

HOUSE....No. 187.

[Reported by the Joint Select Committee on Slavery.]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-One.

RESOLVES

Concerning Slavery.

1. *Resolved*, That Massachusetts affirms anew her hostility to slavery, and her devotion to the Union; that, inspired by these cherished sentiments, she longs for harmony among the different parts of our common country; but she cannot conceal the conviction that this can be finally and permanently secured only by the overthrow of slavery, so far as the same can be constitutionally done, everywhere within the jurisdiction of the National Government, that the Free States may be relieved from all responsibility therefor; while freedom, instead of slavery, shall become national, and slavery, instead of freedom, become sectional.

2. *Resolved*, That Massachusetts protests against the fugitive slave law, as hostile to the sentiments of Christianity, and abhorrent to the feelings of the people of this Commonwealth; that such a law will naturally fail to secure that support in the heart and conscience of the community, without which any law must, sooner or later, become a dead letter.

3. *Resolved*, That while Massachusetts entertains these views of that law, she claims no right under the the Federal Constitution, to nullify, disregard, or forcibly resist the provisions of an act of Congress; that she has already, when such right was claimed by the state of South Carolina, expressed her opinion upon it, and she now reaffirms and repeats the following resolution, then passed by her Legislature, namely :

“That the Constitution of the United States of America, is a solemn social compact, by which the people of the said states, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty for themselves and their posterity, formed themselves into one body politic, under a common government; that this Constitution, and the laws of the United States, made in pursuance thereof, and all treaties made under the authority of the same, are the supreme law of the land, anything in the constitution or laws of any state, to the contrary notwithstanding; and that no citizen, state, or other member of the body politic, has a right, in any shape, or under any pretext, to annul or prevent the execution of the said Constitution, laws, or treaties, or any of them, excepting in such extreme cases as justify a violent resistance to the laws, on the principle of the natural and indefeasible prerogative of self-defence against intolerable oppression.”

4. *Resolved*, That his excellency the governor be requested to transmit a copy of these Resolves to each of our senators and representatives in Congress, to be by them laid before their respective houses.

IN SENATE, May 16, 1851.

Passed to be engrossed.

Sent down for concurrence.

C. L. KNAPP, *Clerk*.

AMENDMENT PROPOSED BY MR. FOWLER, OF
AMHERST.

Whereas, when slavery existed in all the colonies, Massachusetts, as early as 1643, in articles of confederation and agreement, adopted in Boston, between the colonies of Massachusetts Bay, Plymouth, New Haven, and Connecticut, entered into the following compact, to wit: "It is also agreed that if any servant run away from his master into any of these confederate jurisdictions, in such case, upon certificate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant shall be delivered up to the master or any other who pursues and brings such certificate and proof."

And whereas, in accordance with this, Massachusetts, in 1703, passed the following law, to wit: "Be it enacted by his excellency the *governor, council, and representatives in General Court assembled, and by authority of the same*, that no mulatto or negro slave shall hereafter be manumitted, discharged, or set free, until sufficient security be given to the treasurer of the town or place where such person dwells, in a valuable sum, not less than fifty pounds, to secure or indemnify the town or place from all charge for or about such mulatto or negro to be manumitted or set at liberty, in case he or she, by sickness, lameness, or otherwise, be rendered incapable to support him or herself.

And no mulatto or negro hereafter manumitted, shall be deemed or accounted free for whom security shall not be given as aforesaid; but shall be the proper charge of their respective masters and mistresses, in case they stand in need of relief and support; notwithstanding any manumission or instrument of freedom to them made and given, and shall be liable at all times to be put forth to service, by the selectmen of the town." *Passed 1703, Revised Statutes 1807.*

And whereas, in accordance with this, Massachusetts, in 1707, passed the following penal law, to wit: "And be it further enacted, that every free negro or mulatto who *shall harbor*

or entertain any negro or mulatto servant, in his or her house, without the leave and consent of their respective masters and mistresses, shall forfeit and pay the sum of five shillings to the use of the poor of the town, for each offence.

And if any negro or mulatto, as aforesaid, shall be unable to pay his or her fine, or shall neglect or refuse to attend to the labor assigned him as aforesaid, any of her Majesty's justices, upon complaint thereof made, are hereby impowered to commit such delinquent to the house of correction, there to receive the discipline of the house, and to be kept to hard labor double the number of days assigned him to work as aforesaid; or as is the sum of his or her fine, at the rate of one shilling *per diem*."—*Provincial Laws*, May 28, 1707.

And whereas, in accordance with this, Massachusetts, as one of the members of the Old Confederation, adopted, in Philadelphia, July 9, 1778, the following as one of the articles of agreement between the States, to wit: "The better to secure and to perpetuate mutual friendship and intercourse among the people of the different states of this Union, the *free inhabitants* of each of the states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges of free citizens in the several states;" thus making a broad distinction between freemen and slaves who should enter the Commonwealth; a distinction under the Confederation, recognized by the General Court of Massachusetts, in resolves passed Nov. 18, 1779, in which they provide for the restoration of eight slaves to South Carolina; a distinction recognized by a justice of the peace in Boston, who committed them to jail for the purpose of carrying out those resolves, and then issued an order for their delivery to their owners; a distinction recognized by the Supreme Judicial Court of Massachusetts, to which John Hancock, governor of Massachusetts, had referred the subject of the restoration of these slaves, in consequence of a letter received from the governor of South Carolina.

