MAINE STATE LEGISLATURE

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OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1841.

Augusta:
SEVERANCE AND DORR, PRINTERS TO THE STATE.

1841.

TWENTY-FIRST LEGISLATURE.

NO. 27. SENATE.

REPORT

OF THE

JUDICIARY COMMITTEE

UPON THE CONTROVERSY BETWEEN

GEORGIA AND MAINE.

SEVERANCE & DORR,.....Printers to the State.

REPORT.

The Judiciary Committee, to which were referred the Resolutions of the General Assembly of Alabama, transmitted by the Governor, touching the controversy between the States of Georgia and Maine, relating to the refusal of the latter to deliver up certain persons charged with offences against the laws of Georgia, have had the same under consideration, and respectfully ask leave to make the following

REPORT:

That they are duly sensible of the difficulty and delicacy of the question presented, under its various aspects; and, also, of the respect that is due to the rights and sentiments of co-equal members of this confederacy, upon points to which they may each, in their own view, attach paramount and even vital importance; and, more, upon which they may be equally entitled to judge, so long as there shall be no acknowledged intermediate authority to determine questions between them.

The Committee cannot but avow their deep regret, in the first place, that a question of this critical and momentous kind, as it is considered, both by Maine and Georgia, should have arisen between the two kindred communities, situated as they are, at the opposite extremes of the old Continental Union; at so great a distance from each other, as apparently to preclude almost the possibility of any thing to arise, in the way of collision, to disturb that harmony by which they are bound, and with which they should move, together, in their proper orbits, within the sphere of the Federal System.

It is obvious, that nothing of this nature could ever arise except from the most remote, improbable, and accidental causes; and it is a satisfaction, which the Committee cannot refuse themselves, to believe, that the two individuals accused of violating the laws of Georgia, are in truth, entirely innocent of the offence, with which they stand charged in the view of that State, and that they were totally unconscious of being liable to be pursued as fugitives from the justice of Georgia.

Your Committee make this avowal in entire sincerity; and far as we may be from Georgia, and widely as we may differ in any respects, nothing can be farther, they are persuaded, from the feelings and purposes of the people of Maine, than to harbour the idea of affording encouragement to enterprizes against the order of a sister State, or presenting a refuge to absolute transgressors of its laws;—We mean, in the spirit which, we conceive, should govern the intercourse between independent, associated communities.

Your Committee will further confess their regret at the tone, which the General Assembly of Alabama have thought proper to assume upon this subject, in relation to Maine. But the excited opinions which that respectable Assembly may have felt themselves impelled to express, cannot, in the view of your Committee, alter or have any effect upon the real state of relations between us and Georgia upon this topic, and ought not to be allowed to exercise any disturbing influence on the temper in which it is now to be taken up. In the breasts of the Committee it does not serve to produce the least.

The Committee do not deem it requisite to recite the circumstances out of which this question has grown, and by which it has grown into a controversy, nor to refer to the various communications, which have been interchanged upon the subject; or particularly, as they might, to those which have proceeded from the Governors of this State. And herein they would go no further than to declare their belief, that those magistrates have been governed by their own just persuasions of the correctness of the principles they have set forth; and those princi-

ples, the Committee only feel themselves called to say, are conceived to be sustained by the prevailing opinion and honest convictions of the people of this State, upon the point; and that while they thus serve to define the position which the authorities of the State are bound to preserve, until convinced to the contrary, they consequently mark the course which those officers are obliged to pursue, in the absence of any better lights, or superior powers, to determine their duties.

Your Committee, at the same time, do not profess to be unaware that a very different, and totally opposite, view is taken of the matter by the authorities of the State of Georgia, who have demanded of us the fulfilment of what they deem to be an indubitable and imperious constitutional obligation.

Your Committee are well aware, moreover, that the root of the difficulty may be apt to be viewed by many, and perhaps very naturally, as consisting in a fundamental difference of opinions and feelings, in regard to the particular character of the act complained of, as affected by the circumstances of those institutions, with which it is connected. Without affecting to deny the possibility of any such influences, or of their denoting the radical difference which is referred to by the supposition, and without wishing to go into so deep and troublesome a topic of discussion, as that might present—but really wishing, on the other hand, to avoid every needlessly exciting addition to this already sufficiently embarrassing subject—your Committee would content themselves with glancing at what they conceive to be the true source of the difficulty which exists.

And that arises, in the main, as they apprehend, from simple, but at the same time absolute, diversities of jurisprudence. The Committee do not mean merely in the respect, sometimes suggested, of there not being any corresponding law or provision in Maine, for example, to that of Georgia, to to serve as a measure of its applicability; that is to say, that there are no similar sanctions for like offences; but they mean such varieties as equally prevail between States whose laws

and institutions are of the same general mould, and which are perfectly homogeneous. As, for instance, between this State and Massachusetts or New York, where no such peculiar difficulties or embarrassments could be involved as in the present case; and where the State Executive has more than once declined, or refused, to comply with demands of the same kind, and made upon the same ground.

