THE KENTUCKY RESOLUTIONS OF 1798

AN HISTORICAL STUDY

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SECOND EDITION

G. P. PUTNAM'S SONS

NEW YORK
27 WEST TWENTY-THIRD STREET

LONDON
24 BEDFORD STREET, STRAND

The Knickerbocker Press

1894

Electrotyped, Printed and Bound by
The Knickerbocker Press, New York
G. P. PUTNAM'S SONS

DEDICATED

TO THE CHERISHED MEMORY OF

S. L. W.

WHOSE LOVE INSPIRED AND HAND COMPLETED THIS LITTLE WORK

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PREFACE.

THIS little work was first suggested several years ago by a sense of the inadequacy of the historical accounts of the Kentucky Resolutions of 1798. This feeling has steadily increased ever since, and its correctness must be apparent to every one who has remarked the great influence these Resolutions have had upon our constitutional and political history. While they have been the cause and occasion of much debate and transitory discussion, there is no connected account of the causes and circumstances of their adoption, and their relation to the subsequent history of this country, except such as under many limitations is to be found in the histories of the United States under the Constitution. None of these are calculated to make the subject plain to the average reader, and there is scarcely one that is not positively in error as to some important fact.

The original documents, many of which have always been accessible, have been singularly neglected, and misstatements that at first crept in by inadvertence or unwarranted assumptions, not only have never been corrected by recourse to the sources,

but have been repeated till they became the seed of error, later writers competing with each other in reiterating the mistakes of all those who preceded them.

The materials used in this book, while no printed work treating of the subjects embraced in its purview has been intentionally neglected, are chiefly the original sources—the newspapers of the day and the written accounts of actors upon the stage, but especially the letters and manuscripts of the time, and of the men who were the leaders in the movements against the Alien and Sedition laws, Of all the sources consulted none can be compared for interest and importance to the hitherto almost untouched store of manuscripts forming the Breckinridge papers and containing John Breckinridge's literary remains.

Some part of the contents of this volume has already been published in a series of articles in the Magazines of American and Western History, but in a very abridged form and rather for the sake of provoking criticisms which might lead to a full and complete treatment of the questions connected with the Resolutions than as a permanent contribution to American history.

It is hoped that the evidence herein set out may be regarded as justifying a final judgment upon the important and somewhat mooted points of the real mover of the Resolutions in the Kentucky legislature and their true text. It is, perhaps, too much to hope that any final solution of the problems of authorship and interpretation is now, or ever will

be reached. Some new light has been found even upon these difficult questions, and some advance towards a final statement of all the evidence may have been made, even though the desired end has not been attained. If no other good is accomplished, yet if some part of the credit that is justly due to John Breckinridge, the mover and responsible author of these Resolutions be recovered, this work has not been written in vain.

Thanks for aid and encouragement are due to many friends, who have added so much to the accomplishment of my task that I cannot deny myself the public recognition of their assistance. Chief among these, are Prof. Alexander Johnston, Hon. Wm. C. P. Breckinridge, Col. R. T. Durrett, Pres. James C. Welling, and Hon. James Schouler.

ETHELBERT D. WARFIELD.

GRASMERE, NEAR LEXINGTON, KY.,
Mid-Summer, 1887.

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THE KENTUCKY RESOLUTIONS OF 1798.

CHAPTER I.

INTRODUCTION.

THE history of the Resolutions of 1798, of the causes which led to them, their authorship, and their influence upon the history of the United States, involves so many problems, and those problems are of so nice a character, that any one must needs feel the greatest hesitancy in undertaking to write it. Questions that have divided men into parties and factions, especially if bitter feelings have been engendered and conflicts provoked by them, must always afford difficult fields for the historian. The partisan finds little to commend in the conclusions of the most righteous judge, and if the doctrinaire has preëmpted the domain, his judgments are apt to prevail with those whose natural inclinations lead in the direction which he has pursued. Party passion on each side has done its worst to make the history of these resolutions difficult, and doctrinaires have appeared to represent almost every possible point of view. Much as

they have been discussed, and many as are the theories that have been promulgated concerning them, no attempt has as yet been made to write their history in a full and connected form. Certainly it may justly be assigned a place among those departments of American history esteemed worthy of separate treatment; and now that the mists of passion and prejudice that so long forbade any attempt at a candid discussion are nearly dissipated, it may not be too much to hope that the day is at last come when a fair-minded and dispassionate narrative may be written, the general uncertainty that clings to the whole subject be dispelled, and some of the errors that have crept into the most weighty accounts be corrected.

A clear knowledge of the causes that led to the Resolutions of 1798–9 is indispensable to the understanding of the problems connected with them. They had the primary cause of their existence not in any temporary condition of affairs, but in the great natural diversity of sentiment common to all men. The trend of human thought constantly leads men, according to their natural temperaments, to separate themselves into two great parties. By whatever names they may be known at different times and places, the one may be roughly designated as Conservative, and the other as Progressive. According to the condition of public affairs the efforts of the one party are directed towards the preservation intact of the existing government and the resistance of all change, or towards the steady strengthening of the hands of authority, and an

increase of the prerogative of the executive. While the other party in each instance adopts an opposite course. The natural bent of the one party is towards a strong and highly centralized government, of the other towards a pure democracy. The one finds its dangerous extreme in absolute monarchy with all the attendant theories of divine right, non-resistance, and so forth, while the latter finds its corresponding extreme in anarchy. In one form or another these opposing theories are always present in the state. Immediately after the Revolutionary war had left this country free but exhausted, they began to show themselves in various forms and different degrees of intensity in every part of the land. The general prostration and the natural weight of *vis inertia* told heavily on the feeble Federation, and the majority of thinking men watched with regret the slow, insidious work of disintegration. The essential weakness of the Federation was more and more widely recognized, till at last the tide set strongly towards a more efficient government, and by constant, almost heroic, efforts the dead weight of opposition was at length raised, and the country fairly made a nation. All but the most uncompromising foes of a strong central government joined in one way or another in the movement. The only notable exceptions were to be found among the citizens of those States which hoped to gain by oppressing their weaker neighbors and monopolizing commerce when the long impending ruin of the effete central government should become an accomplished

fact. There were many men, indeed, who were for strengthening the federal head, who yet refused assent to the constitution offered them, but this was on specific not on general grounds.

When once the youthful nation was launched on her voyage with the new Constitution, there was a rapid and radical shifting on the part of many. The terms Federalist and Anti-Federalist were applied to very different men at dates so near together as 1788 and 1790; and in a few more years there were fewer still who retained their old party-name, and this without any change of principles. Some of those who on various grounds had made the most determined fight in their several States against ratification, became under the new order of things devoted to the party of the administration, which claimed for itself the right to live under the honorable symbol of their late victory, the name of Federalist. No more notable instance of this class could be cited than the leader of the Virginia minority, the eloquent Henry. Once committed to the new form, he became one of the President's staunchest coadjutors. On the other hand, Madison and Jefferson, who had been so instrumental in bringing about the Annapolis convention, and the former of whom had played such an able part in the Philadelphia convention, drifted in the opposite direction. Jefferson who had wavered somewhat at first, was all for the Constitution if the amendments which were eventually secured could be obtained. But by all the dictates of his taste and temper he favored the least centralized form of government that would

subserve the purposes of securing a permanent union of the States, and of rendering that union secure against foreign interference; and earnestly desired the widest latitude for the exercise of State and personal liberty in domestic affairs; and these natural proclivities had been confirmed and strengthened by his residence in France. Madison was by nature very moderate in his views. In early life his position leaned rather towards the conservative and centralizing party, and in the last years of his life he returned to the same position, but under the influence of his great chief and the irresistible current of opinion in Virginia he assumed from the time of the first Congress forth a position not to be distinguished from that of Mr. Jefferson so long as the latter lived.

It is safe to say that a large part of those who became known after the adoption of the Constitution as Anti-Federalists, were old Federalists who considered the end they had labored to secure as attained when the Constitution was put into effect. They had regarded a strong central government as only a less evil than dismemberment, and when the latter fate was averted they winced at every act that carried the system they had helped to inaugurate into efficient action. The period of Washington's administration was almost entirely consumed in the work of organizing the new government and carrying out the provisions of the Constitution. The aspect of affairs when a vigorous nation, fully equipped, with all the insignia of power, had supplanted the weak and visionary federation was not

a little startling to men who had made this their *bête noir*. The prophet of such a change would have been laughed to scorn half a dozen years before. Indeed, few of this class, even those who fancied themselves most familiar with the instrument, thought it possible to create such a power in so brief a space of time out of the Constitution. This was doubtless due to a failure to give adequate weight and consideration to two factors which were destined to effect materially the result ; first, the capacity of the country for great and rapid growth, and second, of even more immediate influence, the means and methods that would at once be called into being to effectuate the plain provisions of the Constitution. To those who occupied this position the financial operations of Hamilton were not merely unlooked-for, but they assumed the aspect of unwarranted, and even wicked, violations of the Constitution. Thus step by step as the work of organization went on, the central government developed a power and patronage which was at once surprising and highly disapproved of by many sometime ardent Federalists ; and thereby steadily estranging many from the administration, it built up an opposition, and an opposition that had a firmer party-basis than most of those who composed it realized.

This fundamental division of political opinion, which has now come to be universally recognized, may be wholly or partly concealed by the temper of certain times or the absorbing claims of specific measures, but nevertheless it is always present,

and according to the trend given to political action it is pronounced or obscure ; but when this or that diversion has ceased to operate, the old ruts are again followed and the old division made plain. The condition of public affairs, both at home and abroad, during the early years of our national life, ran in courses that made this great division most prominent. Individual tastes were reinforced or modified by the special advantages the one policy or the other offered to the different States or sections of the country. These in turn, even as they dictated, were intensified and accentuated by leanings to British or French sympathies. As the one class of ideas was dominant in one country and the other in the other, they to a remarkable extent came to stand for the two policies. It is almost impossible, at the distance of nearly a century, to regard without the liveliest wonder the intense bitterness engendered by these different foreign attachments, and the tremendous influence which they exerted over the minds of our forefathers between the era of the Revolution and the second war with Great Britain. They were not a mere natural hostility against the mother country growing out of the prolonged war, and an equally natural spirit of gratitude for the timely aid of France. They differed from such sentiments so widely as not even to be comparable to them, and did not end with awakening sympathy and dislike, or even of governing our foreign relations, but extended to our domestic concerns and dictated our home policy. All of these things tended in the

same direction and drew a sharp line between the advocates of a strong and of a feeble central government.

In addition to these causes there was a special development of what may be called the "individualism," which is generally found as a prominent feature of that theory of government which looks towards liberalism and democracy. That is, the development of the importance of the individual in relation to the State. Mr. Jefferson was a most advanced advocate of this principle. Under his leadership it was gradually advanced, and finding a ready acceptance, especially in the South and West, became one of the greatest forces in the development and permanence of the party he founded. The noble system of English law, which from the time of the first settlements had been firmly established in the colonies, had for some time been marked by a comparative neglect of the individual, a neglect which in its administration had been accentuated to such an extent that at the era of our revolution English jurisprudence seemed much too indifferent to the personal rights of citizens. Property rights were preferred to personal rights, and the most trifling violations of the former were visited with much more speedy and severe punishment than the most serious assaults upon the latter. The libel law was peculiarly oppressive, and its administration had been a scandal and a shame. The prosecutions under this law for a century before this country achieved its independence, had been enough to discourage the most

courageous friends of free speech and a free press. From this source Mr. Jefferson drew a wholesome dread of any incroachments upon the freedom of the individual in whatever sphere, and curtailments of it were too recent and too great for it to be regarded as a figment of his brain. It appealed to him very strongly, falling in as it did with his natural habit of thought. Many regarded it as sufficiently guaranteed by the Constitution, but his fear and unrest were never satisfied even by so perfect a continuing guaranty, and he never ceased to watch over it jealously. He showed the first force of his convictions on this subject in the particular enumeration in the Declaration of Independence of the rights of "life, liberty, and the pursuit of happiness," again in his insistence upon the addition of a bill of rights to the Constitution, and in his watchful care throughout his career. There are many instances in which it behooves us to keep in view the dominant influence of this individualism on Mr. Jefferson's mind. It is not only the key to many of his own acts, but to the problems that afterwards grew out of them when it was attempted to wrest them to a widely different meaning. The natural result of these inclinations was exhibited in his steady advocacy of a general government of minimum power, a fostering of the influence of the States as the natural bulwarks against a strong central power, and his unwearied struggle for what was, indeed, the great end of all his policy, a democracy of the purest and simplest type, possessing all the power capable of be-

ing lodged in its hands and itself exercising as far as possible all the functions of government, itself the master, its office-holders the servants, and dictating and rightly requiring from all the most republican simplicity.

Such, in brief outline, were the sentiments of those who regarded the vigorous policy so promptly adopted and put into operation under Washington, with dislike and distrust. The overshadowing influence of the President held many to the warm support of the administration who would otherwise have been in the ranks of the opposition, and a far greater number yielded acquiescence to the same spell. There was, however, a steady growth towards the principles of those opposed to centralization. But for a long time they lacked both organization and party-name. Of leaders there was no lack. New York offered some brilliant candidates for headship; Massachusetts herself could have supplied an able champion; but by general consent the position was accorded to Virginia. Not at once, indeed, but gradually. In the House of Representatives, Madison quickly won the first place, but he was then, as ever afterwards, second to Jefferson, and by the time that the third presidential election had come, Jefferson was almost without a rival. Had the party been better organized, with a clearer enunciation of principles, they would have made a much better stand even thus early. They lacked cohesion sadly, and hitherto they were without any party-name of general acceptation. The name of Anti-Federalist was too

negative, and to some still smacked of a false position; the name of Democrat, which was not uncommonly given at the time, was a term of reproach and grew out of the unfortunate conduct of Genet, and the taste of French affairs was then fast growing bitter in all men's mouths. They had already begun to give themselves out as Republicans, and then to join the two names into Democratic-Republicans; but as yet this name had not become fairly fixed upon the party.

Such was the general state of affairs when Adams became President, and Jefferson Vice-President. Mr. Jefferson with his unfailing political sagacity had remarked the weaknesses in the great body of men who thought with him, and now began a systematic course directed towards the remedying of those defects. His first impulses towards a coöperation with the policy that Mr. Adams might pursue were of brief duration.[1] Their points of view were hopelessly at variance.

The President was an avowed admirer of the British Constitution, he had pronounced views of an aristocratical nature, and he was an uncompromising friend of strong government. The Vice-President, great as he was, was undeniably suspicious, and especially so of the northern Federalists. Even he forgot, that while at the Court of St. James Mr. Adams had pursued a most manly and independent course, and that, whatever his theories were, he had proved his patriotism and

[1] Jefferson's Works, vol. iv., pp. 153, 154 *et seq.*, *et.* 166.

republicanism in his masterly leadership in the first years of the Continental Congress. The distrust was probably mutual, but the President was the one to whom confidence and coöperation were due, and instead of that the Vice-President was the leader of the opposition and his rival for the suffrages of the people. The situation was too much for the administration. The President early gave offence by inauspicious speeches in regard to the relation of British and French influences, and kindred matters. The friends of France took especial exception to a remark to the effect that the American and French revolutions possessed not one point in common. Madison and Jefferson criticised this utterance freely in their correspondence, and it became the text for a public warning against a man who could hold such an opinion. Meanwhile our relations with France were growing more and more complicated. The performances of Genet produced a great revulsion of feeling on the part of many ardent French sympathizers. And from the time of his coming there was never quite the same feeling that had once prevailed. When Washington left office Adet's commission was suspended, and though he continued in Philadelphia, he was no longer accredited to the government. Charles Cotesworth Pinckney had set out bearing Monroe's recall and his own credentials to St. Denis. When he arrived he was received with much hauteur, and finally informed that the Directory declined to recognize him. All this had transpired in the last days of Washington's administration, but the news

had not reached this country when Adams was inaugurated. The country generally was exasperated by the rejection of Pinckney, and the circumstances of that rejection made the course of France, which for a long time had been directed towards a separation between the executive and a large body of the people, more patent than at any previous time. But Adams declared it to be his desire to heal the differences if possible, and to do all in his power to prevent the breach from widening. In order to accomplish this he summoned Congress to a special session in May and expressed his intention of nominating a commission to be sent to France to endeavor to bring about an accommodation. This commission as first drawn was to consist of Pinckney, Dana, and Marshall, but Dana declined, and Gerry was substituted for him. Gerry and Marshall set out promptly and joined Pinckney in Holland. Their credentials and instructions were adequate to the broadest scope of negotiation and there was great hope that they would be able to effect an accommodation. But at the same time there was a growing distrust of French attitudes, and particularly of the increasing power of Buonaparte. Even Mr. Jefferson was doubtful what the times would bring forth. Time slipped away. Negotiation was slow and communication between the countries imperfect. Public interest was fairly on tip-toe.

The envoys had reached Paris early in October, and six months had now elapsed. Just at this moment the weight was lifted from the President's heart which had been so sorely stung by insult and

vituperation. The X. Y. Z. despatches arrived and were made public on the 3d of April, 1798. A tremendous revulsion of feeling was the result. "Millions for defence, not one cent for tribute," became the cry on every hand. Adams was for once almost a popular hero. Federalism was in high feather. A French war seemed imminent, and for the moment would have been received with acclamation by all parties. This seemed to be the time to press forward vigorous measures that would undo much past evil and prevent much future annoyance. The programme embraced three acts. The first a change of the naturalization law; the second an alien act; the third a sedition act. The effect of the first was to alter the period of residence necessary to citizenship from five to fourteen years, to require a registration of all white aliens, and to forbid the naturalization of alien enemies. The Alien Act permitted the banishment of aliens under the simple order of the President, and in case of refusal to depart it authorized imprisonment and deprivation of the right to become a citizen. This was for alien friends, for the act drew this distinction. Alien enemies could be detained, banished, imprisoned, all at the discretion of the President. This was a most remarkable stretch of authority, but the Sedition Act was far more radical. It originated in the Senate, and must have alarmed not merely the friends of France and the Republican party, but equally all clear-sighted friends of freedom and of calm legislation. As introduced, its first section declared

France to be a public enemy, and made the giving of comfort or aid to Frenchmen or France by any one owing allegiance to the United States treason, and punishable with death. The second clause made the concealing or withholding of information concerning the acts made treason by the preceding section misprision of treason, and punishable by fine and imprisonment. The third was directed against combinations and conspiracies to resist the laws and the execution of the laws by officers of the United States. This crime of sedition was punishable by fine and imprisonment, and the judges were given authority to require securities for future good conduct. The fourth section was directed against seditious publications.

It would have been wonderful had such a measure become a law. It was tremendously sweeping in its provisions; to pronounce France and her people enemies when not in a state of declared war was unexampled, and to make it a high misdemeanor to use language "tending to justify the hostile conduct of the French government" a great stretch of censorship. The first two sections were stricken out bodily; not, however, till they had served to create alarm, and to supply a bugbear wherewith to frighten the uneasy, as examples of what the administration party desired and were working to obtain. The last two sections were purged of their more objectionable features, but a residuum remained ample to awake the fiercest invectives and the most determined opposition. It now included the two classes of seditious practices

and the publication of seditious libels on the government and its officers. Two clauses were added to modify the effect of these provisions. Section three permitted the truth in action for libel to be set up as a defence, contrary to the previous practice, and section four limited the continuance of this act to the period of the current administration, that is, to March 3, 1801.

Even before these laws were enacted a feeling of alarm spread everywhere. In the extreme Federalist States, no doubt, a feeling of triumph and exultation prevailed, but even in their borders there was no lack of dismay among the minority. The opposition in Congress labored strenuously to prevent their passage, but in vain. Once passed, the country was thrown into a perfect ferment. The different portions of the country were affected according to the dominant political opinion. Where the Federalists were strong political feeling bore them headlong into prosecutions under the new powers. In the Republican States a sense of injury and danger went hand in hand, and the question of the hour was how to repel the threatening destruction.

Mr. Jefferson did not fail to see that the great opportunity for his party had come. His keen political sagacity detected in an instant the fatal mistake the administration had made, and he began at once to look about him for the best means to turn his opponents' mistake to his own advantage. Naturally he felt some delicacy in appearing too forward in assailing a government of

which he himself was the second in office. Nevertheless he lent himself willingly to the task of organizing, in a quiet way, a systematic assault upon these laws of Congress, and at once opened a correspondence calculated to elicit the best judgment of his coadjutors and gradually drew out a programme of action.

Virginia was by no means unanimous in reprobating these laws. She had a large and influential body of Federalists, who were led by bold and able leaders, and, as is not infrequently the case with minorities largely constituted of the wealthy and cultivated, many of the Virginia Federalists were extreme in their convictions and partisanship. But the influence of Jefferson was paramount and the result of Jeffersonian principles soon appeared on every hand. Meetings were held in many of the counties upon their county court days at which were adopted addresses or series of resolutions condemning or praying for the repeal of these laws. Among these counties were Prince Edward, Goochland, Orange, Augusta, Amelia, Powhattan, Louisa, and Caroline. Except Kentucky it made the greatest show of resistance. New York, New Jersey, and Pennsylvania sent petitions of appeal to Congress, and the latter, being especially aroused by the plain personal attack contained in these laws upon the popular Gallatin, was very active in doing what was possible to secure the repeal.

It is a matter of general regret that so few of Mr. Jefferson's letters written just at this crisis

appear in his published works. Those that are before us contain more expressions of suspicions of surveillance and inspection on the part of the post-office than of opinions on the situation. His general views are, however, sufficiently well known. He wholly opposed the course the government was pursuing, but deplored any thought of violent measures, arguing very forcibly in a letter to John Taylor of Carolina,[1] that men were prone to differ, parties were inevitable, and the constant rule of either party impossible; that, therefore to consider secession and separate existence with North Carolina alone, as suggested by him, was to flee from the evil without escaping it; that one might thus continue to divide and subdivide and yet never attain the desired goal. At the same time he recognized the importance, even the imperative necessity, especially for party purposes, of prompt action, and soon came to share the opinion of those who thought that the legislatures should be made the mouth-pieces of their protests. In a less pleasing tone he wrote to S. T. Mason[2]: "The Alien and Sedition laws are working hard. I fancy that some of the State legislatures will take strong ground on this occasion. For my own part I consider those laws as only an experiment on the American mind to see how far it will bear an avowed violation of the Constitution. If this goes down, we shall immediately see attempted another act of Congress declaring that the President shall

[1] Jefferson's Works (1859), vol. iv., p. 247.
[2] *Ibid.*, p. 257.

continue in office during life, reserving to another occasion the transfer of the succession to his heirs and the establishment of the Senate for life. At least this may be the aim of the Oliverians, while Monk and the cavaliers (who are perhaps the strongest) may be playing their game for the restoration of his most gracious Majesty, George the Third. That these things are in contemplation I have no doubt ; nor can I be confident of their failure after the dupery of which our countrymen have shown themselves susceptible." This letter was written so late as October 11th, when the fact that some action would be taken in the legislatures of Kentucky and Virginia was generally known. The tone of these remarks, a tone common in Jefferson's letters, is remarkable for the extreme measures he attributes to his opponents, and also for the pessimistic view of popular action. The question is inevitably suggested : Did he really think these things of men, most of whom he had served with, many of whom he had watched from the vantage-ground of a presiding officer, practically without a vote, or the people toward whom he ever practised a wide optimism and showed a confidence honorable alike to himself and them ? Or on the other hand, was this tone assumed for purposes of policy, to urge his followers on to spirited action by painting the picture in the most sombre colors ? Neither alternative can be regarded as worthy of a man of such a vigorous mind and such a genius for politics.

