IV.

COUNTER-RESOLUTIONS OF OTHER STATES

IN RESPONSE TO THOSE OF VIRGINIA, &c.

STATE OF DELAWARE.

IN THE HOUSE OF REPRESENTATIVES,

February 1, 1799.

Resolved, By the Senate and House of Representatives of the state of Delaware, in General Assembly met, That they consider the resolutions from the state of Virginia, as a very unjustifiable interference with the general government and constituted authorities of the United States, and of dangerous tendency, and therefore not a fit subject for the further consideration of the General Assembly.

ISAAC DAVIS,
Speaker of Senate.

STEPHEN LEWIS,
Speaker of House of Representatives.
Test,

JOHN FISHER,

Clerk of Senate.

JOHN CALDWELL,

Clerk of House of Representatives.

Resolved, That the above resolutions be signed by the Speaker of the Senate,

and by the Speaker of the House of Representatives; and that the Governor of

this state be requested to forward the same to the Governor of the state of

Virginia.

JOHN FISHER,

Clerk of Senate.

JOHN CALDWELL,

Clerk of House of Representatives.
PLANTATIONS.

IN GENERAL ASSEMBLY,

February, A. D. 1799.

Certain resolutions of the legislature of Virginia, passed on the twenty-first day of December last, being communicated to this Assembly,

1. Resolved, That in the opinion of this legislature, the second section of the third article of the Constitution of the United States, in these words, to wit: The judicial power shall extend to all cases arising under the laws of the United States, vests in the federal courts exclusively, and in the Supreme Court of the United States ultimately, the authority of deciding on the constitutionality of any act or law of the Congress of the United States.

2. Resolved, That for any state legislature to assume that authority would be,

1st. Blending together legislative and judicial powers.

2d. Hazarding an interruption of the peace of the states by
civil discord, in case of a diversity of opinions among the
state legislatures; each state having, in that case, no resort
for vindicating its own opinion, but to the strength of its
own arm.

3d. Submitting most important questions of law, to less
competent tribunals; and

4th. An infraction of the Constitution of the United States,
expressed in plain terms.

3. Resolved, That although, for the above reasons, this legislature, in
their public capacity, do not feel themselves authorized to consider and
decide on the constitutionality of the sedition and alien-laws (so called),
yet they are called upon by the exigency of this occasion, to declare, that
in their private opinions, these laws are within the powers delegated to
Congress, and promotive of the welfare of the United States.

4. Resolved, That the Governor communicate these resolutions to the supreme
executive of the state of Virginia, and, at the same time, express to him,
that this legislature cannot contemplate, without extreme concern and
regret, the many evil and fatal consequences which may flow from the very
unwarrantable resolutions aforesaid of the legislature of Virginia, passed
The Legislature of Massachusetts, having taken into serious consideration the resolutions of the state of Virginia, passed the 21st day of December last, and communicated by his excellency the Governor, relative to certain supposed infractions of the Constitution of the United States, by the government thereof, and being convinced that the Federal Constitution is calculated to promote the happiness, prosperity and safety of the people of these United States, and to maintain that union of the several states, so essential to the welfare of the whole; and, being bound by solemn oath to support and defend that Constitution, feel it unnecessary to make any professions of their attachment to it, or of their firm determination to support it against every aggression, foreign or domestic.
But they deem it their duty solemnly to declare, that while they hold sacred
the principle, that the consent of the people is the only pure source of just and legitimate power, they cannot admit the right of the state legislatures to denounce the administration of that government to which the people themselves, by a solemn compact, have exclusively committed their national concerns: That, although a liberal and enlightened vigilance among the people is always to be cherished, yet an unreasonable jealousy of the men of their choice, and a recurrence to measures of extremity, upon groundless or trivial pretexts, have a strong tendency to destroy all rational liberty at home, and to deprive the United States of the most essential advantages in their relations abroad: That this Legislature are persuaded, that the decision of all cases in law and equity, arising under the Constitution of the United States, and the construction of all laws made in pursuance thereof, are exclusively vested by the people in the judicial courts of the United States.

That the people in that solemn compact, which is declared to be the supreme law of the land, have not constituted the state legislatures the judges of the acts or measures of the Federal Government, but have confided to them the power of proposing such amendments of the Constitution, as shall appear to them necessary to the interests, or conformable to the wishes of the people whom they represent.
That by this construction of the Constitution, an amicable and dispassionate remedy is pointed out for any evil which experience may prove to exist, and the peace and prosperity of the United States may be preserved without interruption.