Questions, it is well known, of an embarrassing kind, have arisen, in regard to constitutional requirements between the Federal Government and the several States, as well as between the individual States themselves. And it is almost impossible that they should not sometimes arise under a system, like ours, of definite rules, and absolute limitations. Among these last, (that is, between individual States) questions have arisen that have been created purely by modifications existing in their own municipal or domestic institutions, and which have been affected by circumstances addressed to the just and equitable discretion of the Executive. And the States, or Executives, upon which such calls were made, either felt themselves constrained, or considered themselves at liberty, to determine their propriety, and cogency, according to the character and analogy of their own laws; and have, in consequence, refused to comply with calls, however solemnly made, upon principles of which they did not see the justness, or did not recognize the force.

The State of Georgia may therefore be assured, that there is nothing peculiar in the position taken by the Executive of this State towards her. No community can deliver up its citizens upon demands from external jurisdictions, without requiring the causes, or forming a judgment, in some manner, upon the cases.

It is manifest moreover, that the requirement in regard to the surrender of fugitives from *justice* (without insisting on the mere moral, or more general, import of that expression) implies a reference to some common-law of the land, or some

constitutional exposition or definition of that term. Upon the existence of any such *common law* in this country, it is unfortunate, that learned and enlightened jurists are not found to agree; and the authority of any such doctrine is known to be controverted by equally respectable opinions, (your Committee will not undertake to say, equally sound) in one section of the Union, no less extensively than in another.

It is observable, too, that the Constitution, which may well be deemed to recognize the legal character of slavery, as an institution in those old States where it still continues, and also in the new ones, in which it has been since established, and which requires, in general terms, the surrender of fugitives from *service*—whether voluntary or involuntary, it does not absolutely discriminate, whatever it may be understood to signify—that Constitution does not extend, and carry out, those provisions, which are considered to apply to this subject. But it expresses them in such guarded generalities, that the existence of the institution could hardly be discovered from the surface of the instrument; and the Constitution indeed might remain in full operation, after that institution should have ceased, and no vestige of it be found in the record, or import, of that great fundamental act.

The Constitution, it may moreover be said, without any invidious meaning, does not even cast any shadow of the existence of that institution upon the civil institutions or legal systems of other States, in which that particular institution is is not recognized. It does not undertake to mould them into any agreement, or conformity, further than its express provisions necessarily operate. Neither is it from incaution, that these provisions are to be understood as not extending further.

The distinction and distance, in respect to these different systems, have, in some measure, it must be admitted, been increased, and widened, by the settled and deliberate opposition which exists in the Southern States to allowing other States, which are not in the same condition to have any thing to do

with the character of their peculiar institutions on that point, or to enter into the question, or intermeddle with the matter, in any way or manner. The objection is founded on the reason, that the exercise of any species of authority, or interference, may involve, indefinitely, a danger, to which it is best not to open the door. This objection has, perhaps naturally, been extended to not permitting any sort of legislative or other jurisdiction to the federal government, in regard to the subject, as tending to the same consequence. It is most obvious, and must be confessed, that a political authority so limited and restricted, in regard to some of its material attributes of power, may stand in danger of proving to be deficient in its practical working in some important respects.

The Constitution can hardly be said to afford any plain and absolute prescription as to the exact point in issue in this late controversy; since it avoids going into any precision of definition or detail touching the subject in question ; but leaves it in a state of entire abstraction; and contains, scarcely any thing of an administrative nature for carrying into effect principles, which if they exist in it, are unexpressed, or are couched in such indistinct and ambiguous phrases as to convey no certain meaning, and do not therefore import any strict constitutional duties in relation thereto. At least it may be observed, that if the subject was not studiously and carefully withheld from coming within the sphere or control of the Constitution, any power whatever concerning it seems to have been so cautiously and prudently imparted as to exclude the slightest exercise of it, that might possibly be inexpedient.

So far as the Union is liable to be resolved into a mere confederation of States, without any constitutional *sanctions* to fix and determine their relative duties under the general terms of the compact, those States are necessarily left, in some measure, to say the least, to interpret the extent of those obligations, in circumstances that may arise, for themselves.

Each State stands at liberty, in that relation merely, to insist

upon its utmost rights, according to its own views of justice and propriety.

So far as a State, or community, may not be under absolute obligations to comply with demands from abroad, there may be reasonable ground of hesitation to enter, without necessity, upon a course of surrender and concession, which might be extended by degrees to the most pernicious consequences, and the fatality thereof be determined by the first unguarded departure from the paramount and decisive rule of self protection.

The claim set up by the State of Georgia if allowed to be a peremptory one, would extend just as well for example, in the first place, to other States, which have voluntarily introduced the principle of slavery into their institutions, since the establishment of the Constitution. It might lead also, in the next instance, to the necessary recognition of penal regulations to protect the internal commerce which is carried on in the transfer of slaves, especially between the old and new States. We can at once see in what light we should regard penalties to protect the proper slave trade, if it had not been abolished; and can conceive the serious difficulties that might ensue from the principle involved, in all its extent. Again, we have but to extend our view to the frame of the neighboring republic of Texas, which petitioned for admission into our Union, to consider the situation in which we might be placed by the unreserved admission of such a principle, as should expose us to such an interpretation of international law upon this point, as we might be liable to on that border.