But it was in Kentucky that the greatest re-

sistance was evoked. The feeling in that State was, indeed, little short of frenzy, and a singular unanimity was displayed even in the most extreme acts and sentiments. This grew out of no passing passion. It was based upon the most vigorous elements in her character as a people. Kentucky was at this time somewhat apart from the rest of the Union. With the single exception of the newly created State of Tennessee, the only one of the sisterhood west of the mountains, of very recent and rapid growth, she had, to a very large degree, interests peculiar to herself; her needs were not clearly understood, and sometimes, when understood, disregarded by the others. Her complaints, just and unjust, had been many, but hitherto she had not gained the nation's ear. But the time was now ripe for her to assert herself, and as she played the most important part in the little drama that was then hurrying upon the stage, it is important to understand the circumstances which prepared her for her rôle, and in order that it may be quite plain that it was no mere chance which assigned to her this place, but a manifest destiny long in preparing, this point will be presented somewhat at length.

CHAPTER II.

KENTUCKY'S GROWTH TOWARDS THE RESOLUTIONS.

THE first settlement effected in Kentucky only dates from 1774. The whole of her growth up to 1798 was, therefore, embraced in the brief period of twenty-four years. And in addition to this the dark days of the Revolution almost entirely checked emigration from the older States.[1] Not only were the calls at home all engrossing, but the Indians, under the stimulus of British excitation, were unusually warlike. Thus the first years repeated the old story of frontier struggle. The little ground won was gained hardly and retained by desperate means. But the war once over, a perfect tide of emigration swept over the mountains. The termination of a great war always throws upon a country a band of restless spirits, to whose existence excitement has become well-nigh a necessity. Some escape or some proper application of this spirit is necessary to the peace and well-being of the State. The veterans of the Revolution found

[1] A few scattered stockades and block-houses were the only semblance of settlement till about the end of the war, and these were more in the nature of hunters', trappers', and traders' posts than the beginnings of actual settlement.

it in the exploration and colonization of the west. The story of the efforts in the more northerly States in the settlement of the country north of the Ohio has been frequently told. Though the southern emigration to Kentucky and Tennessee has been less ably dealt with, it has even more of interest attaching to it, and is enlivened by incidents full of the spirit of romance. In Kentucky, at the close of the war, the foundation had been laid, the country had been thoroughly explored, and the need was mainly of settlers to occupy and possess the land. Virginia encouraged emigration in every way. Her soldiers received large grants, and many occupied them in person. The North Carolinians, who had been so prominent in early days, having given among other eminent names, those of Boone, her typical pioneer, and of Shelby, her first governor, continued to pour in. Maryland, too, sent a large number of settlers. Except from these three States there were very few emigrants to this country, those from the more northerly States being more prominent than numerous. The growth was surprisingly rapid ; in 1790 there were already more than 73,000 inhabitants, which number had grown to 220,955 in 1800 ; a wonderful exhibit for a period of twenty-six years. In 1798 the number of inhabitants must have approximated 200,000. These were collected in several little groups, not scattered broadcast throughout the land. The most important centres were in Fayette County, about Lexington, in Lincoln County, about Danville, and in Jefferson County, about Louisville.

The population still retained the characteristics of a frontier people. Impatient of restraint, they were rash and adventurous. Placing an exalted value upon personal courage but too often according praise to recklessness rather than to calm, unpretentious heroism, they exaggerated personal privileges and repelled any breach of them with unnecessary violence. The love of adventure too often degenerated into a mere thirst for excitement, and the spirit of the backswoods hero into the love of horse-races, cock-fights and games of chance. But on the other side of their nature they were frank, manly, and generous, living with an easy and open-handed hospitality that was very attractive and has passed into a proverb. And in all things, in word and act, they were full of nature's own gift of an untrammelled love of liberty, crude and unformed beyond the nomad spirit sometimes, as when it drove the aged Boone to the wilds of Missouri because he could not find room to breathe in Kentucky, but rising with the temper of the times to an intelligent and not-to-be-denied demand of political independence. Whatever trespassed on it was jealously regarded. Where any thing, in whatever domain, has acquired a special sensitiveness, its guardians do not have to look long or seek far for an injury. And so it was that within ten years from the first settlement the cry was raised that injustice was being done by Virginia to her District beyond the mountains, that her laws were oppressive to its people and that their personal liberty was curtailed. It was not a groundless cry in some respects. But

Virginia was always a cherishing mother to Kentucky. The complications did not grow out of conscious neglect and still less out of deliberate oppression. But the difficulties of communication were very great, the wave of immigration had overpassed the mountains and a great uninhabited interval was thus left to make intercourse slow and difficult, and as yet the road was exceedingly dangerous; while to delays and casualties growing out of bad roads and mountain passes, the uncertainties of travel through a country invested by roving bands of hostile savages had to be added. Virginia naturally sometimes lost sight of the peculiar needs of a part of the State so cut off, so badly represented, and so distinct in its needs, in her legislation. Thus little by little complaints arose affecting all branches of the government, judiciary, legislative, and executive, and at last these complaints grew to a demand for complete independence.

The first issue actually raised grew out of military affairs. Kentucky was singularly situated in respect to the Indians. Her territory was almost entirely without permanent settlements. It was a common hunting-ground, abounding in game, and attracting the various tribes from the bordering States to frequent expeditions. Naturally enough collisions were of constant occurrence, and it was almost as much a battle as a hunting-ground, justifying the Indian name which signifies "the dark and bloody ground." This circumstance made it easier to plant the first settlements, since they were made on unoccupied ground, but it made their maintenance

much more difficult, because the roving war-parties had not been in any wise dispossessed or reduced in numbers, and made their periodical returns as of old. The only difference, apparently, was that instead of tribe slaughtering tribe in their predatory incursions they all now fell upon the white man. It was an anomalous state of affairs, and it is probable that the Virginia authorities did not fully comprehend the situation. A somewhat analogous experience had fallen to the lot of the settlers in the region west of the mountains at the head-waters of the New, Holston, and other rivers, known collectively as "the Western Waters," which became the counties of Washington, Fincastle, Bottetourt, and so forth, during the war period, who were the victims of frequent raids from the Cherokee towns just within the depths of the wilderness. But the Indians were then under the manipulation of British and Tory agents, and at other times rarely proved the aggressors. Here the Indians made dash after dash and harried the settlers sadly. The only remedy was to be found in retaliation, and the arrangement of the militia under Virginia's laws made this most difficult. The governors disapproved of it, and the federal war department made more than one complaint of these expeditions as stirring up trouble and violating treaties. The Kentuckians were in the grasp of a necessity that knew no law, and Colonel Benjamin Logan invited a number of militia officers to an informal conference at Danville in the summer of 1784. Those present de-

cided to call a convention in December to discuss the military situation. This convention was of the opinion that Virginia ought to be asked to grant a separation, as otherwise the good of the western counties would be prejudiced ; but fearing a lack of authority, the question was referred to another convention to meet in May, 1785. This convention also found it expedient to refer the situation to another, called to meet almost immediately, in August. A request for autonomy was formally made to Virginia and addreses were made to the people setting forth the necessity of separation. During the course of these events a strong party had sprung up, so bent on separation as to be willing to go to the greatest lengths in order to obtain it. The talk even thus early was needlessly violent, and pointed to more vigorous measures than the necessity of the case seems to have demanded. To men of this stamp the news that Virginia, by an act passed in January, 1786, had acceded to the request for a separation was almost a disappointment. This act authorizing the people to erect themselves into a State is generally known as the first enabling act. Its full text was not received until some time after the rumor of its passage had arrived. When it was known, certain conditions contained therein came as a relief to the extreme party. They were simple and proper, but some of them were very unpopular. The principal conditions required, first, the adoption of a proper constitution, a participation in the debt of the old State, a recognition of old land-grants, and equal treatment to Virginia land-

owners, and that the consent of the Federal Congress be obtained before June 1, 1787, to receive the new State into the Federation; and then the separation was to be made perfect upon a day to be named subsequent to September 1, 1787. The delay necessitated by the last clause was eminently unsatisfactory to the impatient. They chafed under it, but the temper of the people showed itself as fully *en rapport* with the Virginia programme, and the situation was quietly accepted. Misunderstandings, however, arose, and Virginia in October of the same year passed another act delaying the separation till January 1, 1789, and fixing July 4, 1788, as the date prior to which Congress should consent to receive the new State into the Federation. This was very much more unpopular than the former act, but was complied with at the time by quietly recognizing it as final.

Meanwhile the military affairs were growing less important, and the two meetings held in Danville, in 1787, the one in May and the other in September, brought another question into prominence. As the country grew the difficulties that were felt in transactions beyond the mountains were greatly increased by the advent of commerce. Transportation of large quantities of goods was both expensive and difficult. And the products of the State were all agricultural, and the imports were all the necessaries of life, except their food. The imports would come to them, but at a high price; their exports, on the other hand, could with difficulty find a market at any price. At such a time it was only natural that

the great system of rivers pouring their waters to the Gulf should be pointed to as the natural avenue of their trade. But Spain owned all the western bank of the Mississippi, and the eastern bank to 31° of north latitude, and guarded with jealous care the traffic on the great western highway. There was good reason to believe that the western possessions of the Federation had a right of use, but this was denied, and Spain had the power to enforce her claims. The sense of the importance of this outlet to Kentucky commerce grew rapidly, and was studiously fostered by those over hasty in their desire for independence, and it was not long till this question became the most important one before the people.

The man who was to be the chief promoter of this idea in all its phases, and through it to become a most conspicuous figure in the history of the United States, now first appears upon the scene in Kentucky. This man was General James Wilkinson. He was possessed of that precocious genius so common to extraordinary times. He was a captain in the Continental army at eighteen, had several opportunities of distinguishing himself, was an aide-de-camp to General Gates at Saratoga, and finally left the army as Brevet Brigadier-General. He came to Kentucky in 1784 as agent of a Philadelphia trading company, and opened a store in Lexington, it being the third dry-goods store in Kentucky. He was short of stature, but slender in build, elegant in manners, easy in his address, and, although already in the most straightened circumstances, dispensed a free-handed hospitality that gained him many friends.

As time went on he proved himself able, enterprising, and indomitable, and when the opportunity, which was now near at hand, offered, he discovered an eloquence of that declamatory and florid kind which was then so popular. This was the one thing needful to give him great political influence, and it for a long time floated him on the highest tide of popularity, despite reflections on his truth and probity which became constantly more and more widespread. He was an early convert to the necessity of the Mississippi trade to the well-being of Kentucky, and came into the field of politics to press this single question. Kentucky meanwhile overtured Virginia to address Congress on the subject, and in compliance therewith the Virginia delegates were instructed to urge the importance of the free navigation of the Mississippi on Congress. The convention called to meet in July, 1787, promised to be most important, and it was expected that the contest of the two parties would be very sharp. Wilkinson, who seems to have been peculiarly obnoxious to his opponents and the fomentor of all discord, suddenly disappeared. The time for the convention came on and still he did not appear. The convention opened and went on with its deliberations in a quiet and unanimity that had been hitherto unknown, and finally adjourned without a single ripple having broken the smooth surface of their debates. Meantime speculation was rife as to what had become of Wilkinson. Various reports were current for a time, but it came to be very generally understood that he had

gone to make trial of the Spaniards on the lower Mississippi. It was quite true. Wishing to enforce his plans by an object lesson, he collected a valuable cargo, and dropped down the river. His success was greater than he dared hope for. Elated, he returned in great state, in a "chariot" drawn by four horses and accompanied by a retinue of slaves. Here, indeed, was a transformation. He had departed a bankrupt trader, be returned like a merchant prince. Nor was it all empty show, a display on the borrowed money of too trusting friends, as it had been more than hinted that his previous little show had been. He displayed with a flourish of trumpets a commercial treaty with the Spanish authorities at New Orleans, conferring on him the right to export thither all the "productions" of Kentucky free of duty, and offering, on behalf of the Spanish government, nine dollars and fifty cents per hundredweight for tobacco, which had hitherto been sold at two dollars. Here, indeed, was a solid triumph, one that scarcely any one would refuse to share.

Despite the glitter of the gold and the jingle of the dollars there was no lack of men to ask the meaning of this transaction, and why it was that while the representatives of Spain in one place refused on any conditions to open the Mississippi to trade, in another place others, on behalf of that country, entered into private treaty for the benefit of a single State. The charge was easily suggested and instantly made, that Wilkinson had been bribed by the Spanish government to favor the cause of

separation, not only from Virginia but also from the Federation, and he was now nothing less than the paid agent of a foreign power.

There is undoubtedly a mystery in this whole affair which renders it impossible to speak with absolute decision on some points. Whatever may have been Wilkinson's designs, and however intimate the connection between him and such men as Brown, Sebastian, Innis, and others, they at this time played into each other's hands, and the trend of all their action was towards unlicensed separation from Virginia, with a very suspicious savor of complete severance of all existing ties. Brown was delegate in Congress at this time, and hardly gave a fair impression to his constituents as to the sentiments of that body. He let it be understood that there was strong opposition to receiving Kentucky as a new State, especially if Vermont or Maine could not be brought in at the same time; that Congress was responsible for the proposition in Jay's proposed Spanish treaty, surrendering the navigation of the Mississippi for twenty years; and furthermore, that Congress, and the East especially, did not care a rush for Kentucky or the river trade. This was bad enough, for in a negative way it left a wrong impression. Nevertheless, this much might have resulted from a bias growing out of prejudices. But he further had a private interview with Don Gardoqui, the Spanish ambassador, and embodied the results of that consultation in the following statement, which was enclosed in a letter to Kentucky:

"In a conversation I had with Don Gardoqui, the Spanish minister, relative to the Mississippi, he stated that, if the people of Kentucky would erect themselves into an independent State, and appoint a proper person to negotiate with him, he had authority for that purpose, and would enter into an arrangement with them for the exportation of their produce to New Orleans on terms of mutual advantage."[1]

John Brown also wrote to George Muter, Chief-Justice of Kentucky, a letter setting forth the same views, and adding the thought that it was not to be thought likely that Kentucky would hesitate any longer to separate herself from Virginia by the shortest if the illegal way; and he also says plainly that the idea of Don Gardoqui looked to a separation, and, indeed, was conditioned upon a separation from the United States.

Affairs were in this posture when the question of ratification of the Constitution of the United States was finally settled. Each of the seven counties which then composed the district of Kentucky sent two delegates to the Virginia convention. The men who held the extreme views on the subject of independence were very popular, more so than the measures they advocated, when the two could be separated, and they held nearly all the prominent offices, and now formed a great majority of the delegates. On the question of ratification they voted three for and eleven against, Jefferson County casting its whole vote for the Constitution, led by the distinguished Robert Breckinridge;

[1] Marshall, vol. i., p. 302.

the other vote was that of Humphrey Marshall, of Fayette, afterwards the Federalist Senator, and the historian of his State. Virginia was the tenth State to adopt the Constitution. Congress hearing of this, which occurred on June 26, 1788, refused on July 3d, the latest possible date, to act on Kentucky's application to be received into the Federation, and relegated the whole matter to the new system which alone it concerned. John Brown left for Kentucky in disgust, and the feeling in that State assumed a more radical aspect.

The failure of Congress to take the requisite action, together with further complications between Virginia and Kentucky, now necessitated an eighth convention in order to determine this question. It met in Danville in July, 1789. The contest in Fayette was again sharp, but this time the tables were turned, and Wilkinson by the weight of his personal popularity, was elected alone of his party. The other four members were from his opponents, and headed by Colonel Marshall.[1] Wilkinson read an essay on the Mississippi navigation and its importance to Kentucky, and then said there was another present who could more properly lay the matter before the convention than he could. Thereupon John Brown rose, said briefly that he was assured that if unanimous, Spain was ready to grant almost any terms, and sat down. A motion was made to refer the question of separation without

[1] The father of Chief-Justice Marshall and uncle of Humphrey Marshall, a dear friend of Washington, and the leading spirit among the elder Federalists.

the antecedent consent of Virginia to the people, and this motion was carried, but by the exertions of Colonel Crockett reconsidered, and the convention ended by agreeing to all that Virginia now demanded; and as a result Kentucky passed quietly into the Union in June, 1792.

The universal satisfaction which followed the admission into the Union proved sufficiently that the great mass of the people really wanted that consummation. Other things, indeed, they desired, but this first and most and the others in connection with it. Eight years had elapsed since the question of separation was first brought into public notice. These years had been marked by unceasing agitation. Nine conventions had been held for this single purpose, involving frequent elections and public canvasses. Other elections in the natural course of events had occurred, and the election of delegates to the Virginia convention had brought another special discussion before the people. The whole concatenation naturally produced an unhealthy state of mind. Extreme measures had been again and again warmly advocated, visionary schemes fostered and encouraged, addresses and overtures to every branch of government frequently resorted to, so that agitation had come to be almost the normal state of political thought. This was almost universal. Besides this the leaders of the more radical separatists had acquired a violent style of oratory, and a passion for discussion that could not be readily put away, especially when the darling problem of the navigation of the Missis-

sippi was yet unsolved. It was not too much to say that they never would be content till this was secured. Kentucky was plainly the most anti-federal of States. Her vote had been eleven to three against ratification, and this affords a clue to her instant opposition to the administration when taken in connection with the Mississippi question. These things combined to make her throw herself into the arms of the French party, and when France planned, through Genet, an expedition against Louisiana, her abandonment to that cause was complete. A Democratic club of American origin, manly and straightforward in its tone, had long been in existence at Danville. Now a number of Democratic societies on the French model began to spring up. Several were formed in 1793, among them one in Lexington, which proceeded to resolve that "the right of the people on the waters of the Missisippi to its navigation is undoubted, and ought to be peremptorily demanded of Spain by the United States Government." Genet's four agents appeared just at this time and began to prepare for an expedition to the southwest. General George Rogers Clark, whose sun was fast setting in an old age of dissipation, received a commission as "Major-General in the Armies of France, and Commander-in-Chief of the revolutionary legions on the Mississippi." There was much talk, but apparently very little action, the commissioners being more given to braggadocio than warlike deeds. Washington no sooner heard of this proposed expedition than he communicated to the government at Frankfort a

very full account of the relations then subsisting between this country and Spain, pointing out the efforts being made to secure the use of the river, and the present prospects of success, and closing with an injunction to be on the watch. Says Mr. Randolph : [1] "Let this communication then be received, sir, as a warning against the danger to which these unauthorized schemes of war may expose the United States, and particularly the State of Kentucky. Let not unfounded suspicions of a tardiness in government prompt individuals to rash efforts in which they cannot be countenanced; which may thwart any favorable advances to their cause; and which, by seizing the direction of the military force, must be repressed by law, or they will terminate in anarchy. Under whatever auspices of a foreign agent these commotions were at first raised, the present Minister Plenipotentiary of the French Republic has publicly disavowed and recalled the commissions which have been granted." This letter bore date March 29, 1794. It did not have much effect in quieting the State. Extreme views were expressed in the Democratic Society at Lexington in the middle of May, and a public meeting was called on May 24th, at which the most violent and inflammatory resolutions were passed. The only step taken was the sending of a large part of the letter above mentioned to Mr. John Breckinridge, the president of the society, to advise him

[1] Letter and enclosure of copy to John Breckinridge, Pres't Lexington Democratic Society, from Isaac Shelby, Gov'r Kentucky.—BRECKINRIDGE PAPERS.

of the condition of the negotiation, and the attitude of the administration toward the West. About this time John Edwards, one of the first Senators, was called up before this society, and in a long series of questions was catechized as to what the Senate had done, especially in secret session, what secret oaths were required of Senators, if any, and what part he had played in the secret drama. Edwards answered in a dignified and manly way, and the society got little satisfaction.

In the autumn Washington not being satisfied with the way things were going forward again communicated with Governor Shelby. The action of the general government was throughout dignified but firm, while the governor, asserted that if any man had a right to leave the State any number had the same right ; that the State recognized the right of its citizens to bear arms, and could not set up an inquisition to inquire into the intent for which they bore arms ; in short, that the government desired him to arrest respectable citizens on the suspicion of an intent, which was unthinkable.

The French schemes gradually fell through, and a return was had to the old channel of a treaty with Spain. In July, 1795, Governor Carondelet sent one Thomas Power to see what could be done. A letter was sent to Judge Sebastian of the court of appeals of the State, who had belonged to the old coterie of Spanish inclinations. It was shown to others, and General Wilkinson who was on the northern frontier was again communicated with. It is unnecessary to attempt to unravel the tortuous

maze of these Spanish negotiations. That they existed and that they were renewed in 1797 cannot be denied, although the exact part played by the different actors is as yet uncertain. Whatever may have been the wishes of a few a period was put to any general inclination to such a course by the treaty with Spain in the autumn of 1795, which opened the Mississippi and gave a place of deposit at New Orleans. So great was the reaction caused by the excesses of Genet that the Federalists were able to elect Humphrey Marshall to the Senate, and this treaty carried it still further. The great mass of the people had always felt themselves a part of the United States and hesitated to think of any proposition looking towards separation. They received this as earnest of a desire to legislate for their good, equally with that of the older States, and, though the devotion to the administration was short-lived, and though they seriously opposed the excise, still cherished an attachment to France, and blazed out against the Alien and Sedition laws, the seeds of entire loyalty had been so well sown, that when the election of Jefferson proclaimed the triumph of the extreme Democratic school, they gave an adherence to the Union that has been sincere and enthusiastic to this day.

More space has perhaps been given to this account of the growth of public opinion in Kentucky than was necessary. And yet it is very important that it should be kept well in mind, in order to clearly understand the nature of the movement resulting

from the odious acts of 1798. A single further example, while it may be regarded as extreme, will yet throw some additional light on a type of political opinion which was not uncommon. In early times in Indiana a political libel suit was tried in the Franklin Circuit Court. The principal allegation was that the defendant had called the plaintiff an old Federalist. The issue was made up on this as an agreed statement of facts, and proof was taken as to whether the offence constituted a libel. The chief witness was an old man named Herndon, who had moved to Indiana from Kentucky. He swore that he considered it libelous to call a man a Federalist; that he would shoot a man who called him either a horse thief or a Federalist; that he would rather be called any thing under heaven than a Federalist; and regarded a thousand dollars as the least measure of damages; that he considered the term as equivalent to Tory, or enemy of his country, and from the earliest days of Kentucky such he believed to have been the common acceptation of the term. Other witnesses coroborated this testimony and the jury found a verdict to the effect that "to call a man a Federalist was libelous," and fixed the damages at one thousand dollars.[1]

Such an occurrence seems impossible in days of calm retrospect, but the bitter invectives and unfounded statements that filled the harangues of the time were well calculated to distort the judgment and fill the minds of men with erroneous and totally false ideas.

[1] "Early Indiana Trials," etc., by O. H. Smith, Senator in Congress, etc., p. 120.

Such was the temper of the people and the times in Kentucky when the news was slowly brought to them of the progress of events at the seat of government. It does not require any very acute student of history to see how the people and the times interacted on each other, nor how fully in accord they were just at this time. The stubble was dry; with the first breath of flame it was ready to spring into full blaze. It was one great conflagration from the moment that it was known that the Alien and Seditions acts were likely to pass the houses and become laws.

It is easy to understand the profound impression made in Kentucky by the Alien and Sedition laws, when the feeling in other and less radically Democratic States is remembered and their past history considered. The very frame of society seemed to be shaken. The sentiment was unanimous that these measures were transgressions of the limits fixed by the Constitution and aimed at the subversion of the very foundations of liberty. All the old machinery was at once put in motion, and county after county passed resolutions condemning these laws. Public dinners were held at which toasts were drunk in honor of France, of the two great opponents of these laws, Livingston of New York and Gallatin of Pennsylvania, to whom John Nicholas of Virginia was sometimes added, of the Vice-President, "the bulwark of liberty," and also to the right to the navigation of the Mississippi, to the inviolability of the Constitution, etc., the President in all cases being conspicuous by the absence

of any mention of his name. A spirit of opposition was born of the instant, and the advocacy of resistance steadily increased. The means and methods of that resistance alone formed subject of debate. The resolutions passed at a meeting of the citizens of the influential county of Clark will give an idea of the opinions expressed in all. They were the first of the series and passed so early as July 24th.