But, should the respectable state of Virginia persist in the assumption of the right to declare the acts of the national government unconstitutional, and should she oppose successfully her force and will to those of the nation, the Constitution would be reduced to a mere cypher, to the form and pageantry of authority, without the energy of power. Every act of the Federal Government which thwarted the views, or checked the ambitious projects of a particular state, or of its leading and influential members, would be the object of opposition and of remonstrance; while the people, convulsed and confused by the conflict between two hostile jurisdictions, enjoying the protection of neither, would be wearied into a submission to some bold leader, who would establish himself on the ruins of both.

The Legislature of Massachusetts, although they do not themselves claim the right, nor admit the authority, of any of the state governments to decide upon the constitutionality of the acts of the Federal Government, still, lest their silence should be construed into disapprobation, or at best into a doubt of the constitutionality of the acts referred to by the state of
Virginia; and, as the General Assembly of Virginia has called for an
expression of their sentiments, do explicitly declare, that they consider
the acts of Congress, commonly called "the alien and sedition-acts," not
only constitutional, but expedient and necessary: That the former act
respects a description of persons whose rights were not particularly
contemplated in the Constitution of the United States, who are entitled only
to a temporary protection, while they yield a temporary allegiance: a
protection, which ought to be withdrawn whenever they become "dangerous to
the public safety," or are found guilty of "treasonable machinations"
against the government: That Congress having been especially entrusted by
the people with the general defence of the nation, had not only the right
but were bound to protect it against internal, as well as external foes.

That the United States, at the time of passing the act concerning aliens,
were threatened with actual invasion, had been driven by the unjust and
ambitious conduct of the French government into warlike preparations,
expensive and burdensome, and had then, within the bosom of the country,
thousands of aliens, who, we doubt not, were ready to co-operate in any
external attack.

It cannot be seriously believed, that the United States should have waited
till the poniard had in fact been plunged. The removal of aliens is the
usual preliminary of hostility, and is justified by the invariable usages of
nations. Actual hostility had unhappily long been experienced, and a formal declaration of it the government had reason daily to expect. The law, therefore, was just and salutary, and no officer could, with so much propriety be entrusted with the execution of it, as the one in whom the Constitution has reposed the executive power of the United States.

The sedition-act, so called, is, in the opinion of this Legislature, equally defensible. The General Assembly of Virginia, in their resolve under consideration, observe, that when that state, by its convention, ratified the Federal Constitution, it expressly declared, "That, among other essential rights, the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, with other states, recommended an amendment for that purpose; which amendment was, in due time, annexed to the Constitution; but they did not surely expect that the proceedings of their state convention were to explain the amendment adopted by the union. The words of that amendment, on this subject, are, "Congress shall make no law abridging the freedom of speech, or of the press."

The act complained of is no abridgment of the freedom of either. The genuine
liberty of speech and the press, is the liberty to utter and publish the truth; but the constitutional right of the citizen to utter and publish the truth, is not to be confounded with the licentiousness in speaking and writing, that is only employed in propagating falsehood and slander. This freedom of the press has been explicitly secured by most, if not all the state constitutions; and of this provision there has been generally but one construction among enlightened men; that it is a security for the rational use and not the abuse of the press; of which the courts of law, the juries and people will judge: this right is not infringed, but confirmed and established by the late act of Congress.

By the Constitution, the legislative, executive, and judicial departments of government are ordained and established; and general enumerated powers vested in them respectively, including those which are prohibited to the several states. Certain powers are granted in general terms by the people to their General Government, for the purposes of their safety and protection. That government is not only empowered, but it is made their duty, to repel invasions and suppress insurrections; to guarantee to the several states a republican form of government; to protect each state against invasion, and, when applied to, against domestic violence; to hear and decide all cases in law and equity, arising under the Constitution, and under any treaty or law made in pursuance thereof; and all cases of admiralty and maritime jurisdiction, and relating to the law of nations. Whenever, therefore, it
becomes necessary to effect any of the objects designated, it is perfectly consonant to all just rules of construction to infer, that the usual means and powers necessary to the attainment of that object, are also granted: but the Constitution has left no occasion to resort to implication for these powers; it has made an express grant of them, in the eighth section of the first article, which ordains, "That Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof."

