HOUSE....No. 289.

Commonwealth of Massachusetts.

House of Representatives, April 27, 1855.

The Minority of the Joint Standing Committee on Federal Relations, to whom were referred so much of the Governor's Address as relates to Trial by Jury and the writ of *Habeas Corpus*, a Bill from the Senate regarding eligibility to certain offices in this Commonwealth, an Order as to the expediency of prohibiting State Judges from acting as United States Commissioners, an Order as to whether the State officers shall be prohibited from acting in the arrest, detention or removal of persons claimed as Fugitive Slaves, and also the Petitions of George Grennell, of Greenfield, Samuel May, of Boston, Cyrus Gale, of Northboro', and 6,987 others, for legislation concerning alleged Fugitive Slaves and Trial by Jury, have considered the same, and

REPORT:

The minority of the Committee desire to be fully understood to coincide with the general views, adopted by the majority of the Committee, of the great principles involved in the subject referred to their consideration. They also agree with the ma-

jority in an earnest desire to give to these principles a clear, unquestionable and practical expression, in every mode that seems to be consistent and proper; and they also would cheerfully join in carrying them into effect by any authorized, practicable and dignified course of legislation.

It is, however, in their view, highly desirable and important to do all this in a manner worthy of the great rights and interests treated of, and in a manner correspondent to the dignity of a sovereign State.

The matter is, confessedly, one of great delicacy and difficulty. It involves high questions of constitutional law and momentous considerations of policy; it is surrounded with the gravest doubts and the most serious embarrassments; it raises points of the most perplexing character; it gives birth to a conflict of rights and duties, of feelings and opinions, which legal acuteness, reason and conscience attempt in vain to reconcile. In fact they are, of their nature, irreconcilable.

The laws of the slave States declare the human beings which they hold in bondage to be, in one sense, mere chattels —property of their fellow-men—and they treat them as such.

By express provision of the constitution, the United States and every individual State stand pledged to respect these laws within their own sphere, and, in one particular, to coöperate with them, or at least to refrain from all active interference with them beyond that sphere.

Massachusetts, among the rest, has solemnly and legally bound herself to the observance of a confederative compact, which enacts, in one of its articles, that, "no person held to service and labor in one State under the laws thereof, escaping into another, shall, *in consequence of any 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."

The institution of slavery and the laws by which it is created and protected are alike repulsive and odious to the public sentiment and principles, and hostile to the whole spirit and tenor of the legislation of the free States. Yet they are an existent fact, and recognized as such by the supreme law of the country—by a law paramount to any authority of ours, and over which we can pretend to exercise no direct control.

Congress has assumed to carry into effect the provision of the constitution above quoted by its own enactments, and our own courts have admitted and sustained its right so to do. Massachusetts, therefore, and every person within her borders, are bound, individually and collectively at least, to acquiescence.

The selfsame principle of allegiance which holds our citizens to the observance of our own laws compels them, each and all, as citizens of the United States, to the observance of this. However painful or revolting to our feelings and convictions it may be, none can deny that such is the plain, practical, unquestionable fact. Unwelcome necessities, disagreeable duties, painful struggles, are the necessary result. It is far easier to deprecate or disown than to rid ourselves of it.

In such a position it behooves a sovereign State to act with discretion, moderation and dignity, to assume no ground that cannot be maintained, to advance no pretensions that must be necessarily and immediately abandoned. Policy, duty and honor demand a high, unimpassioned, calm procedure. Rash assumption, crude theory and inconsiderate legislation are unworthy alike of the parties and the cause.

The elaborate and extended argument of the majority of the Committee is carried, in our view, *in some points*, beyond the limits of sound deduction. While we cordially sympathize with its general import, we cannot make ourselves responsible for some of its extreme positions. Cheerfully admitting its general bearing, some of its details and conclusions seem to us questionable and unwarrantable.

The Fugitive Slave Law has been declared constitutional upon certain grounds which are not open to our doubts. As good citizens, and especially as representatives of the body politic, we are precluded, *upon such points*, from further question.