Without insisting, that in order to constitute crimes against a State which demands the surrender of fugitives, it is necessary to find corresponding ones under the laws of the State upon which the demand is made, it certainly could not be allowed, to legislate into crimes acts not clearly committed within such other jurisdictions, so as to make that criminal which should be entirely consonant to the laws of the State on which the requisition is made. But the Committee would, by

no means, undertake to defend in this manner, or upon this idea, against the claim intended to be set up by the State of Georgia.

The Committee, however, would not undertake to place themselves, nor would they wish to shelter the State, under any mere literal and strict construction or interpretation of the Constitution in regard to the late requirement of Georgia. Nor would they dwell upon the distinction between duties of perfect and imperfect obligation, defined not only in ethical treatises, but laid down in text works on natural and civil jurisprudence. The Committee would acknowledge the obligation, as they feel the force, both morally and politically, of higher principles than those contained in the mere enactments of positive constitutions, and which impart, in truth, all their efficacy to actual prescriptions. They recognize all the original principles of the Federal Union, and those of the Federal Constitution, which existed in fact before the Federal Constitution was formed; by which we of this State are willing to be bound, as parts of one great people, as well as members of a simple confederacy.

We acknowledge all the claims of equal courtesy and comity, which we might be expected to attend to, not only upon the mutual principle which prevails in the intercourse of all civilized communities, but much more should extend to bind that of sister States, united as these are by the strongest bonds that can connect human societies.

Superadded to all these there is also the acknowledged force of an obligatory compact. The Committee, therefore, would be unwilling to assume the defence of any further position than is absolutely assigned them; and they would be inclined, and desirous, to rest the reasons given for the refusal, in this instance, upon the simple circumstances of the case, which are such, in their view, as to preclude any possible belief of guilty intention in the persons accused, imputed towards the State of Georgia. They would decline to undertake any apology for the commis-

sion of such an act, as the authorities of that State allege against the individuals complained of; and disclaim all disposition to abet any violation of the laws of that community, or injury to its sovereignty.

In regard even to these circumstances, the Committee would be disposed to look round for some common and amicable expedient for the settlement of this controversy, if it still preserves sufficient importance in the view of the Government of that State; and this must depend upon the possibility of finding some adequate means for the solution of this serious question.

The difficulty of finding such an expedient is undoubtedly increased by that prohibiting principle, engrafted into the Constitution, which defends States, and of course their Chief Magistrates, against being called to the bar of national justice, for alleged offences against individual rights. But the Constitution does not intend to cast its shield over the power of any State to transgress the just rights of another; and though it is undoubtedly competent for any State to consider how far it would be willing to pass its own safeguards, and submit to the decision of any higher tribunal than its own breast, points of predominant importance to itself, yet situated as the parties are, and in the State to which the question has arrived, the Committee cannot see any other method of determination than could be offered by the highest judicial authority in the United States, if any suitable mode could be adopted, of which your Committee have much doubt, to obtain it. But they would not exclude the consideration of any conciliatory proposition for that purpose that could be suggested.

Your Committee in the circumstances of the case, have thought proper to forbear going into any discussion, concerning the subject, which might not be profitable, or tending to any probable good. They apprehend there is really no difference in the general abstract judgment of mankind upon the point which, after all, cannot be shut out of view. At the same

time, as a great social and political burden, they are sensible, that we must all consent to bear our share of it, whether for good or for evil; and, above all, that the institutions of no State in the union are to be approached with an unfriendly or incendiary spirit.

The Committee have not thought it necessary to go further into any distinct consideration of the duty which every community owes to the protection of its own loyal citizens, and by departure from which it would be recreant to its most sacred trust; however unwilling it should be to abet outrages upon the hospitality or the authority of other States, or averse to throwing open an asylum for the escape of the guilty in other jurisdictions from the consequences of their crimes. It must be evidently one thing to harbor runaways, and shelter outlaws, from other communities, and quite another to refuse to surrender our own true citizens to demands from abroad, to be delivered up for undetermined and unascertained offences.

The Committee respectfully conclude by observing, that they consider the subject to belong properly to the Executive department; and therefore, submitting the following Resolve to that effect, request to be discharged from any further consideration thereof.

By order of Committee,

CHARLES S. DAVEIS.

April 13, 1841.

STATE OF MAINE.

RESOLVE relating to the Communication from the General Assembly of Alabama, concerning the matter between Georgia and Maine.

RESOLVED, That in the opinion of this Legislature, the subject matter of said Communication and Resolves, coming from the General Assembly of Alabama, concerning the question existing between Maine and Georgia, so far as this State is concerned belongs appropriately and exclusively to the Executive Department, and that the Legislature is not called upon to express any further views in relation thereto.

RESOLVED, That copies of this Resolve together with the preceding Report be transmitted by the Governor to the Governors of Alabama and Georgia.

STATE OF MAINE.

IN SENATE, April 13, 1841.

Read, laid on the table, and 300 copies ordered to be printed, for the use of the Legislature.

[Extract from the Journal.]

ATTEST, DANIEL SANBORN, *Secretary.*