This Constitution has established a supreme court of the United States, but has made no provision for its protection, even against such improper conduct in its presence, as might disturb its proceedings, unless expressed in the section before recited. But as no statute has been passed on this subject, this protection is, and has been for nine years past, uniformly found in the application of the principles and usages of the common law. The same protection may unquestionably be afforded by a statute passed in virtue of the before-mentioned section, as necessary and proper, for carrying into execution the powers vested in that department. A construction of the different parts of the Constitution, perfectly just and fair, will, on analogous principles, extend protection and security against the offences in
question, to the other departments of government, in discharge of their respective trusts.

The President of the United States is bound by his oath "to preserve, protect, and defend the Constitution," and it is expressly made his duty "to take care that the laws be faithfully executed;" but this would be impracticable by any created being, if there could be no legal restraint of those scandalous misrepresentations of his measures and motives, which directly tend to rob him of the public confidence. And equally impotent would be every other public officer, if thus left to the mercy of the seditious.

It is holden to be a truth most clear, that the important trusts before enumerated, cannot be discharged by the government to which they are committed, without the power to restrain or punish seditious practices and unlawful combinations against itself, and to protect the officers thereof from abusive misrepresentations. Had the Constitution withheld this power, it would have made the government responsible for the effects, without any control over the causes which naturally produce them, and would have essentially failed of answering the great ends for which the people of the United States declare, in the first clause of that instrument, that they establish the same, viz: "To form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the
Seditious practices and unlawful combinations against the federal government, or any officer thereof, in the performance of his duty, as well as licentiousness of speech and of the press, were punishable on the principles of common law in the courts of the United States, before the act in question was passed. This act, then, is an amelioration of that law in favour of the party accused, as it mitigates the punishment which that authorizes, and admits of any investigation of public men and measures which is regulated by truth. It is not intended to protect men in office, only as they are agents of the people. Its object is to afford legal security to public offices and trusts created for the safety and happiness of the people, and therefore the security derived from it is for the benefit of the people, and is their right.

This construction of the Constitution, and of the existing law of the land, as well as the act complained of, the legislature of Massachusetts most deliberately and firmly believe, results from a just and full view of the several parts of that Constitution; and they consider that act to be wise and necessary, as an audacious and unprincipled spirit of falsehood and abuse had been too long unremittingly exerted for the purpose of perverting
public opinion, and threatened to undermine and destroy the whole fabric of the government.

The legislature further declare, that in the foregoing sentiments they have expressed the general opinion of their constituents, who have not only acquiesced without complaint in those particular measures of the federal government, but have given their explicit approbation by re-electing those men who voted for the adoption of them: nor is it apprehended, that the citizens of this state will be accused of supineness, or of an indifference to their constitutional rights; for, while on the one hand, they regard with due vigilance, the conduct of the government: on the other, their freedom, safety, and happiness require, that they should defend that government and its constitutional measures against the open or insidious attacks of any foe, whether foreign or domestic.

And lastly, that the Legislature of Massachusetts feel a strong conviction, that the several United States are connected by a common interest, which ought to render their union indissoluble, and that this state will always co-operate with its confederate states, in rendering that union productive of mutual security, freedom and happiness. Sent down for concurrence.

SAMUEL PHILIPS,
President.
In the House of Representatives,
Feb. 13, 1799.
Read and concurred.

EDWARD ROBBINS,
Speaker. A true copy.

Attest, JOHN AVERY,
Secretary.

STATE OF NEW YORK.

IN SENATE,
March 5, 1799.

Whereas the people of the United States have established for themselves a
free and independent national government. And whereas it is essential to the
existence of every government, that it have authority to defend and preserve
its constitutional powers inviolate, inasmuch as every infringement thereof
tends to its subversion. And whereas the judicial power extends expressly to all cases of law and equity arising under the Constitution and the laws of the United States, whereby the interference of the legislatures of the particular states in those cases, is manifestly excluded. And whereas our peace, prosperity, and happiness eminently depend on the preservation of the Union, in order to which, a reasonable confidence in the constituted authorities and chosen representatives of the people is indispensable. And whereas every measure calculated to weaken that confidence, has a tendency to destroy the usefulness of our public functionaries, and to excite jealousies equally hostile to rational liberty and the principles of a good republican government. And whereas the Senate, not perceiving that the rights of the particular states have been violated, nor any unconstitutional powers assumed by the general government, cannot forbear to express the anxiety and regret with which they observe the inflammatory and pernicious sentiments and doctrines which are contained in the resolutions of the legislatures of Virginia and Kentucky, sentiments and doctrines no less repugnant to the Constitution of the United States, and the principles of their union, than destructive to the Federal Government, and unjust to those whom the people have elected to administer it: wherefore,

Resolved, That while the Senate feel themselves constrained to bear
unequivocal testimony against such sentiments and doctrines, they deem it a
duty no less indispensable, explicitly to declare their incompetency, as a
branch of the legislature of this state, to supervise the acts of the
general government.