There exists, in many minds, a grave doubt of the authority of Congress to assume to itself the function of the extradition of the fugitive slave. A fair construction of the constitution, both as to its wording and the context and connection of the article, in our view, is thought by many to vest the actual discharge of the duty in the several States. This opinion has the support of high authority.

Another question is also presented—whether the laws of South Carolina, declaring a human being to be a chattel, can

divest that human being of the rights guarantied to him as a MAN in the free States, where no such legal degradation is known or recognized.

Our fundamental laws secure to *every man* the invaluable safeguard and protection of the right to the processes of *habeas corpus* and of trial by jury. Can an artificial, inhumane and unchristian provision of the law of another State abrogate the character and the rights of every man, as established in the free States by their constitutional and legislative enactments? We cannot but hope, even if we cannot venture to assert, that the seal of the divine image is of more potent authority than that which attests any human ordinance. We should be glad at least to be able to recognize the man, till he is proved to be something less, by the guarded and sacred tests which our constitution has made the prerogative of all who live beneath its protection.

If, then, there be any question that affords a hope to humanity, we should earnestly desire to see it tried by the proper tribunals. If we have any right to interfere, in any stage, or on any point, between the right and the wrong,—if we have any power to moderate, to control, or to regulate,—if we have any rights and privileges of our own to which we can effectually appeal,—let us do our best to sustain the dictates of our conscience, the sympathies of our nature and our position, the integrity of our social and legal institutions. But petulant and idle resistance, futile opposition, and empty assumptions are worse than useless. They can but dishonor a noble purpose, embarrass a troublesome dilemma, disunite and destroy our moral force, endanger invaluable interests and indispensable principles, and imbitter and poison all our private and public relations.

In regard to the Bill which accompanies the Report of the majority of the Committee, we find the same difficulties recurring. We should be glad to see some of its principles carried into effect. But it appears to attempt, in some particulars, what is impossible, in others what is highly inexpedient, according to our view of the case. We fear that some of its provisions are unconstitutional, and therefore void. We think that it interferes unnecessarily with the established forms of our laws and their acknowledged principles, and is, therefore,

inexpedient. We are of opinion that it involves our own citizens in unnecessary embarrassments, and imposes upon them exorbitant responsibilities and unauthorized penalties, and is, therefore, unjust. It goes far beyond all that is necessary to assert, and, so far as we have the power to do so, to secure its own professed purposes.

It is cumbrous in its useless details, unsafe in its minute specialities, oppressive in its vengeful sanctions.

It is the opinion of the minority of the Committee that simple, comprehensive and perspicuous enactments, extending to all cases whatever, the established operation of our laws in regard to the great personal rights alluded to, would have been all that is necessary or admissible to settle disputed points, and to apply the legal and constitutional tests to the rights and claims of the several parties.

Enactments of such a character would, in their view, represent more truly the feeling and the real position of the State, would present the case in its truest and best light, and offer the best chance of satisfactory adjustment. Such a course would be most fully sustained by public opinion, and would maintain public opinion in its legitimate and most consistent position. Such a course would avoid all unnecessary embarrassments and all unnecessary excitement, prejudicial alike to the quiet of the community and to the real interests of the cause of freedom and of personal liberty. Such a course would be decorous and dignified for the Commonwealth—safe, simple and prudent in regard to our citizens. It would thoroughly assert every available principle ; while it would neither perplex our laws and practice with exceptional irregularities and questionable provisions, nor involve individuals in embarrassing situations, nor harass the community with disorganizing and conflicting questions.

No particular form of carrying out these views is presented with this Report, from the conviction that it is inexpedient under the circumstances. Antagonistic bills and competing propositions would unnecessarily consume the time of the Legislature in discussion at this advanced period of the session. Our scheme of action is direct and simple; our objections are negative in their character. Our opinion can be sufficiently developed in the course of the regular consideration

of the propositions of the majority. Such modifications, changes and amendments as we should desire to recommend will be fully open to us in that mode. We therefore content ourselves with discharging our duty to ourselves and to the public by this brief but explicit statement of our opinions.

GEO. H. DEVEREUX.
ERASMUS GOULD.