And whereas, in accordance with this, Massachusetts, by her representatives in Continental Congress assembled, adopted the provision in the ordinance of 1787, for the return of fugitive slaves; which provision was drawn up and introduced by Nathan Dane, a member from Massachusetts; to wit, "provided,

always, that any person escaping into the same, (the northwestern territory) from whom labor or service is lawfully claimed in one of the original states, such fugitive may be lawfully claimed, and conveyed to the person claiming his or her labor or service as aforesaid."

And whereas, in accordance with this, Massachusetts, by her delegates in the convention in Philadelphia, 1787, which formed the Constitution of the United States, adopted, without any objection, the article in that instrument relative to fugitive slaves, to wit: "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due."

And whereas, in accordance with this, Massachusetts, in her own State convention, composed of such men as John Hancock, Samuel Adams, Christopher Gore, William Cushing, Benjamin Lincoln, Theophilus Parsons, Rufus King, and Theodore Sedgwick, assembled, January, 1788, to consider the provisions of the Constitution of the United States, adopted, without a single objection, and even with approbation by the patriot, General Heath, the article in the Constitution which relates to fugitive slaves, though she did make objection, in form, in respect to nine articles.

And whereas, in accordance with this, Massachusetts, by her representatives in General Court assembled, March 26, 1788, in view of the article relating to fugitive slaves in the federal Constitution, adopted by herself, passed the following act, to wit: "Be it further enacted, by the authority aforesaid, in the Senate and House of Representatives, that no African or negro, other than a subject of the emperor of Morocco, or a citizen of some one of the United States, (to be evidenced by a certificate of the secretary of state of which he shall be a citizen,) shall tarry in this Commonwealth for a longer time than two months; and upon complaint made to any justice of the peace within this Commonwealth, and in case that the said African or negro shall not depart as aforesaid, any justice of the peace within this Commonwealth, upon complaint and proof made

that such person has continued within the Commonwealth ten days after notice given him or her to depart as aforesaid, shall commit the said person to any house of correction within the county, there to be kept to hard labor, agreeably to the rules and orders of the said house, until the sessions of the peace next to be holden within and for the said county; and the master of the said house of correction is hereby required and directed to transmit an attested copy of the warrant of commitment to the said court, on the first day of the said session; and if upon trial at the said court, it shall be made to appear that the said person has thus continued within the Commonwealth, contrary to the tenor of this act, he or she shall be whipped, not exceeding ten stripes, and ordered to depart out of this Commonwealth within ten days; and if he or she shall not so depart, the same process shall be had, and punishment inflicted, and so *toties quoties*."

And whereas, in accordance with this, Massachusetts, by her representatives in Congress, namely, George Cabot, Fisher Ames, Elbridge Gerry, Theodore Sedgwick, in conjunction with such men as John Langdon, of N. H., Oliver Ellsworth and Roger Sherman, of Conn., Rufus King, of N. Y., and Robert Morris, of Penn., most of them either signers of the Declaration of Independence, or members of the convention which framed the Constitution of the United States, united with the other states 1793, in passing a law to carry out the provisions of the Constitution, which law George Cabot, a senator of Massachusetts, as a member of the committee which reported it, assisted in drafting, and which Joseph Story and other eminent jurists of Massachusetts, pronounced constitutional and valid, to wit:

An Act respecting Fugitives from Justice, and Persons escaping from the Service of their Masters.

SECT. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the

persons so demanded, with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged, fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

SECT. 2. *And be it further enacted,* That any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons, shall by force set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending, shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned, not exceeding one year.

SECT. 3. *And be it also enacted,* That when a person held to labor in any of the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any of the said states or territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge or the Circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before, and certified by a magistrate of any such state or territory that the person so seized or arrested, doth, under the laws of the state or territory, from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the state or territory from which he or she fled.

SECT. 4. *And be it further enacted,* That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared—or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of said offences, forfeit and pay the

sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving, moreover, to the person claiming such labor or service, his right of action for or on account of the said injuries or either of them.

Signed by JONATHAN TRUMBULL, of Conn., *Speaker of the House of Representatives*; JOHN ADAMS, of Mass., *Vice President of the U. States, and President of the Senate*. Approved, February 12, 1793: GEORGE WASHINGTON, of Va., *President of the United States*.

And whereas, in accordance with this, Massachusetts, by her senators and representatives in Congress assembled, in the year of our Lord 1801, voted to enact the following law, which, with other laws relating to the District of Columbia, were passed in consequence of a suggestion of John Adams, a citizen of Massachusetts, and which received his sanction and signature as president of the United States; to wit: "That in all cases where the constitution or laws provide that criminals and fugitives from justice, or persons held to labor in any state, escaping into another state, shall be delivered up, the chief justice of the said district shall be, and he is hereby empowered and required, to cause to be apprehended and delivered up such criminal fugitive from justice, or persons fleeing from service, as the case may be, who shall be found within the district, in the same manner and under the same regulations, as the executive and judicial officers are hereby required to obey all lawful precepts and other process issued for that purpose, and to be aiding and assisting in such delivery." Signed by THEODORE SEDGWICK, of Mass., *Speaker of the House of Representatives*; JAMES HILLHOUSE, of Conn., *President of the Senate*; JOHN ADAMS, of Mass., *President of the United States*.

Therefore,

Resolved, That Massachusetts, as one of the original parties to the mutual stipulation of compact and confederation contained in the Federal Constitution, in regard to the clause thereof which requires the extradition of fugitives from labor, continues true to those principles of public honor, of international integrity, and of inviolate fidelity to engagements, which have distinguished her in all past time, and will therefore punctually execute this, equally with every other, part of the supreme law of the federal union.