First. Resolved, That every officer of the Federal government, whether legislative, executive, or judicial, is the servant of the people, and is amenable and accountable to them: That being so, it becomes the people to watch over their conduct with vigilance and to censure and remove them as they may judge expedient: That the more elevated the office and the more important the duties connected with it may be, the more important is a scrutiny and examination into the conduct of the officer; And that to repose a blind and implicit reliance in the conduct of any such officer or servant is doing injustice to ourselves.

Second. Resolved, That war with France is impolitic, and must be ruinous to America in her present situation.

Third. Resolved, That we will, at the hazard of our lives and fortunes, support the Union, the independence, the Constitution, and the liberty of the United States.

Fourth. Resolved, That an alliance with Great Britain would be dangerous and impolitic; that should defensive exertions be found necessary, we would rather support the burthen of them alone than embark our interests and happiness with that corrupt and tottering monarchy.

Fifth. Resolved, That the powers given to the President to raise armies when he may judge neces-

sary—without restriction as to number—and to borrow money to support them, without limitation as to the sum to be borrowed or the quantum of interest to be given on the loan, are dangerous and unconstitutional.

Sixth. Resolved, That the Alien bill is unconstitutional, impolitic, unjust, and disgraceful to the American character.

Seventh. Resolved, That the privilege of printing and publishing our sentiments on all public questions is inestimable, and that it is unequivocally acknowledged and secured to us by the Constitution of the United States; that all the laws made to impair or destroy it are void, and that we will exercise and assert our just right in opposition to any law that may be passed to deprive us of it.

Eighth. Resolved, That the bill which is said to be now before Congress, defining the crime of treason and sedition and prescribing the punishments therefor, as it has been presented to the public, is the most abominable that was ever attempted to be imposed upon a nation of free men.

Ninth. Resolved, That there is a sufficient reason to believe, and we do believe, that our liberties are in danger; and we pledge ourselves to each other and to our country that we will defend them against all unconstitutional attacks that may be made upon them.

Tenth. Resolved, That the foregoing resolutions be transmitted to our representative in Congress by the chairman, certified by the secretary, and that he be requested to present them to each branch of the Legislature and to the President, and that they also be published in the Kentucky *Gazette*.

JACOB FISHBACK, *Ch.*

Attest: R. HIGGINS, *Sec.*

In Fayette County no sooner was the news of the passage of the acts known than a spontaneous

assemblage gathered in Lexington. Henry Clay was a young man of twenty-one at the time, newly come from Virginia, almost unknown, and hitherto unheard. The crowd hustled him into a wagon and told him to tell them the state of affairs. It was a splendid opportunity for a born orator, and he ably improved it. His own opinions and those of the crowd closely coincided. Youth gave boldness to his words if it detracted from his judgment. So, throwing himself without reserve into his subject, he denounced the hated laws with bold invectives, to the eminent satisfaction of his hearers and his own repute. The field wherein this youthful champion first fleshed his blade was too important to be left even to such an one. The two most able members of the bar, George Nicholas and John Breckinridge, came to the front at once. A meeting was held and resolutions were passed of the same general tenor with those which emanated from other counties. But George Nicholas was not content with this. After playing a most important part in the Virginia convention which ratified the Constitution, this able barrister moved to Lexington and early became prominent both in politics and at the bar. He was a brother of John Nicholas, member of Congress from Virginia, who ably combated these very laws and was prominent in securing their repeal. Another brother was Colonel Wilson Cary Nicholas, the intimate friend of Jefferson, senator and governor of Virginia, one of the ablest of the younger generation of Virginia Statesmen ; and a third, Judge Philip Norborne Nicholas,

of Richmond, Virginia; while a sister was the wife of Edmund Randolph. Their father was Robert Carter Nicholas, the last Royal and first State Treasurer of Virginia, and a grandson of old Robert Carter, popularly known as "King" Carter, who owned sixty-three thousand acres in the valley of Virginia, and was president of the council, lieutenant-governor, and acting governor of the province in the good old days of the colony. He thus combined the factors needful in the States of Kentucky and Virginia, namely, democratic sentiments combined with great family influence and distinguished descent. It seems a strange mixture, but it was the one that gave the greatest influence. Nicholas had now retired from active politics, but was still in full practice at the bar, and was a professor in the law department of Transylvania University. He used his private influence freely, and published a card entitled The Political Creed of George Nicholas, in the Kentucky *Gazette* for August 1, 1798. It is as follows:

"In vindication of my right as a free citizen of the United States to, and as an exercise of, the invaluable privilege of speaking and publishing my sentiments of the official conduct of those who have been appointed to administer the government of the United States, and which is in itself so inestimable that the want of it must render all other earthly things of no value: I do solemnly declare that I do verily believe that the majority of the Legislature of the United States who voted for the act entitled 'An act in addition to the act for the punishment of certain crimes against the United

States' have violated that clause in the Constitution of the United States which declares that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'

"And I do further solemnly declare that I do verily believe, if the President of the United States hath approved the said act, and if any of the judges have by any official transaction endeavored to enforce it, that they have also violated that part of the Constitution."

This was followed up by "a letter to a friend in Virginia," which he caused to be printed and very widely circulated, giving a clear expression to his views. Here the active part taken by Nicholas ceased. An error has crept into many of the ablest histories of the United States, to the effect that he introduced the Resolutions into the Kentucky House of Representatives in November, 1798, but he was not a member of that body, and the error is one of comparatively recent origin.

On the 22d of August, a writer who signed himself Philo-Agis, and who voted against the otherwise unanimous resolutions of Clark County, discussed the situation in a letter to the Kentucky *Gazette*. He explains that his opposition to the action taken in Clark did not arise out of any friendship for the principles enunciated in the Alien and Sedition laws, but out of a hesitancy to adopt the measures proposed by the Resolutions. He then proceeded to express his opinion of the proper course to be

pursued, to this effect: "My plan is this: let the legislature of Kentucky be immediately convened by the governor, let them pass resolutions praying for a repeal of every obnoxious and unconstitutional act of Congress." This plan rapidly grew in popularity in the main. Not, however, in the call of a special session, though that was widely favored at first, but all eyes by common consent were directed towards the autumn session of the legislature as the proper place for action on these laws. Meanwhile, county after county fell into line with its resolutions, all of them closely alike in tone, most of them in form. A common formula was apparently used, and the greatest unanimity was everywhere apparent. Very bitter feeling was engendered in the State as the autumn slipped away, by letters written by over-zealous Federalists in Kentucky to eastern friends, and published by them. Some of these letters were gross misrepresentations, and when they were copied into Kentucky papers the indignation that was stirred up was such that it would have gone hardly with the writers if they had been discovered. Some of the eastern papers also gave garbled accounts of the proceedings which came to them as general news. Thus Peter Porcupine gave the following account of the meeting at Lexington which adopted the Resolutions. It was published on the 21st of September, and is an excellent specimen of its class. It will be noticed that it confuses the Clark and Fayette meetings, designating the former by all the references and locating it at Lexington.

"At *Lexington* (Kentucky) a mob assembled on

the 24th of July, with a fellow of the nameof FISHBACK at their head ; they got pen, ink, and paper, and to work they went, drawing up *resolves* to the number of ten, amongst which is the following one, which, for sentiment as well as orthography, is unequalled even in the annals of American Democracy.

"'Resolvd, that thar es sufishunt resen to beleev, and wee doe beleev, that our leebeerte es in daingur, and wee plege ourselves too echeother, and too ouer countery, that wee will defende um agenst awl unconstetushonal ataks that mey bee mede upon um.'"

It must have been a very credulous people who could be at all imposed on by such feeble efforts as constitute the class to which this belonged, but party spirit ran equally strong in both directions. George Nicholas had achieved for himself so honorable a reputation that he was big game to these scribblers, and was given that meed of scurility which was at that time the penalty of prominence.

In order that the best results might be reaped from the existing agitation, and that Kentucky Republicanism might make its protest in the most effective manner, it was necessary that some champion should be fixed on to marshal the forces and lead in the assault. Eminently qualified as George Nicholas was for such a task, he was now in the decline of life, out of office, and, perhaps, personally averse to so arduous an undertaking. The desired leader was found in a young and ardent friend of Nicholas, who, after a number of years of separation, had, by his recent removal to Kentucky, reknit and strengthened the old ties, and probably

through Nicholas' influence succeeded him as Attorney-General. This was John Breckinridge. The connection of Mr. Breckinridge with the Kentucky Resolutions, and all the circumstances connected with them, is so intimate, and he has failed so entirely to secure the recognition which was his due from those who came after him, that his life and labors will be recounted here somewhat at length.

CHAPTER III.

JOHN BRECKINRIDGE, THE MOVER OF THE RESOLUTIONS.

JOHN BRECKINRIDGE was sprung from a sturdy Scotch-Irish stock. His ancestry, in the earliest days to which they can be traced, lived in Ayrshire, and are found sharing the sentiments for which their friends and neighbors became famous. They were early converted to Protestantism, and became staunch Calvinists and Covenanters in due course. The wars of the Puritan revolution brought little good to their county or themselves, and between king and commons, Papists and Protestants, Presbyterians and Independents, and a hundred factional bitternesses, they were sorely crushed and harried. But there was even a worse fate in store for them. The seemingly tireless struggle of years wore itself out, and sank to rest beneath the firm hand of Cromwell, and for a brief space there was a lull in the storm, but when Charles the Second, "that young man that was the late king's son," as Cromwell called him, found himself firmly seated on his throne, he woke once more the old issues. Fearing his vengeance, the heads of the Breckinridge family, together with many others who had played

a prominent part in the wars of the Covenant, forsook their homes and fled to the Highlands. The Breckinridges found a safe retreat in Breadalbane, and though they only remained there a short time, with grateful hearts they remembered those who had befriended them in adversity, and the name of their highland refuge, commemorated for generations in the names of new seats beyond the sea, still sounds like an echo of home to a Breckinridge's ear. When quiet had once more succeeded to adversity, the hunted refugees crossed over into North Ireland, and, under the rule of William and Anne, regained their former prosperity to a very great degree. It was probably owing to the enforced wanderings of these years, which had bred a spirit of unrest, that in 1728 a new emigration began. There is no complete record of those of this family who came to America. A family tradition is to the effect that three brothers came over together with their families, but although this cannot now be certainly ascertained, it is probable that a number of the family came together. Of these was Alexander Breckinridge, and with him came his wife and a numerous family. He followed the track his countrymen were marking broadly out, westward through Pennsylvania, filling the great central valley, thence trending southward into Virginia, and spreading out in the frontier settlements. He made a brief stay in central Pennsylvania, and then removed to Augusta County, Virginia, and settled upon a tract of land, upon a part of which now stands the town of

Staunton. Augusta was then the frontier county, stretching away with as yet undefined limits, the hazy claims of France and North Carolina being too indefinite to give it any certain boundaries.

Here the father of John Breckinridge, Robert Breckinridge, grew to manhood and succeeded to his father's farm. He became a prominent man in his community, being King's Lieutenant of his county, and Colonel of the county levies. He married first a Miss Pogue, who bore him two sons, Alexander and Robert Breckinridge, and, after her early death, Lettice Preston, the daughter of John and Elizabeth Patton Preston. The Prestons were also from North Ireland, and a family of most marked individuality. The foundation, however, was English, and not Scotch. The family came originally out of Lancashire or the western ridings of Yorkshire, in both of which locations there were strong and kindred stocks of the name; and the extraordinary resemblance preserved to the present day, both to the Yorkshire and Lancashire branches and the American offshoot, seems to show that the Norfolk family of Prestons is a scion from the same stock. Two of these Prestons crossed over into Ireland with the army of King William the Third, and served about Londonderry, where one of them married and made his home. From him John Preston was descended.

John Breckinridge, the second child of this marriage, was born on the second day of December, 1760. His early childhood was passed on the old estate, but while he was still a child his father re-

moved farther west and settled near Fincastle, in what is now Botetourt County, where he soon after died in 1771. His elder sons had grown to manhood, but he left a wife and five young children, four of whom were sons, upon the very confines of civilization, and at the beginning of a period of war and deprivation. The Virginia frontier suffered severely throughout the Revolution, being constantly vexed by Tories at home, the inroads of the savages stirred up by British and Tory agents, and the scarcity of all the comforts of life, and it was not till the victory of King's Mountain hurled back the tide of invasion refluent to the sea and quelled the restless Tories in their midst, that any respite came to the harassed population along the western lines. During these years John Breckinridge, although only the second son of his mother, assumed the chief part in bearing the burden of the family. His character was early developed under the pressure of circumstances, and he cared for the family property, scoured the country as a surveyor, and occupied every leisure moment with eager and well-directed studies; and the autumn of 1778 found him prepared to enter college. He accordingly set out over the mountains and through the wilderness to the capital town of Williamsburgh, and entered himself at the good old college of William and Mary. Here he continued for two years, taking every advantage of his opportunities, and continuing his surveying in the western wilds in the vacations. He was about to set out from home for his third year at college when he was elected to

represent his county in the House of Delegates. This was in the autumn of 1780, when he was only nineteen years of age. He had made no canvass, and was in no true sense a candidate. His election was the result of one of those silent movements when men are brought, under the pressure of events, to select those who can best represent them, without regard to the much-pressed claims of office-seekers. No one could have been more surprised at his election than was John Breckinridge himself, but he cheerfully undertook the task imposed upon him, and set out for Williamsburgh. The House of Delegates, however, set aside the election on account of his youth, feeling, no doubt, that the choice was both unprecedented and out of place in a time so full of danger and demanding the most far-sighted counsels. But the hardy frontiersmen had not made their choice without being convinced of its wisdom, and promptly reëlected Mr. Breckinridge. The house again set the election aside, and again the electors cast their ballots as before, and this time the election was acquiesced in, and the young student left his academic pursuits in the one part of the town, and took his seat in the council hall at the other.

The youngest in any body of men is apt to be the object of kindly interest to the older members, especially if he unites to ability and manliness, modesty and deference. Throughout the contest over his seat young Breckinridge had shown the qualities which raised him to eminence in after days, and as soon as he took his seat his quiet, un-

assuming ways made him a friend of every one. These circumstances early made him a man of no small mark in the distinguished body of which he was a member, and those about him soon came to understand the spell which had caused the hardy mountaineers to press him upon them by the warrant of three elections. Thus happily he entered upon his political career, and his constituents continued their support, until, in 1785, he left their district and removed to Albemarle County. During these years he was often prominent in the House of Delegates. His name appears upon many important committees, and he took a favoring part in the legislation of those years, directed towards the development of that part of the State which afterwards became the State of Kentucky. In the intervals of legislative labors he devoted himself to the study of law, and being admitted to the bar in 1785, he resigned his seat at the conclusion of the session of that year and began his practice in the courts of Charlottesville.

In the same year he married Miss Mary Hopkins Cabell, a woman of most brilliant and original mind, and of honorable descent. The Cabells were an old West of England family, living about Frome in Somersetshire. In the old church of St. Nicholas in that town, a memorial window of the Cabell family dating from early Tudor times is yet to be seen, and the elder branch of the family occupying to this day its ancient seats in the neighboring counties, still owns and claims its American kindred.

Charlottesville was near the home of Jefferson, and here, immediately upon the return of that eminent statesman from the court of St. Denis, began the friendship between these two men which was to have such a controlling influence on Mr. Breckinridge's life. Mr. Jefferson writing of his first visit, to Joseph Cabell Breckinridge, twenty-five years after its occurrence, says: "Our acquaintance arose soon after my return from Europe. He was so kind as to favor me with a visit, and during its short continuance I had opportunity sufficient to discover the large scope of his mind the stores of information laid up in it, and the moral direction given to both."[1] Here too he formed intimate friendships with Monroe, John Marshall, the Nicholases, and others who were fast rising at the bar and in politics. The influence of these early ties may be traced throughout his too brief career. In his profession he quickly revealed talents of a high order. Arduous and assiduous in his labors, with a well-trained and logical mind, and a vigorous and manly eloquence, less florid, indeed, than the style then so popular in Virginia, but too earnest and forceful not to command respect,—he rapidly rose to distinction, even challenging, on an important occasion, comparison with Patrick Henry, then in the zenith of his fame. However great he was as an orator and an advocate, and however much he may have achieved in this department of his profession, it was rather in its higher walks that he most desired to succeed, and for a mastery of legal princi-

[1] Jefferson to J. C. Breckinridge, June 12, 1815.

ples and the exercise of a vigorous logical faculty his reputation grew steadily throughout his life. One of the earliest, as it was the highest possible, testimonials to his success was given by John Marshall, who when he was called to the bench of his native State turned over to Mr. Breckinridge his unfinished business.

Mr. Breckinridge had been practising law a little more than five years when Mr. Jefferson, at that time Secretary of State under Washington, embraced an opportunity to show his confidence in him in a public manner. Kentucky was in an uncertain temper, and the vacant office of attorney needed a capable man to fill it. The President was casting about for such a man, and finally appointed Mr. Breckinridge. Jefferson wrote to him enclosing the commission and urged him to accept it. He said that the President wished it and had heard him spoken of by others than himself in high terms. Such pressure was too flattering to be easily resisted, but this man was of too noble a nature to yield unwisely to honors even when thrust upon him, and he declined the office, while in later years he accepted the somewhat similar post of Attorney-General of Kentucky when called to it under less outward pressure but with greater promise of usefulness.

Soon after this he again turned his attention to politics and was chosen to represent the district composed of the counties of Albemarle, Amherst, Fluvanna, Goochland, Louisa, Spottsylvania, Orange, and Culpeper, in the third Congress which

assembled in the Autumn of 1793. For a moment it seemed as if he was once more to take his place by the side of the comrades of his early political life, and become a member of that little coterie of eminent Republicans and statesmen, who so ably represented this part of Virginia in the highest posts of State and nation. But the promise was cut short by the demands of his private affairs. In the interval between his election and the assembling of Congress his plans underwent a complete metamorphosis, and he resigned the seat he had never occupied and set out for Kentucky.

He went at once to Lexington, the county-seat of Fayette County, the capital of the State, and the largest and most important town west of Pittsburg. Two of his brothers and his only sister had already removed to the neighborhood of Lexington, and his half-brother Robert Breckinridge, who was at this time a member of the House of Representatives, spent a large part of the year there in attendance on the meetings of that body. There too was George Nicholas, his friend of many years' standing, now the leader of the Kentucky bar and high in political influence. Besides these there were many others both friends and relatives in and about the flourishing little town. Although he proposed to devote himself mainly to the practice of his profession, he purchased a large tract of land containing about twenty-five hundred acres, lying to the north of the town, about six miles distant. The place received the name of "Cabell's Dale," in honor of his wife, and a law office was built

and his practice carried on both there and in Lexington.

His practice and reputation grew rapidly, and he soon found himself among the foremost members of the bar and a leader in politics. He had been in Kentucky only a few months when he was made president of the Democratic Society of Lexington, which in that day was esteemed a very high honor; and in the legislature which convened late in 1794 he received the Anti-Federalist or Republican vote for the United States Senate. This election coming as it did in the height of the reaction towards Federalism brought about by the indiscretions of the agents of the French Directory, was practically uncontested, and the vote given to Mr. Breckinridge was merely complimentary; but it was certainly a high testimony to the esteem in which he was already held in his adopted State, and as the sequel showed, it was an earnest of future support and triumph. The Federalists dropped Edwards, who had been so sharply catechized by the Democratic Society at Lexington, and elected Humphrey Marshall.

Mr. Breckinridge no doubt owed the honors so early accorded him very largely to the influence of his brother, General Robert Breckinridge. Although only half-brothers, the greatest confidence and affection always existed between them The elder brother, together with his own brother, Alexander Breckinridge, had served with courage and distinction in the Virginia line during the Revolution as a company officer; taken prisoner, they lay for many months in a prison ship in Charleston

harbor, and did not obtain their release until the close of the war. Soon after this they plunged into the Western wilderness as surveyors, and finally settled in Jefferson County, Kentucky, near the site of Louisville. Here they soon became prominent. Alexander Breckinridge was elected to the Kentucky convention of 1787, and then moved away. Robert Breckinridge became an officer in the active and efficient militia, which under the inefficient policy of Virginia, bore the whole burden of protecting the frontier from Indian forays, and rose steadily till he became a general officer. He began his political career in the Virginia House of Delegates, where he represented his county. His next service was in the Virginia Constitutional Convention, where he manfully stood for ratification despite the strong anti-federal sentiments of the district of Kentucky. His colleague from Jefferson County also voted for ratification, as did Humphrey Marshall, of Fayette, the remaining eleven votes being cast against it. His action though unpopular at the time, won him reputation in the future and insured his election to the convention which draughted the first constitution of his State and to the first legislature. Upon the assembling of that legislature he was chosen speaker of the house, which post he held by repeated reëlections until he retired from politics at the end of his fourth session. He was thus at the summit of his influence when his brother came to Kentucky, and he left no stone unturned to aid him and further his advancement.

Although John Breckinridge was thus, from the very beginning of his residence in Kentucky, connected with politics, it was not until December, 1795, that he held office, and the interval was full of activity in the prosecution of his profession. His practice was soon very large, both in civil and criminal law, but he turned his attention particularly to real-estate law. This was at once the most important and the most lucrative law business. The colony of Virginia under the crown had contained many large and unoccupied grants beyond the mountains. The State of Virginia early began to make others, and after the war immense tracts were given to the soldiery. These grants were made on worthless or mere paper surveys to a large extent, and late comers, finding this to be the case, and that it left many "gores" and corners unconveyed, even while the neighboring lands were covered by several conveyances, obtained "blanquet" grants covering immense tracts, for the purpose of obtaining the unconveyed portions. In addition to the complications naturally incident to such a state of things, further vexations had arisen out of the conflicting claims of Virginia and Kentucky. Virginia, in the acts enabling Kentucky to erect herself into a State, had always conditioned it upon the recognition of her land grants and the protection of the holders of those lands who remained in the mother State. Bickerings arose on this score, as was natural, from the vexatious questions that sprang up. Mr. Breckinridge bent his energies to thrid the mazes of this tangle,

and with distinguished success. All but the most acute minds found themselves hopelessly at fault before they had progressed far, and the few who succeeded were consequently rewarded by a large practice. Mr. Breckinridge's reputation in this department penetrated to the Virginia capital, and he was asked to take charge of the claims of that State. But the retainer reached him just after he had accepted from Governor Shelby the post of Attorney-General of Kentucky, and he was forced to decline the flattering offer.

The election of a governor to succeed Governor Shelby took place on the 17th day of May, 1796. Under the old first constitution, then in force, this was by electors, after the manner of the Federal Constitution. There were properly fifty-seven members of the electoral college, but only fifty-three voted on the day appointed by law. The vote stood: For Benjamin Logan, 21; for James Garrard, 17; for Thomas Todd, 14; for John Brown, 1. The electors proceeded to another ballot, assuming that there was no election and that a majority vote was necessary to a choice. Todd and Brown were summarily dropped, and Garrard receiving a majority was declared elected. Benjamin Logan appealed to Mr. Breckinridge, as Attorney-General, for his construction of the constitution upon the point. He declined to answer as Attorney-General, thinking it beyond the scope of his office, but prepared for him an able and elaborate opinion as a lawyer, which was published in the Lexington, Kentucky, *Gazette* for May 28th,

and led to a sharp controversy. Mr. Breckinridge thought that the electors had plainly exceeded their powers; that under the constitution Logan was elected, and that even if Logan was not elected that Garrard was certainly not elected, as the article of the constitution having been modelled on the national Constitution the same procedure would be properly applicable if any, although the Kentucky article omitted the provision for a reference to the house except in case of a tie, seeming to imply a plurality election. Logan appealed to the senate, by the law made arbiter of gubernatorial contests, but after a sharp fight the senate dodged the matter by declaring the law which gave them jurisdiction unconstitutional, and Logan's case went by default. But Mr. Breckinridge's argument was never refuted.

