation the other a pecuniary one. Have we not as much right to require him to give a bond that he will not take our slaves out of the state without authority of law, as we have to require him to swear that he will not ship uninspected tobacco? We have gone further than this. In our law for the inspection of lumber, we act *on the collector and officers of the customs*. The collector, or other proper officer of the customs is thereby charged and directed not to suffer any vessel to clear from his office, unless the master shall produce inspection notes or certificates, and make an oath that he has no lumber on board but what is entered in his manifest. I must forbear, however, Mr. Speaker, from going into further detail upon this subject. I designed to analyze these laws minutely, and trace out the strict analogy which they bear to the measure before the house; but I am too much exhausted to do so, and perhaps it is unnecessary. I will make no further remark in relation to them than to refer to what is said in the report of the committee:

“Your committee, however, will not be betrayed into further argument on this point. The constitutionality of similar laws involving the same principles, have been so universally admitted, that it would be superfluous. The quarantine laws which have been passed by nearly all the maritime states, the laws passed prior to 1808, prohibiting the importation

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of slaves, the state laws prohibiting the circulation of incendiary publications by mail, the pilot laws, the inspection laws of the states, &c. &c., all involve the same principle. New York herself has her pilot laws; she has her health laws, by which all vessels coming from any port south of Cape Henlopen, are quarantined and compelled to pay fees. In her act for the inspection of pot or pearl ashes, the inspector is authorized to enter on board any ship, &c., to search for pot or pearl ashes improperly shipped for exportation, and if such be found, he is required to seize them and sell them for the benefit of the state treasury. Before 1808, New York passed a law prohibiting the *importation* or *exportation* of slaves. Virginia has enacted similar laws, and so have most of the states. Their right to pass them has not been questioned; and the right to enforce them is incident to their right to pass them.”

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I had also designed to refer minutely to several instances in which congress has recognized the power of the states to pass similar laws; particularly to the laws prohibiting the transmission of incendiary publications by mail, and the law, passed at the instance of the people of Wilmington, N. C., prohibiting the introduction of free negroes from the West Indies.

The first case is a very strong one. The power over the mail is expressly granted to the federal government. Nevertheless, congress recognized the right of the states, by their legislation, to prohibit the circulation through it of such papers as they should regard as of a dangerous character.

Mr. Speaker, it seems to me that the gentleman from Fauquier has not duly weighed the consequences of the positions which he takes. If the states cannot pass such a law as the one now under discussion, because the power to do it is exclusively vested in the general government, then congress may enact it. If congress can enact this law, prohibiting masters of vessels from carrying slaves to New York, it could pass one prohibiting them from carrying them to New Orleans. In a word, congress may prohibit the slave trade

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between the states. The fact that the states may permit their being carried to the one place and not to the other, could make no difference. The legislation of the states cannot confer power upon the general government. This is the legitimate consequence of the gentleman's argument, yet I believe that but few, even of the most latitudinous construers of the federal compact claim this power for congress.

In replying on yesterday to the declamation of the gentleman from Fauquier, (Mr. Scott) about a dissolution of the Union, I omitted to make some remarks which I designed to offer.

I hold it to be the duty of every friend of the Union to resist every infraction of the constitution. Nothing can so much tend to dissolution as the habitual violation of that instrument. He who would preserve the Union must protect the constitution from invasion. It is admitted that New York has trampled in the dust some of its most vital provisions. The constitution, now, practically is not the constitution which our fathers framed. It is to all practical purposes, as far as New York is concerned, such a constitution as the southern states never would have agreed to. She has nullified two provisions of the constitution, which are of such a vital character to us, that not one southern state would have adopted it without them. Shall we consent to New York's changing that instrument in a most important feature, not only without our consent, but in despite of our remonstrance? The character of the two provisions which New York has annulled, is too decided to leave room for doubt. But to put the matter past all question, I will quote what judge Story, the most federal of authorities, says in relation to them. At page 676, vol. 3, of his Commentaries upon the constitution, he says:

“This clause, (the one providing for the recapture of fugitive slaves,) was introduced into the constitution solely for the benefit of the slaveholding states, to enable them to reclaim their fugitive slaves who should have escaped into other states where slavery was not tolerated. The want of such a provision under the confederation was felt, as a grievous inconvenience by the slaveholding states, since in many states no aid whatever would be

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allowed to the owners; and sometimes indeed they met with open resistance. It is obvious, that these provisions for the arrest and removal of fugitives of both classes, contemplate summary ministerial proceedings, and not the ordinary course of judicial investigations, to ascertain whether the complaint be well founded, or the claim of ownership be established beyond all legal controversy. In cases of suspected crimes, the guilt or innocence of the party is to be made out at his trial, and not upon the preliminary enquiry, whether he shall be delivered up. All that would seem in such cases to be necessary is, that there should be *prima facie* evidence before the executive authority to satisfy its judgment, that there is probable cause to believe the party guilty, such as upon an ordinary warrant, would justify his commitment for trial.

“And in the cases of fugitive slaves, there would seem to be the same necessity of requiring only *prima facie* proofs of ownership, without putting the party to a formal assertion of his rights by a suit at the common law. Congress appear to have acted upon this opinion; and, accordingly, in the statute upon this subject, have authorized summary proceedings before a magistrate, upon which he may grant a warrant for removal.”

This is the constitution as we adopted it. New York has annulled it. Without these provisions we never would have agreed to it. New York has nullified them against our remonstrance. We seek to restore the constitution to what it was; and we are told, do not attempt it, lest you dissolve the Union! The Union is now dissolved, and I desire to do what I can to restore it.

The acts of New York would be bad enough under any circumstances; but when they are done in obedience to the mandate of our worst enemies, and the worst enemies of our country, they assume an atrocity which defies description. We have arrived at a point, when to recede farther from the abolitionists will be dishonourable and fatal. We have receded too far already. We have never met the aggressions of these people with sufficient firmness. What has been the consequence? They have been multiplied upon us,

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and we have become comparatively callous. We submit with patience to acts now which would have made our blood boil in the beginning. In 1836 we passed solemn resolutions, requiring New York to suppress the abolition societies within her borders; we had clearly the right to make the demand, but it was contemned and despised. We gave way. These aggressions have continued to advance upon us, as we have receded, until we have arrived at a point, where the very existence of the constitution requires that we shall make a stand. Yet it is proposed that we shall still farther recede. When will gentlemen be prepared to make a stand, if not now? Will they sit here in cold debate and lull themselves into a fancied and fatal security, until the most horrible of scourges—servile war rages through this peaceful land? The abolitionists are active, spurred on by a frenzied zeal, which disregards every duty; they declare that if we do not ultimately submit to their mad schemes, that insurrection will be the consequence. Let that dread catastrophe come when it may, and scenes of horror will be enacted which will make the stoutest heart sicken. What would be its termination no one doubts. The negro race of the southern states would be exterminated. But before that would be done, this fair land, upon which peace and prosperity now smile, would be laid waste from the banks of the Potomac to the gulf of Mexico, and present one boundless scene of blight and desolation. I desire to save my country from this tragic end.