Resolved, That his excellency the Governor be, and he is hereby requested to
transmit a copy of the foregoing resolution to the executives of the states
of Virginia and Kentucky, to the end that the same may be communicated to the legislatures thereof.

A true copy, ABM. B. BAUCKER, Clerk.

STATE OF CONNECTICUT.

At a general assembly of the state of Connecticut, holden at Hartford, in
the said state, on the second Thursday of May, Anno Domini, 1799, his excellency the Governor having communicated to this Assembly sundry resolutions of the legislature of Virginia, adopted in December 1798, which relate to the measures of the general government, and the said resolutions having been considered, it is
Resolved, That this Assembly views with deep regret, and explicitly disavows, the principles contained in the aforesaid resolutions; and particularly the opposition to the "alien and sedition-acts," acts, which the Constitution authorized; which the exigency of the country rendered necessary; which the constituted authorities have enacted, and which merit the entire approbation of this Assembly. They therefore decidedly refuse to concur with the legislature of Virginia, in promoting any of the objects attempted in the aforesaid resolutions.

And it is further Resolved, that his excellency the Governor be requested to transmit a copy of the foregoing resolution to the Governor of Virginia, that it may be communicated to the legislature of that state.

Passed in the House of Representatives unanimously.

Attest,

JOHN C. SMITH, Clerk.

Concurred unanimously, in the upper House. Teste,

SAMUEL WILLYS, Secretary.
STATE OF NEW HAMPSHIRE.

IN THE HOUSE OF REPRESENTATIVES,

June 14, 1799.

The committee to take into consideration the resolutions of the General Assembly of Virginia, dated December 21st, 1798; also certain resolutions of the Legislature of Kentucky, of the 10th November, 1798, report as follows:

The Legislature of New Hampshire having taken into consideration certain resolutions of the General Assembly of Virginia, dated December 21, 1798; also certain resolutions of the Legislature of Kentucky, of the 10th of November, 1798:

Resolved, That the Legislature of New Hampshire unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this state, against every aggression, either foreign or domestic, and that they will support the government of the United States in all measures warranted by the former.
That the state legislatures are not the proper tribunals to determine the constitutionality of the laws of the general government, that the duty of such decision is properly and exclusively confided to the judicial department.

That if the Legislature of New Hampshire, for mere speculative purposes, were to express an opinion on the acts of the general government, commonly called "the alien and sedition-bills," that opinion would unreservedly be, that those acts are constitutional, and in the present critical situation of our country, highly expedient.

That the constitutionality and expediency of the acts aforesaid, have been very ably advocated and clearly demonstrated by many citizens of the United States, more especially by the minority of the General Assembly of Virginia. The Legislature of New Hampshire, therefore, deem it unnecessary, by any train of arguments, to attempt further illustration of the propositions, the truth of which, it is confidently believed, at this day, is very generally seen and acknowledged.

Which report being read and considered, was unanimously received and accepted, one hundred and thirty-seven members being present. Sent up for
concurrence.

JOHN PRENTICE, Speaker.

In Senate, the same day, read and concurred unanimously.

AMOS SHEPARD, President.

Approved, June 15th, 1799.

J. T. GILMAN, Governor. A true copy.

Attest,

JOSEPH PEARSON, Secretary.

STATE OF VERMONT.

IN THE HOUSE OF REPRESENTATIVES,

October 30th, A. D. 1799.
THE House proceeded to take under their consideration, the resolutions of
the General Assembly of Virginia, relative to certain measures of the
general government, transmitted to the Legislature of this state, for their
consideration: Whereupon,

Resolved, That the General Assembly of the state of Vermont do highly
disapprove of the resolutions of the General Assembly of Virginia, as being
unconstitutional in their nature, and dangerous in their tendency. It
belongs not to state legislatures to decide on the constitutionality of laws
made by the general government; this power being exclusively vested in the
judiciary courts of the Union: That his excellency the Governor be requested
to transmit a copy of this resolution to the executive of Virginia, to be
communicated to the General Assembly of that state: And that the same be
sent to the Governor and Council for their concurrence.

SAMUEL C. CRAFTS, Clerk.

In Council, October 30, 1799.

Read and concurred unanimously.

RICHARD WHITNEY, Secretary.