Governor Garrard was installed on the 1st of June, 1796, and in December of that year Mr. Breckinridge resigned his office. During his incumbency one thing had been brought home to him with great force. The Kentucky Criminal Code then in use prescribed the death penalty in no less than one hundred and sixty cases, extending it to some of the most trivial offences. The other penalties it prescribed were equally severe. To his broad and humane mind such a code was barbarous and a blot upon the State; but his judgment condemned it even more, on the ground that its very severity was an effectual barrier to its application, since juries shrank from convicting criminals where the punishment was so dispropor-

tionate to the offence. A vacancy occurring in the legislative representation from his county he was elected to fill out the term with the avowed purpose of carrying through a thorough revision of the code. He took his seat in December, 1797, and at once addressed himself to this self-imposed task. The bill embodying the desired reforms was passed in the following February, and the death penalty was abolished for all offences with the single exception of murder in the first degree, and a code efficient and yet humane was secured.

Thus began the year 1798, a year destined to be of the greatest influence upon his rising fortunes, and filled to overflowing with ceaseless and untiring labors. It was not till past mid-summer that the great questions of the year arose. The first note of resistance to the alien and sedition laws called him to the front, when, side by side with George Nicholas, he began the work of refuting their doctrines, breaking their force, and securing their repeal. Active as was his great friend, the leading part was by general consent conceded to Mr. Breckinridge, and with untiring industry and broad statesmanship he gained the best opinion of the leading men in Virginia and Kentucky as to the wisest course to pursue, and introduced the results of his labors into the House of Representatives in the form of the famous Resolutions of 1798. These resolutions meeting with universal applause throughout the State, greatly increased his popularity in his own State and with the Republican statesmen throughout the country. His future

preferment now seemed secure, and thenceforth his rise was rapid. He strenuously opposed the means used to bring about the second constitutional convention of 1799, but when that convention became a settled fact, he accepted a place in it, and was so active that it has been said that the constitution then produced was more the work of his hand than of any other man's. He was elected to the legislatures of 1799 and 1800, and by both of them he was chosen Speaker. In the former he further distinguished himself by the resolutions of 1799, and in the latter the promise of six years before was fulfilled, and he was elected to the Senate of the United States, to succeed his old competitor, Humphrey Marshall. He was now just forty years of age, and had been in politics twenty years, during which time he had surely and steadily risen in the eyes of the people with an almost unbroken career of success.

Mr. Breckinridge took his seat in the Senate upon the inauguration of his old chief, Mr. Jefferson, in March, 1801. He had set out from Kentucky taking his whole family with him, but was advised in Virginia to leave them with his relatives in that State, as the much-talked-of "Federal town" of Washington had very ill accommodation to offer the great throng of people crowding thither. He followed this advice, and upon arriving in the town, if it can be dignified with such a name, found it difficult to obtain even a lodging for himself. The new President and the new Congress were alike Republican, the Senate for the first time, and

the era of Republican simplicity, which the President introduced by riding horseback to his inauguration and on dismounting tying his democratic steed to the fence, was continued by a close attention to business. The "midnight appointments" first fell under the President's hand, and in close connection therewith a bill to repeal the judiciary act of the last session was to be introduced. The reconstitution of the houses consequent upon the new administration and the formation of the Cabinet left the now dominant party without leaders, and the President's influence was such that whomsoever he should select would be regarded as the leaders of the administration in the two branches of the Congress.

Although Mr. Breckinridge now made his first appearance in national affairs, he was intrusted by Mr. Jefferson with the business of introducing the bill to repeal the judiciary act. This extraordinary exhibition of confidence and esteem placed Mr. Breckinridge in the front rank of statesmen, and he so well justified the trust by his conduct of this matter, and in his subsequent career in the Senate, that his comrades readily acquiesced in the estimate of the President. The repeal of the judiciary act having been carried through, Mr. Breckinridge was not called upon to act in any matter of first-class importance until the Louisiana purchase came up. As a Kentuckian he naturally was prompt to second a measure which secured finally and completely the darling object of his State. In every way he lent his aid and

advice to bring the matter to a happy issue. None of the doubts and difficulties that for a time stood in the way of the President affected him. The Mississippi traffic was essential, it was then believed, to the life and development of the States beyond the mountains, and so long as the mouth of that river was in the hands of a foreign power, there was no certainty that the river would remain open. And far-sighted statesmen, even in that early day, had begun to catch some glimpse of the growth of the West through the vistas of the future, and thought that the western bank of the great river ought to be secured at any price. When the purchase had been pushed through on the responsibility of the President, he became very anxious to know how Congress and the people would regard his action. Congress was summoned to meet early in the autumn. In the meantime he wrote to Mr. Breckinridge, urging him to do what he could towards the desired end, and particularly to impress upon the western members, who could be relied on to support the administration, the necessity of being on hand promptly at the beginning of the session.

Mr. Jefferson was very doubtful whether he had any warrant in the Constitution for the step he had taken. After his usual manner in such a dilemma he wrote to a number of his confrères and asked their advice. He finally came to the conclusion that an amendment to the Constitution was necessary to make the acquisition of territory good, and expressed a desire to throw himself upon the tender

mercies of posterity to justify what he believed to have been a breach, at least of the letter, of the law. Accordingly he sent draughts of an amendment, somewhat differently worded in the several cases, to a number of gentlemen, among whom was Mr. Breckinridge,[1] asking their opinion of it. Mr. Breckinridge was not to be brought to the view of his leader, and declined to introduce the bill authorizing the submission of such an amendment to the people. After a good deal of doubt and hesitancy on one side, and great firmness and decision on the other, the matter was finally dropped. No amendment was offered, and the acquisition of Louisiana passed into a great precedent. Had Mr. Jefferson prevailed and Mr. Breckinridge been overruled, the barrier to the annexation of Texas, and the purchase of the Floridas and Alaska might well have become insuperable.

When Congress assembled, the first question after the Senate had ratified the treaty, was to decide what steps were necessary to assert the ownership of Louisiana. Mr. Jefferson came to the conclusion that the warrant of Congress was prerequisite to any occupation of the newly-acquired territory, and Mr. Gallatin, acting for him, wrote to Mr. Breckinridge: "I send in the shape of a bill the substance of which [what?] the President seems to think necessary in order to authorize him to occupy and temporarily govern Louisiana. Will you consult with your friends and decide whether authority be necessary, and if so what form should be given it."

[1] *Vide* letters of Jefferson to Levi Lincoln and Madison.

Upon this point there was no difference of opinion, and the authority was given to the President in an act passed early in the session.

The energy, activity and decision which Mr. Breckinridge displayed in this connection, raised him in the estimation even of those with whom he had long been on intimate terms, and when the next election drew near he was mentioned very prominently for the Republican nomination for the Vice-Presidency. He never lacked warm and staunch friends, and, as soon as his name was mentioned, they came forward and pressed his claims with convincing effect. Mr. Jefferson, with an honorable desire to bind all sections firmly to his growing party, was very unwilling that the candidates for the two principal offices in the country should come from the States of Virginia and Kentucky, so recently one and still closely knit together. It did not need his eminent foresight to see that jealousy would be called forth by such action, and that such jealousy would at once be almost certainly fatal to the party, and not without some foundation. His friends were quick to urge Mr. Breckinridge to forbid that his name should be used, and the distinguished Allan B. Magruder wrote on Mr. Jefferson's behalf and laid the matter plainly before him. Mr. Breckinridge, who lost no opportunity of proving his love and loyalty towards his great leader, readily listened to these considerations and did not permit his name to be presented to the caucus which made the nominations. Nevertheless, quite a number of votes were cast for him.

Levi Lincoln resigned the position of Attorney-General at the close of Jefferson's first term, and Smith of Maryland, then Secretary of the Navy, was appointed to succeed him, in order that Jacob Crowninshield might be given the Navy Department; but the latter preferred to represent Massachusetts in the House of Representatives and Smith was shifted back to his old post and the Attorney-Generalship was again left vacant, whereupon the President wrote to Mr. Breckinridge, under date of August 1805: "The office of Attorney-General for the United States being not yet permanently filled, I have an opportunity of proposing it for your acceptance. Both its duties and its emoluments are too well known to you to render it necessary for me to particularize them. I shall with the greater pleasure learn that you accede to my wishes in availing the public of your services, as your geographical position will enable you to bring into our counsels a knowledge of the Western interests and circumstances, for which we are often at a loss and sometimes fail in our desire to promote them. Hoping that in your patriotism, and perhaps in other circumstances, you will find motives sufficient to induce you to become a part of our administration, I will pray you, as soon as you shall have been able to form a decision, to be so good as to communicate it to me." Despite the kindly urgency of this letter, Mr. Breckinridge held back. His present position was congenial and he was assured of a continuance in it, and although it could not but be a pleasure to be associated with such men

as formed the Cabinet, he yet seriously doubted if it was not better to continue in the Senate. It was not until some further pressure had been brought to bear upon him that, in December, 1805, he accepted the Attorney-Generalship.

His brief life was now nearly spent. A single year in the Cabinet completed his career, and after a painful and protracted illness he died at his home at Cabell's Dale, on the 14th day of December, 1806, aged forty-six years and twelve days. His death caused deep and widespread regret; for he had, during his brief experience of national politics, achieved a wide and growing fame, and had identified himself so closely with the heads of his party, that the eyes of many already turned to him as to one who was some day to attain even the chiefest places. No better instance of this feeling can be quoted, nor can the permanence of the impression have a better illustration than Albert Gallatin's declaration made many years afterwards in a letter to a friend. Said he: "During the twelve years I was in the Treasury I was anxiously looking for some man that could fill my place there and in the general direction of the national concerns; for one, indeed, that could replace Mr. Jefferson, Mr. Madison, and myself. Breckinridge, of Kentucky, only appeared and died; the eccentricities of John Randolph soon destroyed his influence."

In personal appearance Mr. Breckinridge was tall and striking. He was over six feet in height, of a spare and muscular build, showing in the grace and strength of his figure the effects of the training

he received in the wilderness in his youth. His hair was a rich chestnut-brown, inclining towards auburn, and his eyes of that peculiar shade of brown that is frequently found with such hair, and variously described as hazel, reddish-brown, or chestnut. His address was always easy and dignified, with a touch of gravity, which, in conjunction with his habitual reserve, seemed sometimes to deepen into sternness. But this was only apparently true, for his thoughtful exterior covered, but could not long conceal, the humane and gentle heart that governed his every action. He was one of those few men whom every one seems to love, and to whose name when upon the lips of his friends or kinsmen the adjective "beloved" seemed to belong of right. The terms in which his friends wrote to him, the expressions of delight at his expected return, of pain at his departure, would seem to be more appropriate to the letters of a lover to his mistress than to the correspondence between men schooled in the adversity of that period. John Nicholas, for instance, writes to him just after his return to Kentucky from a visit to Virginia, that the pain of parting had been greater than he could bear; that though he had urged him to come to visit him, the joy of that meeting had been swallowed up in the later sorrow, and that he was constrained to pray him to come no more to Virginia unless it was to remain. This is not a solitary instance, but one out of many, and the writers were not men to affect a sentiment which they did not feel, but rather that type which, though slow

to melt into feeling, when once they yield to the dictates of their hearts, surprise by the depth, even while they charm by the genuineness, of their emotion. His wife, who by her sprightly and ready wit and sparkling conversation had in his lifetime been such a contrast to him, at his death was prostrated by her grief, and by excess of weeping completely destroyed her eyesight, which had not been strong before, and in a life prolonged more than fifty years she cherished in darkness the memory of him who had been in life the very "light of her eyes," and was at length laid to sleep in the grave where his dust had lain for half a century.

Many years ago a eulogy was pronounced upon John Breckinridge, which, though pitched in too oratorical a key to be quoted at length in this place, contains a passage descriptive of his personal character which is at once too vigorous and too eloquent to be passed over. It is as follows :

"Of the private life of this man, I have heard a character still more remarkable. Simple in his manners, grave and lofty in his carriage, self-denied in his personal habits, and a stranger to the common wants and infirmities of man, no efforts were too great, no labors too immense, no vigils too protracted, no dangers too imminent, no difficulties too insurmountable for his great, concentrated, indomitable energies. And yet this firm and earnest spirit, and this vigor almost austere, were tempered by a gentleness towards those he loved, so tender that the devotion of his friends knew no bounds ; and directed by a frankness and generosity towards all men, so striking and absolute, that even those he could not trust trusted him."

One of his sons, Robert Jefferson Breckinridge, who, at his death, was a child of six years old, has left it on record that when he had grown to manhood he sought to learn from the old men who knew him well, something of the father that he could, by the utmost stretch of his memory, but just recall, and that in speaking of him their eyes would fill with tears.

Such was the man upon whom the chief part in the adoption of the Kentucky Resolutions devolved. In all respects he was worthy of the places he was called to occupy, and the measures he advocated, and even higher praise may be contained in the further dictum, which is no less true, that he never held an office nor advocated a measure which was not worthy of him.

His claims to be remembered for what he was and did are great and just, and he is, moreover, worthy of remembrance as the founder of a family which, for achievement, force of intellect, and persistence is comparable to the best of American stocks. His sons, Joseph Cabell Breckinridge, John Breckinridge, Robert Jefferson Breckinridge, and William Lewis Breckinridge, were all men of mark either in politics or the Church; his grandson, John Cabell Breckinridge, holds a memorable place in American history; while a number of others of his descendants on the bench, at the bar, in Congress, in the ministry, and the army, preserve and perpetuate the ability and fame of the name, which was honorable when he received it, and to which he and his brothers gave a permanent lustre.

CHAPTER IV.

THE RESOLUTIONS.

THE Kentucky legislature assembled on the 7th day of November, 1798. As soon as an organization had been effected, the governor, James Garrard, appeared in person and made the opening address, according to the custom of that day. He called attention to the various questions that demanded legislation, and finally, after a *résumé* of the political situation and the prominent position occupied therein by the late legislation in Congress, especially as to aliens and sedition, he concluded with the following recommendation :

" Permit me then to suggest to you the expediency of your declaring fully, in behalf of yourselves and of the respectable people whom you represent, your firm attachment to the Federal Constitution, and your determination to support the general government in every measure which is authorized by the commission under which it acts, whilst at the same time, by entering your protest against all unconstitutional laws and impolitic proceedings— tempering the bold firmness of freemen with that moderation which indicates a love of tranquillity,— you will raise high the character of your country in

the esteem of those whose good opinion you should be solicitous of acquiring, and convince the friends of liberty and of man that whatever may be the fate of their cause in other countries, Kentucky, remote from the contaminating influence of European politics, is steady to the principles of pure republicanism, and will ever be the asylum of her persecuted votaries."[1]

A committee of three was appointed to consider this address and report a reply back to the House. Mr. John Breckinridge, of Fayette County, was one of this committee, and he proceeded at once to give notice that he would, on "to-morrow, move the House to go into a committee of the whole on the state of the commonwealth on that part of the governor's address which relates to certain unconstitutional laws passed at the late session of Congress, and that he would then move certain resolutions on that subject."[2]

In accordance with this notice, the House resolved itself into a committee of the whole on the 8th, with Mr. Caldwell in the chair, and a concatenation of resolutions were introduced by Mr. Breckinridge as follows:

I. *Resolved*, That the several states composing the United States of America, are not united on the principle of unlimited submission to their General Government; but that by compact under the style

[1] *The* (Frankfort, Kentucky,) *Palladium*, November 13, 1798. This passage, alike remarkable as being a single sentence and for the number of its subordinate clauses, its punctuation, and its diction, is a fair sample of the whole address.

[2] *Idem.*

and title of a Constitution for the United States and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving each state to itself, the residuary mass of right to their own self Government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each state acceded as a state, and is an integral party, its co-states forming as to itself, the other party: That the Government created by this compact was not made the exclusive or final *judge* of the extent of the powers delegated to itself; since that would have made its discretion, and not the constitution, the measure of its powers; but that as in all other cases of compact among parties having no common Judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

II. *Resolved*, That the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the High Seas, and offences against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the Constitution having also declared, "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people," therefore also the same act of Congress, passed on the 14th day of

July, 1798, and entitled "An act in addition to the act entitled an act for the punishment of certain crimes against the United States;" as also the act passed by them on the 27th day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States" (and all other their acts which assume to create, define, or punish crimes other than those enumerated in the constitution) are altogether void and of no force, and that the power to create, define, and punish such other crimes is reserved, and of right appertains solely and exclusively to the respective states, each within its own Territory.

III. *Resolved*, That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press, being delegated to the United States by the Constitution, nor prohibited by it to the states, all lawful powers respecting the same did of right remain, and were reserved to the states, or to the people: That thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use, should be tolerated rather than the use be destroyed; and thus also they guarded against all abridgment by the

United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this state by a Law passed on the general demand of its Citizens, had already protected them from all human restraint or interference: And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution which expressly declares, that "Congress shall make no law respecting an Establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch, that whatever violates either, throws down the sanctuary which covers the others, and that libels, falsehoods, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals. That therefore the act of the Congress of the United States passed on the 14th day of July, 1798, entitled "An act in addition to the act for the punishment of certain crimes against the United States," which does abridge the freedom of the press, is not law, but is altogether void and of no effect.

IV. *Resolved*, That alien friends are under the jurisdiction and protection of the laws of the state wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual states distinct from their power over citizens; and it being true as a general princi-

ple, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively or to the people," the act of the Congress of the United States passed on the 22d day of June, 1798, entitled "An act concerning aliens," which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

V. *Resolved*, That in addition to the general principle as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution has declared, "that the *migration* or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808." That this Commonwealth does admit the migration of alien friends described as the subject of the said act concerning aliens; that a provision against prohibiting their migration, is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the Constitution, and void.

VI. *Resolved*, That the imprisonment of a person under the protection of the laws of this Commonwealth on his failure to obey the simple *order* of the President to depart out of the United States, as is undertaken by the said act entitled "An act con-

cerning Aliens," is contrary to the Constitution, one amendment to which has provided, that "no person shall be deprived of liberty without due process of law," and that another having provided "that in all criminal prosecutions, the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, without defence, without counsel, is contrary to these provisions also of the Constitution, is therefore not law but utterly void and of no force.

That transferring the power of judging any person who is under the protection of the laws, from the Courts to the President of the United States, as is undertaken by the same act concerning Aliens, is against the article of the Constitution which provides, that "the judicial power of the United States shall be vested in courts, the Judges of which shall hold their offices during good behavior," and that the said act is void for that reason also; and it is further to be noted that this transfer of Judiciary power is to that magistrate of the General Government who already possesses all the Executive,

and a qualified negative in all the Legislative powers.

VII. *Resolved*, That the construction applied by the General Government (as is evinced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a power to lay and collect taxes, duties, imposts, and excises ; to pay the debts, and provide for the common defence, and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution—That words meant by that instrument to be subsidiary only to the execution of the limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken, as to destroy the whole residue of the instrument : That the proceedings of the General Government under color of these articles, will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

VIII. *Resolved*, That the preceding Resolutions be transmitted to the Senators and Representatives in Congress from this Commonwealth, who are hereby enjoined to present the same to their respective Houses, and to use their best endeavors to procure at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

IX. *Resolved* lastly, That the Governor of this Commonwealth be, and is hereby authorized and requested to communicate the preceding Resolutions to the Legislatures of the several States, to assure them that this Commonwealth considers union for specified National purposes, and particularly for those specified in their late Federal Compact, to be friendly to the peace, happiness, and prosperity of all the states: that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the states all the powers of self government, and transfer them to a general and consolidated Government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these states: And that, therefore, this Commonwealth is determined, as it doubts not its Co-states are, tamely to submit to undelegated and consequently unlimited powers in no man or body of men on earth: that if the acts before specified should stand, these conclusions would flow from them; that the General Government may place any act they think proper on the list of crimes and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them: that they may transfer its cognizance to the President or any other person who may himself be the accuser, counsel, judge, and jury, whose *suspicions* may be the evidence, his order the sentence, his officer the executioner,

and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these states, being by this precedent reduced as outlaws to the absolute dominion of one man and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the power of a majority of Congress, to protect from a like exportation or other more grievous punishment the minority of the same body, the Legislatures, Judges, Governors, and Counsellors of the states, nor their other peaceable inhabitants who may venture to reclaim the constitutional rights and liberties of the states and people, or who for other causes, good or bad, may be obnoxious to the views or marked by the suspicions of the President, or be thought dangerous to his or their elections or other interests public or personal: that the friendless alien has indeed been selected as the safest subject of a first experiment: but the citizen will soon follow, or rather has already followed; for, already has a Sedition Act marked him as its prey: that these and successive acts of the same character, unless arrested on the threshold, may tend to drive these states into revolution and blood, and will furnish new calumnies against Republican Governments, and new pretexts for those who wish it to be believed, that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is every-

where the parent of despotism: free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited Constitutions to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which and no further our confidence may go; and let the honest advocate of confidence read the Alien and Sedition Acts, and say if the Constitution has not been wise in fixing limits to the Government it created, and whether we should be wise in destroying those limits? Let him say what the Government is if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted over the friendly strangers, to whom the mild spirit of our Country and its laws had pledged hospitality and protection: that the men of our choice have more respected the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power then let no more be heard of confidence in man, but bind him down from mischief by the chain of the Constitution. That this Commonwealth does therefore call on its Co-states for an expression of their sentiments on the acts concerning Aliens, and for the punishment of certain crimes hereinbefore specified, plainly declaring whether these acts are or are not authorized by the Federal Compact? And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited Government,

whether general or particular, and that the rights and liberties of their Co-states will be exposed to no dangers by remaining embarked on a common bottom with their own: That they will concur with this Commonwealth in considering the said acts as so palpably against the Constitution as to amount to an undisguised declaration, that the Compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these states of all powers whatsoever: That they will view this as seizing the rights of the states and consolidating them in the hands of the General Government with a power assumed to bind the states (not merely in cases made federal) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: That this would be to surrender the form of Government we have chosen, and to live under one deriving its powers from its own will, and not from our authority; and that the Co-states recurring to their natural right in cases not made federal, will concur in declaring these acts void and of no force, and will each unite with this Commonwealth in requesting their repeal at the next session of Congress.

EDMUND BULLOCK, S. H. R.
JOHN CAMPBELL, S. S. P. T.

Passed the House of Representatives Nov. 10, 1798.

Attest, THOMAS TODD, C. H. R.

IN SENATE, November 13, 1798, unanimously concurred in,

Attest, B. THURSTON, Clk. Sen.,

Approved Nov. 16, 1798.

JAMES GARRARD, G. K.

BY THE GOVERNOR,

HARRY TOULMIN,
Secretary of State.

These resolutions were under discussion Thursday, Friday, and Saturday, the 8th, 9th, and 10th of November, and were reported to the House and adopted on the 10th instant. They called forth very little debate; but that debate was vigorous and distinctly upon the very points at issue. There was a rare unanimity in the House, so much so that the opposition was confined, so far as the whole series was concerned, to Mr. William Murray, of Franklin County. But he was a man of high powers, an able lawyer, a clear thinker, and a forcible debater. He grasped the salient points of the controversy with firmness, and if he did not succeed in convincing his audience, he anticipated the general arguments of the party to which he belonged for many years. His bias towards Federalism prevented him from attaining eminence. He was one of the number to whom the communications from the Spanish governor, in 1793 and 1797, were said to have been submitted, and it has been charged that his opposition may have been dictated by a desire "to balance his as yet unpublished relation to that intrigue; it certainly was a favorable opportunity for him to purge himself of that iniquity."[1] There is no just ground for such a suggestion. He was in all things a typical Federalist both in profession and in habits of thought. It would have required a most facile and acute mind, indeed, to handle the arguments against these resolutions with the vigor and ability which he

[1] See "American Commonwealths." Kentucky. By N. S. Shaler, p. 141.

manifested had they sprung from any thing short of deep conviction.

The speeches of Mr. Murray and Mr. Breckinridge are so important that a very full report of them is given entire. This report was made for the Frankfort *Palladium*, and published in that paper in its issues for the 13th and 20th of November, 1798.

Mr. Murray opened the debate.

Mr. Murray observed that, having received a printed copy of them [the resolutions] but a short time before he came to the House, he was not prepared to come forward with such amendments as would render them more correspondent with his own ideas. He should therefore content himself with a few preliminary observations. Nothing had been said to show that resolutions similar to those which had been proposed were such as the House could with propriety adopt. No observations had been offered to prove that the case before them was a proper one for the House to act upon. He regretted the manner in which the subject had been taken up in the State of Kentucky. Parties had sometimes been said to be necessary to the existence and welfare of a republican government. For his own part, he was of a different opinion. Parties occasion heat; heat begets heat. The mind when heated is unfit for deliberation. It was manifested in the present instance. He was willing to admit that the measures might have been impolitic which had been adopted by the ruling party in Congress; but the opposite party had acted with still greater impolicy. They had not contented themselves with that cool, deliberate course of conduct which would have been most likely to insure success to their exertions, but at once, at the very outset of the business,

had recourse to the most violent, the most iregular modes of opposition. They had not merely attempted to show the impropriety of the laws which they complained of, and endeavor by peaceable remonstrance to obtain redress, but had denied the authority of Congress to enact such laws. The legislature of Kentucky were now called upon to do what? To stretch forth their hands to support the ark of the Constitution. Yet at the very moment they are calling upon you to preserve the Constitution, at the very moment they are calling on you to declare what is and what is not the theory of your Constitution, are they not tempting you to violate the Constitution ; are they not calling upon you to exercise a power which never has been delegated to this body? While exclaiming against usurpation, will you yourselves become usurpers? Because the Constitution of the United States has been violated, will you violate your own Constitution? Where is the clause which has given you the censorship? Where is the clause which has authorized you to repeal or to declare void the laws of the United States?

If we have been elected by our fellow-citizens to watch over the interests of our commonwealth, shall we consume our time, shall we divert our attention from the objects for which we were specially sent here, in fabricating theories of government and pronouncing void the acts of Congress? If we turn our attention to the Constitution of this State we shall find that it has delegated the several powers of government to three distinct branches: the executive, the legislative, and the judiciary.

Here Mr. Murray enumerated the several powers lodged with each. And where, says he, in this distribution does the power of censorship reside? Does it belong to the Governor to pass a judgment on the proceedings of Congress? No! the objects of his authority are to appoint State officers, to ex-

amine State acts, to superintend the execution of State laws, and to recommend to our attention objects of State policy. Does the censorship then reside in this House? No; for it is "the legislative power of this commonwealth" only that is vested in the General Assembly. Its power of impeachment has connection merely with our State officers. Nor does it belong to the judiciary; for there is a judiciary department established by the Constitution of the United States. It belongs then to the people at large. Let me not be told that we, the members of this House, are a part of the people, and have, as such, a right to take cognizance of Federal transactions.

We are sent here, not to act as so many individual citizens, but as a constituted body, and it is in that capacity only we have a right to act within these walls. Our proceedings are the proceedings of the legislature of Kentucky only; nor can any thing which we think, or say, or do, as individuals, obtain a place in our journals.

What then follows? It certainly follows that instead of consuming our time on objects to which our powers do not extend, we ought to be bending our attention to the objects for which our constituents sent us; we ought to be providing for the welfare of the commonwealth of Kentucky. The power which we possess as members of this legislature is as much derivative as the power of Congress; we are as much restrained by constitutional sanctions, we are as much confined within particular bounds. But are we not going beyond those bounds? Are we not, in taking up these resolutions, going beyond the bounds of State legislation?

The Constitution of the United States was rendered necessary by a want of energy in the former confederation. Under that confederation credit had expired. The United States were the contempt of foreign nations; money was necessary for carry-

ing on the government; but money could not be raised by means of taxes, nor borrowed on the faith of them. Under these circumstances we were obliged to form a closed union, and the present Constitution of the United States attained existence. This Constitution, he showed, was not merely a covenant between integral States, but a compact between the several individuals composing those States. Accordingly the Constitution commences with this form of expression: "We, the people of the United States," not we, the thirteen States of America.

In this Constitution of the United States, as in the several State constitutions, the powers of government are distributed into three departments. Congress, like the State assemblies, is possessed of legislative authority. The powers and duties of the President of the United States resemble those of the several State governors; and to the judiciary, and the judiciary alone, it belongs to declare what acts of the legislature are law, and what are not law. And to their honor be it said that they have, with an independence becoming their character, declared an act passed by Congress no law. He referred to an act authorizing the judges of the circuit courts to certify the persons entitled to pensions, allowing an appeal, however, to some branch of the executive, or probably to the heads of departments.

On this law it was held that the authority of courts was purely a judicial authority, and no other; and, when exercising this judicial authority, no appeal could constitutionally lie to an executive officer.

The Constitution of the United States has reserved certain powers to the people and to the States respectively.

But does that article, or does any other article give to the State legislatures any authority to cen-

sure either the executive or the legislative departments of the general government? Is there any clause either in the Federal or in the State constitution which delegates the power reserved by the people to their State legislature?

No! it is the people only that have a right to inquire whether Congress hath exceeded its powers; it is the people only that have a right to appeal for redress.

To the General Assembly is delegated merely State powers. The authority to determine that a law is void is lodged with the judiciary.

These being his sentiments, he considered it as altogether improper for him in the present stage of the business to engage in a discussion of the resolutions which had been referred to the committee. He trusted that the committee would determine that it was entirely out of their province to enter upon the consideration of the validity of laws of the Union; should they, however, declare their opinion that it was their duty to take up the subject, it would then be time enough for him to offer his reasons for rejecting the resolutions.

Mr. Murray having concluded his remarks Mr. Breckinridge rose to reply.

Mr. Breckinridge observed that if the gentleman who had just sat down were right in every part of the political creed which he had been making to the committee, he had himself been all his life enveloped in a cloud of political darkness.

Though that gentleman might regard the State legislature as so contemptible a body that they had nothing to do but sit in that House and silently view the depredations committed on their rights, he had a very different opinion of their character and authority, and for his own part held high his importance as a representative of the people of Kentucky.

The observations, however, of the gentleman, though new and unexpected, he would endeavor to answer. It had been admitted that the laws which were the subject of complaint were impolitic. They could then take notice of impolitic acts ; but if impolitic acts may be censured, those which are unconstitutional may certainly, *a fortiori*, not only be censured, but may be declared void.

It had likewise been admitted that the powers of the General Government are altogether derivative ; that they are derived either from the people or from the State legislatures. The doctrine, so far, is good ; but I ask, said he, are not those derivative powers enumerated and limited to certain specified purposes ? and is not the residuary mass retained somewhere ? Where then is it retained ? Either in the State legislatures or in the people.

The State Governments can not entrench on the powers delegated to the General Government ; and the General Government can not entrench on those which are retained. If, then, the General Government should transgress the limits prescribed to them by the Constitution, how are they to be restrained ? Are they to be restrained by themselves ? Is their discretion to be the only measure of their powers ? The idea is absurd. Liken it to a common case. If my agent exceeds the powers which I have delegated to him, am I to supplicate him to review his conduct and to change it ? No ! That would imply a discretionary power in him, either to adhere to or to abandon his errors and misconduct. I consider the General Assembly as the grand inquest of the commonwealth. They are bound in duty, as well as by oath, to support their own as well as the Federal Constitution ; and all attempts to violate either, from whatever quarter offered, demand their earliest consideration and reprehension. The legislature is the constitutional and proper organ through which the will

of the people is known, and, when known, effectually executed on ordinary occasions; therefore an article declaring that the people through their legislature had a right to censure those who attempt a violation of their rights would not be more absurd than debasing.

If Congress received no censure, from the State legislatures, from whom is the censure to come? The gentleman says, from the people. Yet when the people take up the subject and express their sentiments on it, they are stigmatized with the appellation of irregular assemblies, tumultuous mobs —mere sprouts from one root forced into unnatural growth by intrigue and ambition. When the legislature comes forward a new cry is raised; their powers are demanded; the constitutional article is called for. Sir, I look for no such article; the powers of the legislature were antecedent to the Constitution, and were not surrendered when that Constitution was adopted. Is it possible the gentleman can mean that Congress are the sole judges of the propriety and constitutionality of all acts done by them?

Will he say that in no case it can be proper for the several States to come forward and speak on the subject of congressional proceedings? The doctrine of passive obedience and non-resistance has grown rather unfashionable and obsolete to be now revived. My idea, Mr. Chairman, of the true relative situation of the State Governments and of the General Government is concisely but clearly stated in the first resolution before you. So long as I regard my liberties I shall oppose the principle now contended for by the gentleman of a consolidated government. To be explicit, sir, I consider the co-States to be alone parties to the Federal compact, and *solely* authorized to judge in the last resort of the power exercised under that compact. Congress being not a party, but merely the creature

of the compact, and subject as to its assumptions of power to the final judgment of those by whom and for whose use itself and its powers were all created. I do not consider Congress, therefore, the lords and masters of the State, but as their servants. They are not, as I before said, a party in the Federal compact, but agents intrusted with a limited authority, which, if they exceed, they are amenable to the authority by which they were constituted. When the government of the United States enact *impolitic* laws, we can only say: We pray you to repeal them. As to matters of mere policy they are, it is admitted, vested with a discretionary power. But when they pass laws beyond the limits of the Constitution—laws which they are no more authorized to pass than the Grand Turk—we do not ask a repeal, but ought to make a legislative declaration that, being unconstitutional, they are therefore void and of no effect. Let it be granted that honest judges may refuse to act upon them; but Congress itself, if it be possessed of virtue and wisdom, will on the representations of the State legislatures expunge their unconstitutional proceedings from the annals of the United States. If, upon the representations of the States from whom they derive their powers, they should nevertheless attempt to enforce them, I hesitate not to declare it as my opinion that it is then the right and duty of the several States to nullify those acts, *and to protect their citizens from their operation.* But I hope and trust such an event will never happen, and that Congress will always have sufficient virtue, wisdom, and prudence, upon the representation of a majority of the States, to expunge all obnoxious laws whatever. And after all, who are the judiciary, the body in which the gentleman places such unbounded confidence?

Who are they, but a part of the servants of the people created by the Federal compact? And if

the servants of the people have a right, is it good reasoning to say that the people, by whom and for whose benefit both they and the government were created, are destitute of that right? Or that the people's representatives, emanating immediately from the people, have nothing to do but to behold in silence the most flagrant violations of their rights and bow in silence to any power that may attempt to oppress them? What line of conduct, then, does the gentleman recommend? If the States be already reduced to that deplorable situation, that they have no right to remonstrate with men who may meditate their annihilation, it is time that we should retire to our homes and mournfully prepare for a fate which we are destined to submit to. But the committee, I trust, are actuated by other and nobler principles, and instead of taking exceptions or demurrers to the jurisdiction of this committee, will take up the resolutions and examine them one by one.

Should they deem those laws constitutional, I doubt not they will reject the resolutions; but if they think otherwise, they cannot object to so moderate and peaceable a measure as that of addressing the sister States. We do not pretend to set ourselves up as censors for the Union; but we will firmly express our own opinions and call upon the other States to examine their political situation; I therefore now challenge the gentleman to come forward and controvert the resolutions, and to prove that the laws complained of are constitutional. I do aver they are not, and do aver also, that the great political truths contained in those resolutions cannot be controverted until republicanism and its votaries become extinct.

This speech of Mr. Breckinridge's was well calculated to carry the convictions of the House, even if the case had not been prejudged, as undoubtedly

it was. The argument was in itself able and vigorous, and to the smallest details played upon the chords of local prejudices and self-interest. These speeches formed the centre of debate. A number of others spoke upon the subject, in the main briefly, and their remarks were not regarded as of sufficient value to be preserved, so that now nothing except the names of the others who spoke are preserved.

The resolutions passed substantially as proposed. The amendments agreed to, out of a number proposed, were the following: "In the last line but one of the sixth Resolution, before the word '*negative*,' it was agreed to insert '*qualified*.' In the ninth Resolution, twenty-fifth line, after the word '*are*,' it was agreed to insert '*tamely*.'" And in the ninth Resolution, sixty-seventh line, for "*necessary*," it was agreed to substitute "*may tend to*." [1]

Thus amended the resolutions passed the Committee of the whole and the House. Mr. Murray voted against the whole series. A single vote was added to his against the second, third, fourth, fifth, sixth, seventh, and eighth, and a total of three were cast against the ninth.

They were then sent to the Senate, and after an unsuccessful effort to amend them, made by John Pope, they were unanimously concurred in on the 13th day of November, and were approved by Governor Garrard on the 16th. Thus in the inter-

[1] *The Palladium*, Frankfort, Ky., Nov. 13, 1798.

val between the 7th, on which day the legislature assembled and heard the governor's address, and the 16th, these important resolves, destined to have a profound influence not only on the history of the State, but of the Union, were suggested, offered, put through the two legislative bodies, and signed by the governor. Such action upon so important a subject seems on first thought improperly precipitate; but, in truth, the event was only the natural result of long and mature preparation, and the resolutions were only a thoroughly revised and perfected form of the opinions held and expressed by a large proportion of the citizens for months previously, and the subject had been so thoroughly ventilated and so exhaustively debated in all kinds of assemblages that the measure needed but to be suggested to receive instant and unqualified assent.

The favor accorded to the resolutions in the legislature was not greater than that with which they were received everywhere throughout the State. The people of Kentucky, as has already been said, were remarkably unanimous on the policy demanded by these unpopular laws. Mr. Breckinridge, too, was a man in whom the people felt a strong and growing confidence, and the result was a complete assent to the action of the legislature. There were, indeed, not a few, some of them men of eminent talents and position, who looked upon them with regret. Chief among these was Humphrey Marshall, the Senator who had been elected by the Federalists in the moment of

highest reaction, brought on by the insolence of Genet. He had been a vigorous Federalist from the earliest times, a strong pleader for patient waiting on the pleasure of Virginia and Congress in the matter of separation, an earnest advocate of ratification in the Virginia constitutional convention, wholly opposed to any intrigue to obtain the coveted Mississippi trade, and the capstone of his Federalism was placed when he voted for the hated legislation of this year in Congress. It is told with much evidence of truth that when he returned from the session of 1798 to Kentucky, a body of his indignant constituents apprehended him at night and were about to see what effect a bath in a neigboring horsepond would have on Federalist sentiments. Displaying rather more popular gifts than usual, he appealed to their prevailing religious sentiments, and insisted that it was quite out of place to put a man under the water till he had had an opportunity to relate his "experience." The appeal was successful, and, mounted upon a cask, he delivered a harangue which so pleased his auditors that they released him and sent him home without his bath. He was now politically dead in Kentucky, but he took a sharp-tongued revenge on the times and the leaders in after years in his able but partisan history of Kentucky. He was the leader of the Federalists, and what could be done they did. But as a very prominent gentleman of Woodford County said, at the time, in a letter to Mr. Breckinridge: "Your Resolutions have given the palsy to the friends of the Federal administration in this quarter, which

I believe will be their effect throughout the State."[1] Not only did they "give the palsy" to the Federalists, but they did much to make the political fortune of those prominent in their advocacy, and, as the leading part was Mr. Breckinridge's, he was given, without contest, the precedence in political honors. From the day the resolutions were passed his career was certain, and so long as he lived, certainly after the death of George Nicholas, which was near at hand, he held the first place in his party in Kentucky, both in the eyes of his fellow-citizens and of the leaders beyond the bounds of his State.

As soon as the resolutions were passed, the steps provided by them for their communication without the State were taken, and, in order that their doctrines might be widely disseminated at home, a thousand copies were ordered to be printed. Of these, fifty copies were put in the hands of the Governor to be sent to the other States, and the Representatives in Congress, and the remainder divided among the members of the legislature.[2]

It was pretty well understood that there would be independent action on the part of Virginia. It was hoped that the other States would respond to

[1] Caleb Wallace to John Breckinridge.—BRECKINRIDGE PAPERS, MS.

[2] The Resolutions above given are from a copy from one of these, now in the possession of Col. R. T. Durrett and once the property of Hon. Jas. D. Breckinridge, and has been compared with the one in the Mass. Archives, and with copy of latter in Shaler's "Kentucky." The latter contains two palpable misprints, but has the honor of first practically restoring to the public the true text beyond any question.

the invitation, and too confidently expected that that response would be favorable.

The Virginia House did not assemble until some time after that of Kentucky, and this question was not brought up until the 13th of December. The House then resolved itself into a Committee of the whole, with Mr. James Breckinridge in the chair, upon resolutions which had been offered by Mr. John Taylor, of Caroline, as follows :

IN THE HOUSE OF DELEGATES,
FRIDAY, December, 21, 1798.

First. Resolved, That the General Assembly of Virginia doth 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.

Second. That this Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers ; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that union, because a faithful observance of them can alone secure its existence and the public happiness.

Third. That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact ; as no further valid than they are authorized by the grants enumerated in that compact ; and that, in case of a deliberate, palpaple, and dangerous exercise of other powers not granted

by the said compact, the States who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.

Fourth. That the General Assembly doth also express its deep regret that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued, so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the States by degrees into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

Fifth. That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the "Alien and Sedition Acts," passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of [the] executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but on the contrary, expressly and positively forbidden by one of the amendments thereto,—a power which, more than any other, ought to produce universal alarm, be-

cause it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

Sixth. That this State having by its convention which ratified the Federal Constitution 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, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution,—it would mark a reproachful inconsistency and criminal degeneracy if an indifference were now shown to the palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

Seventh. That the good people of this Commonwealth, having ever felt, and continuing to feel the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State, in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people.

Eighth. That the Governor be desired to transmit

a copy of the foregoing resolutions to the Executive authority of each of the other States, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States.

Attest: JOHN STEWART.

1798, December 24.

Agreed to by the Senate: H. BROOKE.

A true copy from the original deposited in the office of the General Assembly.

JOHN STEWART, *Keeper of Rolls.*

These Resolutions had been drawn by Mr. Madison, as soon afterwards transpired, probably at the instance of Mr. Jefferson, and certainly with his knowledge and approval. Mr. Madison sent them to John Taylor, whose known sentiments and ability marked him out as most suitable for the work of securing their adoption by the legislature. Mr. Taylor opened the debate, and was supported by a number of gentlemen, most notably by Wilson Cary Nicholas and William B. Giles. The debate was of a very different nature here from that in Kentucky. The minority was powerless to prevent the Republicans from doing what they would, but they were nevertheless able and respectable. George Keith Taylor led the opposition, with an eloquent argument, which was, however, rather calculated to stir the emotions and arouse the prejudices of his hearers, than to influence their calm reason, but was looked on as the more dangerous on that very account, for the people delighted in that kind of oratory. Mr. Mercer and General Lee were very

vigorous supporters of Mr. George Keith Taylor, and the debate was prolonged and severe in the party assaults from both sides. Mr. James Breckinridge, though in the chair, and adding nothing to the debate, threw the weight of his influence, which was very considerable, into the scale of the opposition to the resolutions. He was a brother of John Breckinridge, but a decided Federalist, and in the next legislature was the opponent of James Monroe in the canvass for the governorship, and, though beaten, made a most creditable race against that eminent Republican and future President.

The resolutions came to a vote on the 21st of December, after more than a week had been consumed in debate, and were passed in the House by one hundred to sixty-three. The original draft had been amended in the committee, so that the third resolution, third line, which read "to which the States *alone* are parties," had the word "*alone*" stricken out, and the seventh resolution after the declaration that "the acts aforesaid are unconstitutional," lost the pregnant clause, "*and not law, but entirely null, void, and of no force or effect.*"

Being sent to the Senate, a futile effort was made to amend, when they passed, by a vote of fourteen to three, on the 24th day of December, and were duly approved by the governor.

Thus the States of Kentucky and Virginia took their stand side by side in a bold protest against the acts of Congress. The mother State yielded the precedence in this instance to the daughter. The resolutions of the latter were not

only passed at an earlier date, but they breathed more spontaneously and unanimously the spirit of the people, and what is of far more importance, were drawn with a firmer hand and struck with far more courage and far less reserve at the very points objected to. The one faltered somewhat, qualified, expressed in broad and uncertain general terms, the ideas that the other instrument dealt with with pitiless specification. The reason for this use of general terms in the Virginia Resolutions is explained in a letter from Mr. Madison to Mr. Jefferson, written on the 29th of December, 1798. Mr. Madison, as has already been remarked, was the author of these resolutions, and in a sort of retrospective way speaks of the motives which had dictated their form. It may be said in passing that Mr. Madison did not in all probability see a copy of the Kentucky resolves, as passed, before completing his own work, though their general tenor was known to him before the end of November, through a set of resolves sent him by Mr. Jefferson on the 17th of that month. Just what this paper was will be considered at length later on. To return then, Mr. Madison says :

I have not seen the result of the discussions at Richmond of the Alien and Sedition laws. It is to be feared that zeal may forget some considerations which ought to temper their proceedings. Have you ever considered thoroughly the distinction between the power of the State and that of the legislature on questions relating to the Federal pact? On the supposition that the former is clearly the ultimate judge of infractions, it does not follow that

the latter is the legitimate organ, especially as the convention was the organ by which the compact was made. This was a reason of great weight for using general expressions that would leave to other States a choice of all the modes possible of concurring in the substance, and would shield the General Assembly against the charge of usurpation, in the very act of protesting against the usurpation of Congress.[1]

However much this was true, it was equally true that the substance was the same, and the apparently milder resolutions of Virginia enunciated the same doctrines as the more categorical ones of Kentucky. Both of them plainly claimed the right of the States to judge of infractions of the Constitution. The plain, unvarnished statement of the Kentucky instrument "that to this compact [the Constitution] each State acceded as a State, and is an integral party, its co-States forming, as to itself, the other party," and that "each party [*i. e.* each State] has an equal right to judge for itself, as well of infractions as of the mode and measure of redress," has indeed no direct parallel in the other series, but the same doctrine is in effect there. So, too, while the Kentucky Resolutions declare that "whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force," and that certain specified laws "are altogether void and of no effect"; Mr. Madison's draft also contained similar words, and though stricken out by the House of Delegates, the same theory is involved in other statements which remain, notably

[1] Madison's Works, vol. ii., p. 149.

in the declaration of the 3d resolution, that in the case mentioned the States "are in duty bound to interpose," for though the word "interpose" in itself has a less plain meaning in the light of history than "nullification," the context approximates the two words very closely to each other.[1]

A very radical difference between the two sets will be noted in that the Virginia set address themselves specifically only to the alien and sedition laws, while the other embraces within its purview other and less odious laws; that it denies to the federal courts all cognizance of libels and similar offences, and in numerous other ways assails the action of the federal government. In order to make a distinct specification, an argument which, to say the least, was uncandid, and which proved a boomerang in the congressional debate on this subject, was used in the 5th resolution. In setting forth the clause in the Constitution which provides "that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808," as a special provision giving alien friends the protection of the individual States, a conscious and most improper wresting of the Constitution was indulged in. It was well known that this clause was only intended to apply to slaves, and it was a sop thrown to the Southern slaveholders to induce them to concur in the Constitution, which seemed unlikely to be obtained if

[1] See Von Holst, "Constitutional History U. S.," vol. i., pp. 146–8, *et seq.*

the slave trade was put an end to at once. These same men, compelled to yield to the necessity of some compromise, were yet unwilling to stain the Constitution with any recognition of the "South's peculiar institution," and somewhat uncandidly sought, by this impersonal phraseology, to compound with their consciences for sanctioning in fact an iniquity they could not acknowledge in words which they rightly judged were to be more enduring than brass. Hence, for a State to use a clause to support an argument, when that clause had been a concession to a section of which it was a part, for a special end, and was enjoyed by them to that end at the very time, when the subject under debate was wholly foreign to it,—was a palpable attempt to take an unfair advantage. Not only so, but it was wofully inconsistent when the matter in hand was an alleged illegitimate extension of constitutional provisions to subjects not within the intention of the framers.

Owing to the specific allegations of the Kentucky Resolutions, and the vigorous language in which they were couched, they became almost a party platform for the party struggling towards organization. Mr. Jefferson, and all those who thought with him, saw the importance of making the alien and sedition acts the issue in the coming contests. This and all the similar stretches of the narrowest bounds of constitutional provisions, were ventilated, assaulted, and systematically hailed as the outcome of British affiliations and monarchial tendencies. The drift of public opinion was not slow in show-

ing itself, and as the fear of war gave way to certainty of peace, the unwisdom of all extreme measures grew more and more plain. Anti-Federalism, now fully-fledged Republicanism, grew rapidly in the country. As yet the Congress was strongly Federalist and in the height of the pride that goes before a fall; and just as its opponents were growing truly dangerous, disintegration and decay sprang up in the Federalist party, and the very Cabinet itself became the hotbed of intrigue and disorder. Nothing escaped the watchful eye of the chief of the new party, and he continued to play his strong card with vigor and prudence.

V.

THE RESOLUTIONS BEFORE THE STATES AND CONGRESS.

A STATE of hopeful expectancy followed the decided action of their legislatures in Virginia and Kentucky. They believed they had done their duty, and they now waited to see how their declarations would be received in the other States and in Congress. In Kentucky there was not a single prosecution under the alien and sedition acts, and that State had done certainly the utmost that could have been expected of it. It regarded the mere passage of the acts as a menace to the liberties of its people, and it was quick to deny the power in any part of the general government to carry out these acts, or, indeed, the right of Congress to offer this menace even had there been no intention of carrying it out. The situation in Virginia, though different, was never serious enough to lead to any thing like organized resistance. Indeed, it is now impossible to decide just how far and in just what form resistance was contemplated by these Resolutions. At present these two States were content to protest and await the reception this protest should meet with in the other

States, as well as the action Congress should take. For the latter a patient waiting was necessary. The fifth Congress was now in its last session, and the sixth was already elected, and not only so, but having been chosen in the height of the warlike feeling towards France, was even stronger in Federalist sentiments than the present body. Nothing was to be hoped from it. Moreover, the more odious act would expire by its original limitation, March 3, 1801, and the following day a new Congress and a new administration were to begin. That day might be made, if prudent counsels and active measures meanwhile prevailed, the inauguration of a new order of things. If calm judgments could but control violent tendencies, a peaceful revolution might then be effected, whose result would be all that could be desired. And so the Republican party in these two States and throughout the country, losing meanwhile no opportunity to declare their principles, leaving no stone unturned to make proselytes, watchfully waited on the course of events.

Early in February, 1799, the question of action on the resolutions began to come up in the other States. Delaware was the first to pass judgment upon them. Her answer was expressed with laconic brevity :

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 Kentucky [Virginia], as a very unjustifiable interference with the general govern-

ment and constituted authorities of the United States, and of dangerous tendencies, and therefore not a fit subject for the further consideration of the General Assembly.

Delaware was very thoroughly Federalist, and no other sentiments were to be expected thence, so making what merriment they could over the air,—as of a careful mother guarding her children from moral pollution,—contained in the last sentiment of this reply, the Republicans awaited developments. But February and March brought only three replies, and all of them unfavorable. The first was brief and from Rhode Island. Little Rhody had drifted around from her uncompromising non-federal notions, and in a few categorical sentences said a good deal that was decided, declaring the Federal judiciary alone could decide the question of constitutionality ; that the other legislatures had been meddling in what was none of their business, and that this legislature "*in their private opinions*" believed "these laws within the powers delegated to Congress and promotive of the welfare of the United States." Next came Massachusetts with a long and able document, argumentative and comprehensive, the chief points of which were an insistance upon the sole jurisdiction of the Supreme Court of the United States in questions of constitutionality, the distinction between liberty and freedom of speech and of the press in contradistinction to license, and a less pointed but significant allusion to the exercise, and the propriety of the exercise, of common-law powers by the Su-

preme Court. New York came next with a reply from the Senate taking, in briefer form, much the same grounds. This was passed March 5th. There was then a lull till the middle of May, when Connecticut passed a reply of the same character without adding any thing to the situation. New Hampshire was more excited by the red flag of democracy, and no less zealous than the other States of New England, and somewhat more radical in language, and asserted not merely devotion to the Constitution and approbation of the acts of Congress, but gave voice to a warlike outburst worthy of a more southern birthplace. Her long resolution, following a very short preamble, which merely recites the exciting cause and the machinery of action, is worth quoting.

Resolved, That the Legislature of New Hampshire unequivocably 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 confined 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 NewHampshire 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.

The last State to express her sentiment on these resolutions was Vermont. In similar terms with the other New England States, she replied on the 30th day of October.

Thus replies were received from seven States out of the fourteen. New Jersey and Pennsylvania made none, and none of the Southern States. It was rumored that North Carolina had voted the Virginia Resolutions under the table, so Mr. Madison writes to Mr. Jefferson[1]; but whatever were the sentiments of that State, no official action was taken. This, however, was sufficiently certain from the known political bias of the various States, that it was no longer to be hoped that the two memorializing States would be supported by the requisite number to form even a majority of the then sixteen States. This fact, when it became apparent, threw a wet blanket on the high hopes once ascertained. From union of States, as States, nothing was at that time to be hoped for.

Not only was this so, but other States, although they did not send replies to the States making

[1] Madison's Works, vol. ii., p. 152. See also *post.* p. 146.

the overture, yet placed themselves on record against the principles of these Resolutions. These were Maryland, New Jersey, and Pennsylvania, making in all ten States which had declared against the right of the States to interfere with congressional action, and in favor of the constitutionality of the acts of Congress.

But, though this was true, a great number of petitions came in when Congress convened asking for the repeal of the laws, and it was upon these petitions that the debate in that body arose. It does not appear that the Kentucky and Virginia Resolutions were laid before Congress at all. But this was only a formal omission—if indeed it was omitted; for every one in both Houses was cognizant of them, and though the members preferred to act on the petitions of their constituents, these resolutions, as being finished formulas of the principles involved, could not fail to affect the consideration of whatever related to them. Several minor questions relating to this subject came up during the session, such as a motion to have a number of copies of these acts of Congress printed for distribution in Virginia and elsewhere, on the ground that the action taken on them evinced the greatest ignorance of their contents; but the main issue was on the report of the committee, to which the petitions for repeal had been made. This committee reported adversely, and it was attempted to pass the report quietly over the heads of the opposition by the all-powerful party vote. But the opposition were determined to be heard, and though it was

amid the coughs and jeers of the majority, Livingston of New York, Gallatin of Pennsylvania, and John Nicholas of Virginia spoke against the adoption of the committee's report.

Mr. Jefferson, writing to Mr. Madison under date of February 26, 1799, says: "Yesterday witnessed a scandalous scene in the House of Representatives. It was the day for taking up the report of their committee against the Alien and Sedition laws, etc. They held a caucus and decided that not a word should be spoken on their side, in answer to any thing that might be said on the other. Gallatin took up the Alien and Nicholas the Sedition law, but after a little while of common silence, they began to enter into loud conversations, laugh, cough, etc., so that for the last hour of these gentlemen's speaking, they must have had the lungs of a vendue master to have been heard. Livingston, however, attempted to speak. But after a few sentences, the Speaker called him to order and told him what he was saying was not to the question. It was impossible to proceed. The question was taken and carried in favor of the report, fifty-two to forty-eight."

Livingston's attempt to speak was on a motion that the Committee of the whole rise, in order to give time for the thorough ventilation of the subject. The Federalists objected on two grounds. They considered this whole motion a questionable subject for debate, tending to poison the public mind, but especially did they desire to cut it off now when, the sands of that session being nearly

run, time was most precious. They, therefore, pressed for an immediate vote. The Republicans, on the other hand, confidently trusted in the belief that the principle underlying these laws was, from the very nature of the case, certain to be unpopular when once the ear of the multitude was reached. They therefore fought strenuously for a complete and full debate of even the minutest point. The immense number of signatures on the petitions for repeal, especially in the Middle States, encouraged them to redoubled efforts. These efforts gained them very little grace in the House, but when the Speaker went so far as to tell Livingston that the question on the alien bill had already been decided, and that on the occasion of the passage of that act, nearly a year before, he had already "spent all his bitterness and all his threats,"[1] he pressed the gag so far as to insure much sympathy for the cause out of the doors of Congress.

The infatuated Federalists, intoxicated with success, were utterly blind to the signs of the times. There was no lack of able men in that once great party, but there was a want of men of truly popular gifts, who could understand that the people could not be driven but might be led, who could look to the people with that catholic confidence that was the "open sesame" to every heart in the words and acts of Jefferson. That statesman with unerring eye had some time before observed the way public opinion was drifting. On the 13th of February of this year he wrote to Mr.

[1] Jefferson's Works, vol. iv., p. 299.

Stewart in Virginia: "A wonderful and rapid change has taken place in Pennsylvania, Jersey, and New York. Congress is daily plied with petitions against the Alien and Sedition laws and standing armies. Several parts of this State [Pennsylvania] are so violent that we fear an insurrection. This will be brought about by some if they can. It is the only thing that we have to fear. The appearance of an attack of force against the government would check the present current of the Middle States, and rally them around the government; whereas, if suffered to go on, it will pass on to a reformation of abuses. The materials now bearing on the public mind will infallibly restore it to its republican soundness in the course of the present summer, if the knowledge of the facts can only be disseminated among the people. Under separate cover you will receive some pamphlets, written by George Nicholas, on the acts of the last session. These I would wish you to distribute, not to sound men who have no occasion of them, but to such as have been misled, are candid, and will be open to the conviction of truth, and are of influence among their neighbors."[1] The same sentiments were repeated in a letter to Edmund Pendleton on the following day, and were accompanied by an urgent request that he would lend his great influence to help on the movement.[2] Indeed, even in earlier letters, as in that to Mr. Madison on the 30th of January,[3] the same hopes

[1] Jefferson's Works, vol. iv., p. 286. [2] *Idem*, p. 287.
[3] *Idem*, p. 280.

were alluded to and the same policy sketched. Thus, while the Federalists were carrying things with a high hand in Congress, and drifting into an unhappy and fatal cabal within their own ranks, the Republicans, with every muscle tense and every sense on the alert, were building the firm foundations of a great victory and a great party.

In accordance with Mr. Jefferson's views, which seem to have been very generally the common judgment of the Republican leaders, the utmost patience was to be the chief characteristic of the policy which they were now to pursue; but at all times it was to have for its yoke-fellow a bold denunciation of the Federalists' policy in general and of the alien, sedition, and army bills in particular. In pursuance of this policy Mr. Madison left Congress, stood for the House of Delegates, and was elected. This was enough to indicate the intention of again protesting through the State legislatures. In midsummer, 1799, Colonel Wilson Cary Nicholas was about to set out from Virginia for Kentucky, where his brother George Nicholas had just died, when Mr. Jefferson wrote to him, urging him to meet Mr. Madison and himself at Monticello in the last week of August, to discuss the programme proper to be pursued in the winter. Colonel Nicholas was an intimate in the little circle of Monticello, and had been deep in the councils of the preceding year. Mr. Jefferson felt "deeply impressed with the importance of Virginia and Kentucky pursuing the same track at the ensuing sessions of their legislatures,"[1] and could not have

[1] Jefferson's Works, vol. iv., p. 304.

had a more trustworthy bearer of his advice to Kentucky. Colonel Nicholas was unable to accept the invitation, and Mr. Jefferson proceeded to lay out his plan in a letter of the 5th of September,[1] as follows:

DEAR SIR:—Yours of August 30th came duly to hand. It was with great regret we gave up the hope of seeing you here, but could not but consider the obstacle as legitimate. I had written to Mr. Madison, as I had before informed you, and had stated to him some general ideas for consideration and consultation when we should meet. I thought something essentially necessary to be said in order to avoid the inference of acquiescence; that a resolution or declaration should be passed: 1. Answering the reasonings of such of the States as have ventured into the field of reason, and that of the committee of Congress; taking some notice, too, of those States who have either not answered at all, or answered without reasoning; 2. Making firm protestation against the precedent and principle, and *reserving* the right to make this palpable violation of the Federal compact the ground of doing in future whatever we might now rightfully do should repetitions of these and other violations of the compact render it expedient; 3. Expressing in affectionate and conciliatory language our warm attachment to union with the sister States and to the instrument and principles by which we are united; and we are willing to sacrifice to this every thing but the rights of self-government in those important points which we have never yielded, and in which alone we see liberty, safety, and happiness; that, not at all disposed to make every measure of error or of wrong a cause of scission, we are willing to look on with indulgence, and to wait with

[1] Jefferson's Works, vol. iv., p. 305.

patience, till those passions and delusions shall have passed over, which the Federal government have artfully excited to cover its own abuses and conceal its designs, fully confident that the good sense of the American people and their attachment to those rights which we are now vindicating, will, before it shall be too late, rally with us round the true principles of our Federal compact. This was only meant to give a general idea of the complexion and topics of such an instrument. Mr. M., who came, as had been proposed, does not concur in the *reservation* proposed above; and from this I recede readily, not only in deference to his judgment, but because, as we should never think of separation but for repeated and enormous violations, so these, when they occur, will be cause enough of themselves.

To these topics, however, should be added animadversions on the new pretensions to a *common law* of the United States. I proposed to Mr. M. to write to you, but he observed you knew his sentiments so perfectly from a former conference it was unnecessary. As to the preparing any thing, I must decline it to avoid suspicions (which were pretty strong in some quarters on the late occasion), and because there remains still (after their late loss) a mass of talents in Kentucky sufficient for every purpose. The only object of the present communication is to procure a concert in the general plan of action, as it is extremely desirable that Virginia and Kentucky should pursue the same track on this occasion. Besides, how could you better while away the road from hence to Kentucky than in meditating this very subject, and preparing something yourself, than whom nobody will do it better. The loss of your brother and the visit of the apostle Marshall[1] to Kentucky

[1] Omitted in printed works, restored by Miss Randolph in *The Nation* for May 5, 1887.

excite anxiety. However, we doubt not that his poisons will be effectually counterworked. Wishing you a pleasant journey and happy return, I am, with great and sincere esteem, dear sir, your affectionate friend and servant.

The loss of George Nicholas, above alluded to, was indeed a great loss, both to his State and his party. Although not the mover of the resolutions of the preceding year, as has been so often claimed for him, he was active and influential in disseminating the Republican doctrines by speeches, letters in the public press, and controversial pamphlets. The honorable position he had won for himself, moreover, gave the greatest weight to all he did.

Despite the advice thus conveyed by so eminent a messenger from so high a quarter, when the Kentucky legislature met in November, it was at first thought wise to let the matter drop. But, after a time, lest they should be thought to recede from their former position and acquiesce in the decisions of the other States, it was decided that some reassertion of the principles enunciated the preceding year should be made.[1]

[1] The following extract from a letter written by Mr. Breckinridge to Mr. Jefferson gives so clear an idea of the grounds of action, the entire independence of any thing that Colonel Nicholas may have recommended, and contains such a pregnant allusion to the feeling in the Senate even then in regard to the clause containing the word "nullification," that it is worth quoting at length.

FRANKFORT, KY., Dec. 9, 1799.

"DEAR SIR:

"I took the liberty by the last post of inclosing to you the proceedings of our Legislature (now in session) in support of

Mr. Breckinridge, who was now Speaker of the House of Representatives, in pursuance of his determination, proceeded to introduce the instrument known as the Resolutions of 1799, which consisted of a long preamble and a short resolution. The reassertion of the old doctrines could not fail to be regarded in Kentucky, under the existing sentiments of the people, as an honorable work, and it was naturally assigned to the champion of 1798. The Resolutions received the assent of the House, Senate, and Governor as a matter of course, although in the Senate some little stand against them was made. The following is the instrument as agreed to.

In the House of Representatives, November 14, 1799.

The house, according to the standing order of the day, resolved itself into a committee of the whole house on the state of the commonwealth, Mr. Desha in the chair, and after some time spent therein, the Speaker resumed the chair, and Mr. Desha reported that the committee had taken under con-

their Resolutions of the last session respecting the Alien and Sedition laws. It was at the opening of the session concluded to make no reply, but lest an improper construction should be put on silence, we drew up the paper which I inclosed you. In the lower House (of which I am a member) there was not a dissenting voice. In the Senate there was considerable division, particularly on that sentence which declares 'a nullification of those acts by the States to be the rightful remedy.' It has so happened that what little federal influence exists among us, is at present concentred in the Senate. The election of Senators in every district under our new constitution, and which must be made *viva voce*, by the people instead of by electors, will extinguish even this little influence. The great mass of the people are uncontaminated and firm, and as all appointments now flow from the people, those who hold sentiments contrary to theirs will be discarded."

sideration sundry resolutions passed by several state legislatures on the subject of the alien and sedition laws, and had come to a resolution thereupon, which he delivered in at the clerk's table, where it was read and unanimously agreed to by the house, as follows :

" The representatives of the good people of this commonwealth in general assembly convened, having maturely considered the answers of sundry states in the Union to their resolutions passed at the last session, respecting certain unconstitutional laws of Congress commonly called the alien and sedition laws, would be faithless indeed to themselves, and to those they represent, were they silently to acquiesce in the principles and doctrines attempted to be maintained in all those answers, that of Virginia only excepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended, be as unnecessary as unavailing. We cannot, however, but lament, that in the discussion of those interesting subjects, by sundry of the legislatures of our sister states, unfounded suggestions, and uncandid insinuations, derogatory of the true character and principles of the good people of this commonwealth, have been substituted in place of fair reasoning and sound argument. Our opinions on those alarming measures of the general government, together with our reasons for those opinions, were detailed with decency and with temper, and submitted to the discussion and judgment of our fellow-citizens throughout the Union. Whether the like decency and temper have been observed in the answers of most of those States who have denied or attempted to obviate the great truths contained in those Resolutions, we have now only to submit to a candid world. Faithful to the true principles of the federal

union, unconscious of any designs to disturb the harmony of that union, and anxious only to escape the fangs of despotism, the good people of this commonwealth are regardless of censure or calumniation. Least, however, the silence of this commonwealth should be construed into an acquiescence in the doctrines and principles advanced and attempted to be maintained by the said answers, or least those of our fellow-citizens throughout the Union, who so widely differ from us on these important subjects, should be deluded by the expectation that we shall be deterred from what we conceive our duty, or shrink from the principles contained in those Resolutions ; therefore

"*Resolved*, That this commonwealth considers the federal union upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several States ; that it does now unequivocally declare its attachment to the Union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution ; that if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the state governments and the erection upon their ruins of a general consolidated government will be the inevitable consequence ; that the principle and construction contended for by sundry of the State legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism, since the *discretion* of those who administer the government, and not the *Constitution*, would be the measure of their powers ; that the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction ; and that a nullification by

those sovereignties of all unauthorized acts done under color of that instrument, is the rightful remedy; that this commonwealth does, upon the most deliberate reconsideration, declare that the said alien and sedition laws are, in their opinion, palpable violations of the said Constitution, and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy, yet in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal; that although this commonwealth as a party to the Federal compact will bow to the laws of the Union, yet it does at the same time declare that it will not now nor ever hereafter cease to oppose in a constitutional manner every attempt, from what quarter soever offered, to violate that compact: AND, FINALLY, in order that no pretexts or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the federal compact, this commonwealth does now enter against them its SOLEMN PROTEST."

The only really remarkable thing in this document is that it, for the first time, uses the fateful word "nullification" in this connection. There was, indeed, little enough difference between the declarations of the resolutions of the last year and this, and this word was freely used by Mr. Breckinridge in the debate of the preceding year, but this word, which afterwards became the watchword of secession, has been saddled with the whole burden of the extremest advocates of States'-rights, while the most

active efforts have been used to relieve such earlier expressions as "interpose to arrest," etc., from this same burden. The chief difference between the two phrases seems to lie in the peculiar fitness of the one word to express the essence of the whole idea, and so to become a catch phrase, a fitness which any sentence or less terse expression, such as the others were, failed to possess.

This, in one sense, terminated the action of Kentucky upon this question. In another, and perhaps a truer sense, her action was not complete until she had sent Mr. Breckinridge to the Senate, and done her part in electing Mr. Jefferson, and bringing about what he regarded as a peaceful revolution to the principles of true Republicanism. This was all she demanded; thenceforth all her desires were satisfied, all her theories of government fulfilled, and from a turbulent, faction-ridden State, bound to the Union by a slender and galling tether, she became unqualifiedly loyal, with a tendency, which steadily increased for half a century, towards a strong central influence in almost all things—perhaps, with the exception of the tender subject of slavery, in all things. Even when that exception became the issue of the day, and her sister States rushed headlong out of the Union, as far as State action could take them, the centripetal force was still the stronger, and torn almost in two by conflict, disloyalty and factions of every kind, yet steadied by an unfailing majority, she remained true to the Union.

Kentucky having acted with what Mr. Jefferson

called "so much temper, firmness, and propriety,"[1] the scene was once more shifted to Virginia. The answer of the various States to the resolutions of 1798, were referred to a committee, of which Mr. Madison was one, and on him devolved the labor of preparing the report of that committee. This report was done with Mr. Madison's invariable painstaking care. The resolutions, and every point made against them, were taken up one by one and carefully examined and answered. It is superfluous to say that the result was masterly. It was a most exhaustive exposition of the position of a Republican in regard to the questions awakened by the whole discussion of the past two years. The report, which was extremely lengthy, was concluded by a brief resolution, to wit: "*Resolved*, That the General Assembly, having carefully and respectfully attended to the proceedings of a number of the States, in answer to their resolutions of December 21, 1798, and having accurately and fully re-examined and re-considered the latter, find it to be their indispensable duty to adhere to the same, as founded in truth, as consonant with the Constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew, their protest against 'the Alien and Sedition Acts,' as palpable and alarming infractions of the Constitution." There were a few minor amendments made in the report, which passed the House by a

[1] Jefferson's Works, vol. iv., p. 318. To John Brackenridge —Mr. Jefferson invariably misspells the name, following a spelling peculiar to the Pennsylvania branch of the family.

vote of 60 to 40, the minority being still strong. Mr. Madison had felt very anxious over the Senate, which was nearly equally divided, but he found it "in rather a better state than was expected," and the majority for his report was decided, the vote being 15 to 6.

The matter, however, was not suffered to rest there, but a set of resolutions was brought in by Wm. B. Giles, "instructing the Senators to urge the repeal of the unconstitutional acts, the disbanding of the army, and a proper arrangement of the militia."[1] The debate was heated on these resolutions, but the majority was fixed, and any attempt, beyond mere verbal amendment, to stop or modify the action proposed in them was wholly vain. The vote was about two to one on the points upon which issue was taken.

The work was done before the end of January, 1800. The Republicans had carried things with a high hand in both Kentucky and Virginia. In the former there was no considerable objection, for the whole community was wellnigh as one man; but in the latter it was far different. The remnant of Federalism had always been most able and respectable. Many of the most honored of her statesmen belonged to that party, and the party, in its rank and file, was composed of the most weighty citizens. Washington, Henry and John Marshall were the honorable heads of the party; Keith Taylor, General Lee, and James Breckinridge its active

[1] Madison to Jefferson. Madison's Works, vol. ii., several letters, pp. 151–6.

leaders. Any body that could muster such men was deserving of high consideration ; but it was overridden here with the same violence that the equally respectable minority in Congress experienced. The beginning of this session of the legislature was the signal for the fall of Virginia Federalism. Much had been expected of Henry in this session ; but he died before it began, June 6, 1799. Washington, too, passed away on the 14th of December. When Monroe, who was regarded as the very most dangerous of radical Democrats, was elected by a vote only slightly less than the party's strength over James Breckinridge, all things began to be very unpromising. John Nicholas, that fair-minded statesman, who, though what he called a "supporter of government," in fine a Federalist, had so ably opposed the alien and sedition bills, closes a letter to Mr. Breckinridge at this time, with this wail, by way of postscript :

"General Washington is dead ; Colonel Gamble, one of the most important *real American* merchants in this State, it is reported, broke ; the legislature carrying every thing with a high hand to terrify men into their way of thinking ; Henry taken off just as he had *got right ;* in short, Providence and every thing else seems to be against our side this year. I hope we shall begin a new one better, or see our error, if we are wrong."

Any hope of a change for many years to come was vain. The State was now wholly given over to the Republican party, with its illustrious citizens, Jefferson, Madison, and Monroe, at the helm, whose

vigorous policy and long lives left no room for any reaction.

Such was the great movement of 1798 and 1799 in Kentucky and Virginia. The Old Dominion wielded a great influence in the domain of political thought, and, ably seconded by her vigorous daughter of the new West in this instance, she could not fail to draw much support to herself in her energetic and unshaken support of the principles they had joined to enunciate. Their work in that direction was complete. The issue was to be settled at the polls, and hopefully she awaited the result.

The complete triumph of the Republicans in the elections of 1800 was the first act in a great revolution of sentiment. It had at one time been a part of the president-elect's plan to have an amendment to the Constitution, embodying the principles of the Resolutions of 1798. For instance, he wrote to Philip Norborne Nicholas early in 1800: "It is too early to think of a declaratory act as yet; but the time is approaching, and not distant. Two elections more will give us a solid majority in the House of Representatives, and a sufficient one in the Senate. As soon as it can be depended on we must have 'a declaration of the principles of the Constitution,' in the nature of a declaration of rights in all the points in which it has been violated."[1] But nothing ever came of the project. The country settled down into a general acquies-

[1] Jefferson's Works, vol. iv., p. 327. P. N. Nicholas was a brother of George, John, and Wilson Carey Nicholas, and a distinguished ornament of the bar and bench of Virginia.

cence in the Republican policy. Mr. Jefferson continued to hold the confidence of his party, and passed it on to Mr. Madison, and although the Hartford convention reasserted much that was first promulgated in the Resolutions of 1798, the New England Federalists did not venture to found their pleas on any such precedents, and so for years the resolutions and the questions connected with, and growing out of, them slumbered. It was a new century and, in a large degree, a new generation that was to be vexed by two important and perhaps insoluble problems connected with these Resolutions. The first of these is connected with the authorship of the Kentucky Resolutions of 1798, and the second with the theory of government expressed or intended to be expressed in them. These problems, or so much of them as may be properly discussed within the scope of this little work, will now be considered.

VI.

THE AUTHORSHIP OF THE KENTUCKY RESOLUTIONS OF 1798.

It was early an open secret that the Virginia Resolutions of 1798, though presented in the legislature by John Taylor, of Caroline, a man in all respects competent to have drawn such an instrument, were from the pen of Mr. Madison. That distinguished statesman having descended into the lists, and assumed the leadership in the action of the Virginia legislature of the following year, this circumstance was very naturally divulged, and was openly avowed, among others, by John Taylor himself. Although, as Mr. Jefferson said, in his letter of September 5, 1799, to Wilson Cary Nicholas, already quoted, there had been suspicions that he had had some more or less prominent part in the State protests against the alien and sedition laws, these suspicions did not take form for many years. Many of his own party knew that, while he abstained from assuming any public connection with the movement of 1798 and 1799 in opposition to the acts of Congress, he was in the fullest sympathy with it, and had written many letters to those he trusted in every part of the coun-

try, plainly expressing his opinions, and outlining the policy which he thought wisest to pursue. That he had had any further connection with the protests of the legislatures, was believed by few, if any; and if any one knew that he had any other relation to them, they observed the most complete silence. Mr. Breckinridge lived and died with the full odium and the full credit, according as men regarded it, of the authorship, as well as of the advocacy, of the Kentucky Resolutions of 1798. It has never been pretended that this was once called in question during his life. It was a matter which, among his friends, was often adverted to, and it was esteemed his chief title to the remembrance of posterity; in Kentucky it was, as has already been said, both notorious and often pressed as a claim for political preferment; wherever he went it was the act by which he was known. To some men he wore it like the brand of Cain upon his brow, for in this day we can scarcely form an adequate conception of the height of party passion which then prevailed, or the bitter invectives used against political opponents; to others it was like a civic crown. He died with these mingled praises and imprecations in his ears, but with the praises fast becoming dominant, so that none could doubt that his fame and hold upon his countrymen's hearts were largely bound up in this important work. As time slipped by great changes occurred. The war of 1812 brought new men and new issues. Many of those who had fought the battles of the old régime were dead, the Kentucky leaders of 1798

were not of those who were spared to the fulness of years and of honors. It was in 1814, more than fifteen years after the event, that Mr. Breckinridge's authorship of the Resolutions was first questioned. In that year John Taylor, in a foot-note to a work on the principles of government, made the statement, without giving the grounds for it, that Madison was the author of the Virginia Resolutions, and Jefferson of the Kentucky Resolutions.[1] Naturally some attention must have been called to this statement, but it was at a time when the Resolutions were attracting little comment. The Hartford convention had recently enunciated very similar doctrines, but that body was too thoroughly Federalist to be willing to cite the Resolutions of 1798 with any thing but horror; and the Republicans were too hostile to the emanations from that convention willingly to dwell on their own earlier publication of like sentiments. Therefore the declaration passed almost unnoted; especially does it seem certain that it did not come to the knowledge of Mr. Breckinridge's friends in Kentucky. It was not until seven years later that the matter was fairly brought into publicity. The Richmond [Virginia] *Enquirer* in its issue for September 4, 1821, editorially stated that the Kentucky Resolutions had been penned by Mr. Jefferson. It has never transpired from what source the editor of that journal derived the information upon which he

[1] "Inquiries into the Principles and Policy of the Government of the United States," by John Taylor of Caroline, Va., Fredericksburgh, Va., 1814, p. 174.

based the statement, but it is not improbable that it was the printed works of John Taylor. The statement was brought to the notice of Joseph Cabell Breckinridge, the eldest son of John Breckinridge, at that time Secretary of State of Kentucky. It was regarded by John Breckinridge's friends as entirely without foundation,—indeed, as one of those creations "out of the whole cloth" which editors of partisan newspapers are thought not infrequently to indulge in. Had it been in derogation of the rights of the living, they felt it was a thing to be lightly passed by, but the claims of the dead are so easily postponed to the slightest pretensions of the living, that they felt that some refutation was advisable. Wishing to stand upon such sure ground that no one should ever be able to reassert so baseless a rumor with any hope of being believed, Cabell Breckinridge wrote to Mr. Jefferson upon the subject, confidently expecting a complete and categorical denial of the allegation. A copy of his letter was preserved in the letter-book of Joseph Cabell Breckinridge, and is here published in full.[1]

FRANKFORT, Nov. 19, 1821.

DEAR SIR:—If I had not experienced the effects of your candor and obliging indulgence on a former occasion, and on a subject connected with the

[1] This letter is an important link in the evidence, which shows conclusively that George Nicholas had no connection with the legislative action of these years, and that the following letter of Mr. Jefferson's was written to Mr. J. Cabell Breckinridge, and not to "—— Nicholas, Esq.," as published in Mr. Jefferson's works. It was first published by the author of this monograph in the *Magazine of Western History* for April, 1886.

memory of my father, I should feel an insuperable reluctance to trouble you with this letter. A very brief narrative will explain its object.

In the Richmond *Enquirer* of September 4th, in an editorial stricture on certain articles that had appeared in the *National Intelligencer*, the writer, in support of his principles, refers to the authority of your name and opinions, and expresses himself in the following words: "We protested against the 'putting Mr. J. forward as the chief of a new party,' and that the doctrines we held on the great question of supremacy in cases of collision between the governments was the doctrine of the old Republican party, of Mr. Madison's report of '98, and of the Kentucky resolutions penned by Mr. Jefferson himself." Well knowing that the resolutions here alluded to were introduced into the legislature of Kentucky by my father as his own production, I was greatly astonished by the assertion of the editor. Convinced as I am that the mover of the resolutions would not have consented thus to appropriate the labor even of his illustrious friend, I did believe the assertion to be untrue.

To a man the measure of whose fame and usefulness is full, an occurrence like the present may be regarded with indifference. But when you remember that the providence of God arrested at an early period the auspicious career of him whose loss I have cause so deeply to deplore, you will excuse—nay, approve—the sensibility which I feel on every subject connected with his just [fame]. If I am not deceived in the temper of the times, the day is at hand when the struggle of '98 is to be renewed with decisive characteristics of consolidating intent, and these States are to maintain a second contest for the purity and extent of their ancient rights. At such a crisis, involving the safety and perpetuity of some of the most sacred principles of American freedom, the recollection of similar events—the

corresponding sentiments and acts of departed patriots—will be reviewed with peculiar interest and powerful effect, and I can distinctly perceive the value of your written declaration to insure justice to the memory of one, whom loving, you largely contributed to exalt. Believing that I cannot give a better evidence of the sincerity and respect of the present application than by omitting all formal and affected apologies for having made it, I hasten to assure you of my high consideration, and to offer you my sincerest wishes for your continued health and happiness. J. CABELL BRECKINRIDGE.

To this letter Mr. Jefferson sent the following reply:

MONTICELLO, December 11, 1821.

DEAR SIR:—Your letter of December 19th places me under a dilemma which I cannot solve but by an exposition of the naked truth. I would have wished this rather to have remained, as hitherto, without inquiry, but your inquiries have a right to be answered. I will do it as exactly as the great lapse of time and a waning memory will enable me. I may misremember indifferent circumstances, but can be right in substance. At the time when the Republicans of our country were so much alarmed at the proceedings of the Federal ascendancy in Congress in the Executive and the Judiciary departments, it became a matter of serious consideration how head could be made against their enterprises on the Constitution. The leading republicans in Congress found themselves of no use there, browbeaten as they were by a bold and overwhelming majority. They concluded to retire from that field, take a stand in their state legislatures, and endeavor there to arrest their progress. The Alien and Sedition laws furnished the particular occasion. The sympathy between Virginia and

Kentucky was more cordial and more intimately confidential than between any other two States of republican policy. Mr. Madison came into the Virginia legislature. I was then in the Vice-presidency, and could not leave my station; but your father, Colonel W. C. Nicholas, and myself, happening to be together, the engaging the co-operation of Kentucky in an energetic protestation against the constitutionality of those laws became a subject of consultation. Those gentlemen pressed me strongly to sketch resolutions for that purpose, your father undertaking to introduce them to that legislature, with a solemn assurance, which I strictly required, that it should not be known from what quarter they came. I drew and delivered them to him, and in keeping their origin secret he fulfilled his pledge of honor. Some years after this, Colonel Nicholas asked me if I would have any objection to it being known that I had drawn them. I pointedly enjoined that it should not. Whether he had unguardedly intimated before to any one I know not, but I afterwards observed in the papers repeated imputations of them to me, on which, as has been my practice on all occasions of imputation, I have observed entire silence. The question, indeed, has never before been put to me, nor should I answer it to any other than yourself, seeing no good end to be proposed by it, and the desire of tranquillity inducing with me a wish to be withdrawn from public notice. Your father's zeal and talents were too well known to desire any additional distinction from the penning these resolutions. That circumstance surely was of far less merit than the proposing and carrying them through the legislature of his state. The only fact in this statement on which my memory is not distinct, is the time and occasion of the consultation with your father and Mr. Nicholas. It took place here I know, but whether any other person was present or commu-

nicated with is my doubt. I think Mr. Madison was either with us or consulted, but my memory is uncertain as to minor details. I fear, dear sir, we are now in such another crisis, with this difference only, that the judiciary branch is alone and single-handed in the present assaults on the Constitution; but its assaults are more sure and deadly, as from an agent seemingly passive and unassuming. May you and your contemporaries meet them with the same determination and effect as your father and his did the "alien and sedition" laws, and preserve inviolate a constitution which, cherished in all its chastity and purity, will prove in the end a blessing to all the nations of the earth. With these prayers, accept those for your own happiness and prosperity.

TH. JEFFERSON.

This letter is now among the Breckinridge papers in the possession of Hon. Wm. C. P. Breckinridge of Lexington, Kentucky. It is written upon a single sheet, folded, and bears upon the outside the address, "J. Cabell Breckinridge, Frankfort, Kentucky," together with Mr. Jefferson's "frank" and the Charlottesville post-mark; and on the reverse side may still be seen the traces of the wafer which was used to seal it. It is written throughout in Mr. Jefferson's well known and characteristic hand. From this, the original letter, the foregoing copy was made. In the Jefferson papers in the Department of State at Washington a copy of this letter is preserved. It was originally without caption. A later hand with rash assumption

added a caption based upon conjecture: "to —— Nicholas, Esq.," which was followed in the printed editions of Jefferson's works. Who the editor was who thus drew upon the resources of the higher criticism is not certainly known, but the reason for the error is apparent. To one who was acquainted with the intimate connection of the Nicholases with the affairs of Kentucky in '98 and '99, and who had in close juxtaposition to this letter a number of letters to W. C. Nicholas on the general subject,[1] the inference that "your father" was George Nicholas, and that this letter had been addressed to one of his sons might have appeared little less than certain. Unless very conversant with the history of the movement against the alien and sedition laws, he would not at once call to mind the name of Breckinridge; for John Breckinridge had been dead many years, and his once famous name was almost forgotten. The facts in the case show beyond a shadow of a doubt that the letter was addressed to J. Cabell Breckinridge, but this was at one time a matter of some doubt. Therefore the "—— Nicholas, Esq." caption must have sprung from pure conjecture.[2]

Though, like many other things founded on fancy and not on fact, the editor's conclusion was wrong, that did not prevent its gaining credence, even Mr. Madison being misled by it in later

[1] See the order of these letters in Jefferson's published works.

[2] *The Nation*, May 5, 1887, article by Miss Sarah Nicholas Randolph: "New Light on the Resolutions of 1798."

years. But the most remarkable fact connected with this error is that some of the descendants of George Nicholas, being themselves persuaded by the apparent evidence offered by Mr. Jefferson's printed works, claimed for him the part that was really played by Mr. Breckinridge, in the face of the most convincing proof to the contrary. For it must be remembered that, however much the true state of the case was lost sight of elsewhere, and whatever errors crept into the most reliable histories, in Kentucky it never ceased to be known and remembered that Mr. Breckinridge was the chief mover in this matter. There is no question that the Nicholases were perfectly honest in all that they said and wrote, nor is there any doubt that so long as he lived George Nicholas shared the inmost counsels of the actors in this little drama. But they seem to have acted under a mistaken zeal for what they fancied were the rights of their great and long-deceased kinsman, and upon convictions which, though sincere, were not according to knowledge. It was first claimed that the "—— Nicholas" letter was written to Samuel Smith Nicholas, one of the sons of George Nicholas. This claim was made in an obituary notice of Samuel S. Nicholas, in the Cincinnati *Commoner*,[1] towards the end of 1869. In January, 1870, Judge Richard Hawes, the husband of the youngest daughter of George Nicholas, in a lengthy communication to the same journal,[2] denied that

[1] The Cincinnati *Commoner*, December, 1869.

[2] *Ibid.*, January. 1870. I am indebted to Col. R. T. Durrett for a MS. copy of this letter, as I have been unable to find a file of this journal.

statement, and gave what was then the theory of the Nicholas family upon this point. He asserted that Nelson Nicholas, an elder brother of Samuel S. Nicholas, had been educated by his uncle, Wilson Carey Nicholas ; and that while he was an inmate of his uncle's house, he had heard from him that Jefferson had drawn the great Resolutions ; and that as executor of his father, George Nicholas, he had come into possession of a letter from Mr. Jefferson to his father, enclosing the Resolutions and asking that, as he was not a member of the Kentucky legislature, he would entrust them to some reliable member for presentation to that body. Judge Hawes claimed further that to Nelson Nicholas had been written the "—— Nicholas" letter, and that he (Judge Hawes) had himself seen it. The letters were said to have been lost. The statement that the Nicholas papers contained a letter from Jefferson to George Nicholas, asking him to get some trustworthy member of the legislature to introduce a series of Resolutions enclosed, was also made by Judge Hawes as early as 1833, in a letter to the editors of *The National Intelligencer*, of Washington, D. C.[1]

These claims are exceedingly difficult to deal with. No one can impeach the honesty with which they were made. But the letters have utterly perished, and the remaining evidence appears to discredit the claims, and to suggest that there must be some mistake in Judge Hawes' account.

[1] This letter is now in the possession of Pres. James C. Welling, of Columbian University, Washington, D. C., to whom I am indebted for a copy.

The letters of Mr. Breckinridge and Mr. Jefferson, and the whole chain of events connected with them, the motives and the allusions in them, are all so entirely supported by contemporaneous history, that they seem to put the matter on a sound basis. Judge Hawes' letter, on the other hand, is wanting in accuracy, both on important matters and in details. Nelson Nicholas may have had a copy of the letter to Mr. Breckinridge, which, as it bore on its face no evidence of the person to whom it was addressed, and the address on the back would not unnaturally be omitted, might well have been misleading. If Mr. Jefferson's editor committed this error, Judge Hawes would have far greater excuse for repeating it. The existence of the other letter seems to be even more clearly refuted by the facts hereafter to be detailed. It must ever be regretted that any cause of controversy should have arisen between the descendants of men who loved each other so well, and in life knew no difference of sentiment ; and the misapprehensions which have given rise to the dispute and controversy over these matters, were most unfortunate.

Thus Mr. Jefferson's letter, which it was so confidently believed would forever vindicate Mr. Breckinridge's title to the authorship of the Resolutions of 1798, led incidentally to a controversy which did much towards taking from him the entire credit, both as author and advocate. The statements in this letter in regard to the draughting of the resolutions, moreover, seemed to deny what Mr. Breckinridge's friends had always claimed for

him—namely, that he was the author of the resolutions, and these statements were received by them with great bitterness of spirit, and they maintained, and still maintain, that upon a full investigation of all the facts, it is true, notwithstanding Mr. Jefferson's declarations, that he was the responsible author. The Nicholases, too, have taken issue with the statements of this letter, claiming that it does not do justice to Colonel Wilson Cary Nicholas' part in the movement. Hence a controversy has arisen, compared to which that occasioned by the error of the editor of Mr. Jefferson's works was as nothing. Almost every fact stated by Mr. Jefferson in the letter has been questioned, and almost every position controverted. Mr. Breckinridge's friends have assailed Mr. Jefferson's claim that he wrote the resolutions; the Nicholases have gone further, and have argued[1] that Jefferson's own letters indicate that the matter was brought to his notice, that the project was formed and the plans perfected, by Colonel Nicholas, who only sought the advice and approval of the Vice-President, and have denied that the alleged "conference" ever occurred, upon the ground of certain inferences from their correspondence at the time. There are undoubted lapses of memory in this letter, such as the giving of the date of the letter replied to as Dec. 19th, instead of Nov. 19th, and the anticipation of Mr. Madison's election to the Virginia legislature by a

[1] *The Nation*, May 5 and June 2, 1887. "New Light on the Resolutions of 1798." Miss Randolph, and reply by E. D. Warfield.

year; and these are referred to and dwelt upon as evidences of the feebleness of Mr. Jefferson's memory at the time of writing it. The facts, so far as known, however, do not make a very clear case, either for the one side or the other; but, as they are in themselves interesting and important, they will be set forth in outline before any attempt to state a conclusion is made.

Upon the adjournment of Congress in mid-summer, 1798, the Vice-President returned to Monticello. Mr. Breckinridge, after taking an active part in directing the outcries against the odious acts of Congress late in July and early in August, set out soon after on a visit to his old home in Virginia. The record of his doings, as recorded in his letters that have been preserved, is lamentably small. It is certainly known that he saw John Nicholas and Wilson Cary Nicholas; that he saw Jefferson, with whom he had been on such intimate terms, is hardly open to question, since he was at Charlottesville when Mr. Jefferson was at Monticello. It is not until October that the letters now extant begin to substitute solid facts for the misty forms of the realms of conjecture. The first letter is from Jefferson to W. C. Nicholas, and in it he says: "I entirely approve of the confidence you have reposed in Mr. Breckinridge, as he possesses mine entirely. I had imagined it better these resolutions should have originated with North Carolina, but perhaps the late changes in their representation may indicate some doubt whether they would have passed. In that case it is better they should come from

Kentucky. I understand you intend soon to go as far as Mr. Madison's. You know I have no secrets for him. I wish him, therefore, to be consulted as to these resolutions." The next letter, from W. C. Nicholas to John Breckinridge, bearing date five days later, October 10, 1798, communicates the contents of the foregoing letter, and also some further matter derived from Jefferson in another letter or a personal conference. Says Colonel Nicholas: "I have had a letter from our friend. He approves what I have done. He says you possess his confidence entirely—that he thinks the business had better commence in your State. He regrets that he missed the visit that you and your brother intended him, though he is sensible of the delicacy and motives of the omission. He suggests nothing further upon the subject; indeed, I think that every thing is said that can be in the paper that you have. I shall be impatient to hear from you." The third letter is from Caleb Wallace, a member of the Kentucky legislature, and written from Lexington, Ky., under date of November 5th, to John Breckinridge, at Frankfort, whither he had thus early gone to prepare for the coming campaign. It is evident that the letter to which it is an answer could not have been written later than the early part of October.[2] After congratulating him on his return to Kentucky, Mr. Wallace goes on to say:[3] "The letter which you sent me from Botetourt

[1] *The Nation*, May 5, 1787.
[2] *The Nation*, June 2, 1887.
[3] The Breckinridge papers, MS.

lay in one of my neighbor's houses two or three weeks, so that I did not receive it until a few days ago; so that I have not had time to pay attention to the request made in your letter; indeed, I do not think myself capable of draughting any thing of so great importance. I think that the main points to which the legislature ought to attend are the Alien and the Sedition laws, and the laws respecting raising regulars and volunteers—all of which are certainly unconstitutional in the most dangerous instances; the first affecting the trial by jury, the second the freedom of the press—the two great palladiums of liberty. But I think the last is the most highly dangerous, because if in the present instances the Executive does not abuse the powers with which Congress has invested him, it will become a popular precedent for giving the same powers on some future occasion. I feel great anxiety that the conduct of our legislature should be firm, spirited, and constitutional."

From these letters it appears that the little group mentioned in Mr. Jefferson's letter—himself, Col. W. C. Nicholas, John Breckinridge, and Mr. Madison, were all more or less intimately connected with the plan for introducing a protest against the alien and sedition laws into the Kentucky legislature. It further appears that Mr. Jefferson had at first desired to have the protest come from North Carolina, but had been overruled in this in favor of Kentucky; and on Oct. 5th concedes to the power that overruled him, whatever it was, its wisdom, since the autumnal election returns evidenced a

change of opinion in North Carolina, which rendered it doubtful if the resolutions could be gotten through that legislature. The "entire confidence" in regard to the matter under discussion, moreover, points to an intimate knowledge of each other's views,—to a knowledge, so intimate, indeed, that it could scarcely have sprung from any thing less that a full discussion face to face ; while the allusion to a prevented visit of Mr. Breckinridge's, which at first sight might seem to indicate that he had not seen Mr. Jefferson at all, on reflection seems rather to indicate that "the delicacy and motives for its omission" were nothing else than an adoption of Mr. Jefferson's well known caution, and an unwillingness to appear so frequently at Monticello, lest when he should bring forward the resolutions in November, men should at once recall his frequent visits and connect the Vice-President with the anti-administration action of Kentucky. The visit omitted, too, could only have been of the most formal kind, for, as has already been mentioned, James Breckinridge, the brother of John Breckinridge alluded to, was a strong Federalist, and was destined soon after to lead the opposition to the Virginia Resolutions.

All of these facts and circumstances point so strongly towards a consultation of at least Jefferson, Nicholas, and Breckinridge on the subject of resolutions protesting against the laws of the late Congress, that Mr. Jefferson's testimony that such a consultation took place is powerfully corroborated. The cause of the original abandonment of North

Carolina in favor of Kentucky as the first tourney-field cannot be so well explained, moreover, by any other hypothesis than that after it had taken form Mr. Breckinridge appeared fresh from ardent Kentucky mass-meetings, full of the idea of a legislative protest, and eager to try his youthful prowess in his own State in a cause so enthusiastically popular; and that he carried his point, and won for Kentucky the privilege of opening the first great question of constitutional construction.

It is very hard to see how all this evidence of a consultation is to be set aside in favor of any other theory. It has been sharply assailed, and the evidence for it keenly criticised. A very ingenious theory advanced by Miss Sarah Nicholas Randolph,[1] a descendant of both Col. Nicholas and Mr. Jefferson, suggests that no such meeting ever took place, but that this supposed meeting was the outgrowth in Mr. Jefferson's failing memory of the reminiscences of the meeting which he proposed in his letters of August,[2] 1799, to Colonel Nicholas that they should hold, together with Mr. Madison, with regard to the appropriate action for Kentucky to take in the ensuing autumn session of its legislature. This meeting did not take place, owing to Colonel Nicholas' early departure for Kentucky to settle the affairs of George Nicholas, then recently dead. This theory is far too tenuous. No memory once robust can be thought thus to have confused a supposed and a proposed meeting, when on the former hung the deepest things of statecraft. And

[1] *The Nation*, May 5, 1887. [2] Jefferson's Works, vol. iv.

Mr. Jefferson's memory was robust, in the main, till the end. But even more true is it that, however men may forget the details of any event, the antecedents, the attendant circumstances, the order of events, and the words that were spoken, they hold fast to the event itself. And this consultation was important in itself, and of ever growing importance in its results. The logic of events, no less than the logic of thought, is against this theory, and the laws of evidence, also, allow to Mr. Jefferson's direct evidence on the actual happening of the conference a weight that only a highly probable chain of circumstantial evidence could overcome.

Mr. Jefferson says that Nicholas and Breckinridge pressed him to sketch resolutions to be introduced into the Kentucky legislature, and that he "drew and delivered" them to Mr. Breckinridge. What, then, were the resolutions thus drawn? Were they the ones introduced by Mr. Breckinridge and passed by the legislature of Kentucky? The unnegatived inference is, of course, that they were, but there is reason to believe that they were not.

After Mr. Jefferson's death no copy of the Kentucky Resolutions as passed was found among his papers, which, in view of the extraordinary care he gave to the preservation of important papers, is quite remarkable. But there was found a draught of certain resolutions in some respects very like the Kentucky Resolutions, and in others very dissimilar. "Two copies of these resolutions are preserved

among the manuscripts [of Mr. Jefferson], both in his own handwriting. One is a rough draught, and the other very neatly and carefully prepared."[1] These resolutions have generally been spoken of as the "Jefferson draught," in contradistinction to the Kentucky Resolutions actually adopted, and in order that the two forms may be compared, these resolutions are here reproduced in a foot-note.[2] It will be observed that this draught differs from the true Kentucky Resolutions[3] in a number of

[1] Jefferson's Works. Edition 1856, p. 464, vol. ix. Note by editor.

[3] See page 75, *ante*.

[2] THE JEFFERSON RESOLUTIONS.

1st. *Resolved*, That the several States composing the United States of America are not united on the principle of the unlimited submission to the General Government; but that by a compact under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a General Government for special purposes, delegated to that Government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government, and that whensoever the General Government assumes undelegated powers its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and is an integral party, its co-States forming as to itself the other party; that the Government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

2d. *Resolved*, That the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offences against the laws of nations, and no other crimes whatsover, and it being true as a general principle, and one of the amendments of the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to

minor points in the first seven resolutions, only one or two of these alterations being of any material significance, but in the eighth and ninth resolutions

the States respectively, or the people" ; therefore the act of Congress, passed on the 14th July, 1798, and entitled "An act in addition to the act entitled an act for the punishment of certain crimes against the United States" ; as also the act passed by them on the — day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States," (and all other their acts which assume to create, define, or punish crimes other than those so enumerated in the Constitution,) are altogether void and of no force, and that the power to create, define, and punish such other crimes is reserved, and of right appertains solely and exclusively to the respective States, each within its own territory.

3d. *Resolved*, That it is true as a general principle and is also expressly declared, by one of the amendments to the Constitution, that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, were reserved to the States respectively, or to the people ; and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States, by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States or the people ; that thus was manifested their determination to retain themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated, rather than the use be destroyed ; and thus also they guarded against all abridgment by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same ; as this State, by law passed on the general demand of its citizens, had already protected them from all human restraints or interference, and that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press ;" thereby guarding in the same sentence and under the same words the freedom of religion, of speech, and of the press ; insomuch that whatever violates either, throws down the sanctuary which covers the others,

there is the most radical difference. The eighth in the Jefferson draught is long and declamatory, while the ninth is a short directory clause, providing that

and that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals, that therefore the act of Congress of the United States, passed on the 14th day of July, 1798, entitled "An act in addition to an act entitled an act for the punishment of certain crimes against the United States," which does abridge the freedom of the press, is not law, but is altogether void and of no force.

4th. *Resolved*, That alien friends are under the jurisdiction and protection of the laws of the State wherein they are; that no power over them has been delegated to the United States; nor prohibited to the individual States, distinct from their power over citizens; and it being true as a general principle, and one of the amendments to the Constitution having also declared, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," the act of the Congress of the United Stares, passed on the — day of July, 1798, entitled "An act concerning aliens," which assumes powers over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

5th. *Resolved*, That, in addition to the general principle, as well as the express declaration, that powers not delegated are reserved, another and more special provision, inserted in the Constitution from abundant caution, has declared that "the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808;" that this commonwealth does admit the emigration of alien friends, described as the subjects of the said act concerning aliens; that a provision against prohibiting their migration, is a provision against all acts equivalent thereto, as it would be nugatory; that, to remove them when emigrated, is equivalent to a prohibition of their migration; and is, therefore, contrary to the said provision of the Constitution and void.

6th. *Resolved*, That the imprisonment of a person under the protection of the laws of this commonwealth, on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by the said act, entitled "An act concerning aliens," is contrary to the Constitution, one amendment of which has provided that "no person shall be deprived of liberty without due process of law;" and that,

a committee created by the eighth should hold certain communications and report at the next session of the legislature; while the eighth in the

another having provided that, "in all criminal prosecutions the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defence," the same act, undertaking to authorize the President of the United States to remove a person of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without hearing witnesses in his favor, without defence, without counsel, is contrary to these provisions, also, of the Constitution; is, therefore, not law, but utterly void and of no force; that, transferring the power of judging any person, who is under the protection of the law, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides that "the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices under good behavior"; and that the said act is void for that reason also; and it is further to be noted that, this transfer of judiciary power is to that magistrate of the General Government who already possesses all the executive, and a negative, on all the legislative, powers.

7th. *Resolved*, That the construction applied by the General Government (as is evidenced by sundry of their proceedings) to those parts of the Constitution of the United States, which delegate to Congress a power "To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States, or in any department or offices thereof," goes to the destruction of all the limits prescribed to their power by the Constitution; that words meant by that instrument to be subsidiary only to the execution of limited powers, ought not to be so construed as themselves to give unlimited powers, nor a part to be so taken as to destroy the whole residue of that instrument; that the proceedings of the General Government under color of these articles, will be a fit and necessary subject of revisal

Kentucky Resolutions is a directory clause totally unlike the ninth of the other paper, and the ninth is the eighth of the other much reduced and greatly shorn of its declamation and verbiage.

and correction, at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

8th. *Resolved*, That a Committee of Conference and Correspondence be appointed, who shall have in charge to communicate the preceding resolutions to the legislature of the several States; to assure them that this commonwealth continues in the same esteem for their friendship and union which it has manifested from that moment at which a common danger first suggested a common union; that it considers union, for specified national purposes, and particularly for those specified in their late federal compact, to be friendly to the peace, happiness, and prosperity of all the States; that, faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation; that it does also believe that to take from the States all the powers of self-government and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these States; and that, therefore, this commonwealth is determined, as it doubts not its co-States are, to submit to undelegated, and consequently unlimited powers in no man or body of men, on earth; that in cases of an abuse of the delegated powers, the members of the General Government being chosen by the people, a change by the people would be the constitutional remedy; but where powers are assumed which have not been delegated, a nullification of the act is the right remedy; that every State has a natural right in cases not within the compact (*casus non fœderis*), to nullify of their own authority all assumptions of power by others within their limits; that without this right they would be under the dominion, absolute and unlimited, of whatsoever might exercise this right of judgment for them; that, nevertheless this commonwealth, from motives of regard and respect for its co-States, has wished to communicate with them on the subject; that with them alone it is proper to communicate, they alone being parties to the compact, and solely authorized to judge in the last resort of the powers exercised under it, Congress being not a party, but merely the creature of the compact,

The chief significance of these changes lies in the alteration in the directory clause. The Jefferson draught's ninth resolution is an ordinary directory clause pointing out in what manner the com-

and subject, as to its assumption of power, to the final judgment of those by whom, and for whose use, itself and its powers were all created and modified; that, if the act before specified should stand, these conclusions would flow from them, that the General Government may place any act they think proper on the list of crimes, and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them; that they may transfer its cognizance to the President, or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transactions; that a very numerous and valuable description of the inhabitants of these States being, by this precedent, reduced as outlaws to the absolute dominion of one man, and the barrier of the Constitution thus swept away for us all, no rampart now remains against the passions, and the power of a majority in Congress to protect from a like exportation, or other more grievous punishment, the minority of the same body, the legislatures, judges, governors, and counsellors of the States, nor their other peaceable inhabitants, who may venture to reclaim the constitutional rights and liberties of the States and people, or who for other causes, good or bad, may be obnoxious to the views, or marked by the suspicion of the President or be thought dangerous to his or their elections, or other interests, public or personal; that the friendless alien has indeed been selected as the safest subject of a first experiment, but the citizen will soon follow; rather, has already followed; for already has a sedition act marked him as its prey; that these and successive acts of the same character, unless arrested at the threshold, necessarily drive these States into revolution and blood, and will furnish new calumnies against republican governments, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron; that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights; that confidence is everywhere the parent of despotism. Free government is founded in jealousy, and not in confidence; it is jealousy, and not confidence, which prescribes limited constitutions, to bind down those whom we are obliged to trust

mittee appointed in the preceding resolution should proceed. The Kentucky Resolutions moving up the short resolution to the eighth place make it merely an order for the transmission of the Resolutions to the Congressmen of the State, with instructions to press for a repeal of the "obnoxious acts," while in the ninth, instead of appointing a special committee, they authorize the governor to communicate the Resolutions to the other legislatures. In view of the fact that there was serious doubt among the Virginia statesmen whether the power to act in the premises was embraced in the ordinary powers

with power; that our Constitution has accordingly fixed the limits to which, and no further, our confidence may go. And let the honest advocate of confidence read the Alien and Sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits. Let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on our President, and the President of our choice has assented to and accepted, over the friendly strangers to whom the mild spirit of our country and its laws had pledged hospitality and protection; that the men of our choice have more respected the bare suspicions of the President, than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice; in questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution; that this commonwealth does, therefore, call on its co-States for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes hereinbefore specified; plainly declaring whether these acts are, or are not, authorized by the Federal compact.

And it doubts not that their sense will be so enounced as to prove their attachment unaltered to limited government, whether general or particular; and that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked in a common bottom with their own; that they will concur with this commonwealth in considering the said acts as so palpably against the Constitution as to amount

of the State, or was extraordinary, and to be regarded only as lodged in a "sovereign convention," such as originally adopted the Constitution, or could be somehow found in a somewhat ill-defined middle ground, such as the Jefferson draught seems to have been intended to occupy, this change becomes somewhat important. Mr. Madison had very grave doubts upon this subject, and freely expressed them. Mr. Breckinridge, however, had no such doubts, but was decided in his belief that the regular constituted authorities of the State were adequate to the emergency. Hence a change of this

to an undisguised declaration that that compact is not meant to be the measure of the powers of the General Government; but that it will proceed in the exercise over these States of all powers whatsoever; that they will view this as seizing the rights of the States, and consolidating them in the hands of the general government, with a power assumed to bind the States (not merely in the cases made federal [*casus fœderis*], but in all cases whatsoever), by laws made, not with their consent, but by others against their consent; that this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will and not from our authority; and that the co-States recurring to their natural right, in cases not made federal, will concur in declaring these acts void and of no force, and will each take measures of its own for providing that neither these acts, nor any others of the general government, not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories.

9th. *Resolved*, That the said committee be authorized to communicate, by writing or personal conferences, at any times or places whatever, with any person or persons who may be appointed by any one or more of the co-States to correspond or confer with them; and that they lay their proceedings before the next session of assembly.

RICHMOND, March 21, 1832.

I have carefully compared this copy with the MSS. of these resolutions in the handwriting of Thomas Jefferson, and find it a correct and full copy.

TH. JEFFERSON RANDOLPH.

kind under these circumstances might well have had some deeper significance than a mere ordering of the resolutions ; for if it was intended that this clause should be a mere direction for effectuating the provisions of the instrument, it was properly the last resolution ; but if the draughtsman intended to assert a principle and embody a point of political doctrine in it, then the logical sequence demanded that it should precede the declamatory clause, which thereupon became the final resolve both logically and locally. Mr. Madison saw this, and adopted the former order, and declared his objection to the latter. More notable, perhaps, but really less significant, is the omission out of the long declamatory resolution of the clauses in which the word "nullification" occurred. If in dropping these clauses any actual change of meaning had thereby been effected this would have been a most momentous alteration ; but as will be shown in the next chapter, though thereby verbally omitted, every expression necessary to convey any idea at that day included in the word nullification had already been introduced into the paper by equivalent words and phrases.

Two questions naturally suggest themselves ; for what purpose, and by whom, were the changes made ? In the first place, there is no known reason which could have dictated these changes, unless the preference on the part of Mr. Breckinridge for action by the ordinary State authorities, instead of an extraordinary committee, be such a reason. If made by him, they showed a freedom on his part,

which, coupled with his very late request to Caleb Wallace to "draw something," referred to in the letter quoted above[1] from Wallace to Breckinridge, would seem to indicate a very independent attitude on the part of that gentleman towards the resolutions as first drawn. To advance, then, to the question of who made the alterations, while it must be freely admitted that there is no direct evidence to be procured, the circumstantial evidence would seem to indicate that having consulted with the Virginia party-leaders Mr. Breckinridge brought back to Kentucky the Jefferson draught, and after further consideration, perhaps, after further consultation, for it has already been seen that he was on the field at Frankfort some time before the legislature met, he modified and re-ordered the resolutions according to his own best judgment, and in that form presented them to the House of Representatives.

If this view be correct, and Mr. Breckinridge, after diligent preparation and after procuring various opinions from leading Republicans on the action to be taken, finally made use of a draught drawn probably by Mr. Jefferson, after consultation with Col. Nicholas and himself, as the basis of the resolutions introduced by him into the Kentucky legislature of 1798, his part would have been so dominant and so independent, that it would have been no exaggeration of his part for him to claim, or to acquiesce in the claims made so constantly for him, that he was the author of the resolves. Such

[1] *Ante*, page 147.

claims would have rested on a solid basis, and would not in any wise have run counter to that high sense of honor which he so rightly valued, and for which he was so deeply respected. This would be doubly true, if, having received aid from Mr. Jefferson only among others, and that under a strict injunction of secrecy, he had not disclosed the comparatively minor part played by Mr. Jefferson in the affair. On the other hand, it is somewhat hard to reconcile the idea advanced by Mr. Jefferson's letter with the known character of Mr. Breckinridge. Such a one might well have consented to bear the odium and abuse that came from the majority of the States for his chief, but it is difficult to believe that he could have sat in silence under the praise of his own State and of his comrades in the Republican ranks, and the adulation that was not uncommon elsewhere, when Jefferson became the beloved leader of a large part of the country.

It is well to remark in this connection his independence of Mr. Jefferson, illustrated in his letter concerning the action of the following year. There he relates with the simplest and most straightforward manner his intention of disregarding the advice, conveyed through Colonel Wilson Cary Nicholas, to reassert the principles enunciated in the Resolutions of '98; and he goes on to say that, moved not by this advice, but by a fear lest silence might be misconstrued into a change of sentiment, the legislature had finally decided to take action. This is thoroughly in accordance with his natural attitude, an even more decided

exhibition of which he gave during his service in the United States Senate, when he resisted the President's desire—a desire which his correspondence shows haunted Mr. Jefferson's mind for a long time, and which he very freely and anxiously spoke of—to have an amendment to the Constitution sanctioning the acquisition of Louisiana introduced into Congress.

The controversy over the authorship of these resolutions owed its great interest less to its historical than to its political bearings. The relation to the nullification movement, and the efforts of the party of nullification to fix the authorship on Mr. Jefferson, in its motives and results falls more properly in the next chapter. It is proper at this place, however, to point out this fact, and that the sharpness and continuance of the controversy was largely due to the desire to make the nullification of history a part of the Jeffersonian policy of democracy in the United States. The problem has lost much of this, to a certain extent, adventitious interest, but as a historical problem it is yet among the most attractive to the student of American history. The evidence is probably now all in; the conclusion from that evidence alone remains to be made. As to that, men will differ, though it will, perhaps, not be far wrong if made in somewhat the following form:

John Breckinridge was the responsible author of the Kentucky Resolutions of 1798. He formed the design of submitting such a series of resolutions to the Kentucky legislature, and sought and received

assistance in the preparation of a suitable draught from various persons, but especially from Thomas Jefferson, who had independently conceived a similar design with regard to North Carolina, and probably also Virginia. At a conference at Monticello, Mr. Breckinridge, Mr. Jefferson, and Colonel Nicholas outlined the policy to be pursued, and Mr. Jefferson, at the request of his companions, embodied it in a draught, which passed into Mr. Breckinridge's hands. This draught he made the basis of the paper he offered in the legislature, but he subjected it to a searching revision, in the course of which it was altered and modified in important respects, and to a very marked extent. All this was done upon his sole responsibility, and the document was offered as his, and, after a few verbal amendments, passed under his sponsorship. The sentiments expressed were the common property of the whole party, similar utterances having proceeded from many informal assemblies, and the general course pursued was generally recommended in both Virginia and Kentucky; but the execution of the plan in all its parts was in Mr. Breckinridge's hands, and though he used a draught largely composed by Mr. Jefferson, he used it as a private document, suggestive rather than final, and made alterations in it of so radical a nature as to show that he did not regard himself as a mere conduit, by which Mr. Jefferson was to have access to the Kentucky legislature, and that it did not occur to him that Mr. Jefferson so regarded him. In short, he was the master workman. Mr. Breckinridge was not

then, the absolute, sole author of the Resolutions as a paper. Nor, on the other hand, was Mr. Jefferson. Nor, in the same sense, is the sculptor who moulds the clay, and puts the finishing touches on the marble, the sole maker of the statue: nevertheless, the marble-cutters who follow his directions are little more than mechanical appliances for reaching the artist's end. The design, and the finishing and perfecting, are more important than the technical skill that is so essential to success. Mr. Jefferson was the greatest master of his day in framing a state paper, and it does not detract from Mr. Breckinridge's judgment that, having formed the plan of the campaign of 1798 in Kentucky, he sought this great craftsman's aid, and used his splendid powers in reaching his goal. And it speaks great things for his independence and self-confidence, that, having such a piece of work, he used such freedom in changing it to suit his own views and the observed wants of Kentucky.

VII.

THE DOCTRINES AND EFFECTS OF THE RESOLUTIONS.

THE Kentucky Resolutions of 1798 were of the nature of a political manifesto, and as such incurred a danger which frequently attaches to such fulminations. They did not contemplate immediate action, and so wanted that restraint which the very nature of the case imposes upon all declarations which are intended to be acted on at once, or to become a rule of conduct. While they were meant to express the sentiments of the Kentucky people, they were also intended to invite coöperation and gauge the political feeling throughout the country. These circumstances did not invite a calm and equable statement of an exact and well-defined policy, nor a strict limitation of every expression to the measure of action for which the declarants were prepared. On the contrary every circumstance seems to show that they were tempted to go very far in bold declarations which they trusted they might never have to redeem in deeds. Thus their platform, for it was very like a party platform, naturally tended to present a maximum policy, and to declare a willingness to go to the

greatest length to which they could possibly be driven. In adopting this line of action the desired result was probably attained,—for it is not possible to believe that they then expected to have to resort to the extreme measures threatened ; but they left a dangerous inheritance to posterity. For, as the first great party utterance, it was only natural that these resolutions should become an authoritative formula of party faith ; and being generalizations open, in many points, to widely different constructions, so soon as profession began to turn into practice they provoked dissensions, and like all radical professions of faith, dissensions produced parties ready to go any length and give any proof of their orthodoxy, however extreme. The extreme party under a document itself setting forth a maximum policy would needs be a thing to contemplate with anxiety.

The resolutions were intended to be first of all a protest against what was regarded by their authors as encroachments upon the rights of the States. Proceeding from this point, they affected to determine the relations of the States to the national Union, and then to declare what procedure was proper in the premises. But in doing this, it was found necessary to say something more than the same body would have said in laying down the relations of the State to individuals within its bounds, and prescribing the penalties for violating those relations. It did not speak with judicial finality, nor with the calm force of authority, but, its end and aim being agitation, the Kentucky

legislature spoke rhetorically, declaring in heightened metaphors the facts that would have stirred up few to listen if couched in simple language; and in proposing the remedies for the past and the preventives for the future, it launched into bold invective and grave menace. The sister States still heard with cold hearts, and the same kind of utterance was indulged in the following year in the "solemn protest" of the resolutions of 1799. They did not put their words into action, but waited. The tide was already upon the turn; in 1801, Mr. Jefferson became President, Mr. Madison Secretary of State, Mr. Breckinridge Senator in Congress, and, with a Democratic adminstration and Congress, there was no need of further act or declaration. They sat down in peace and power and, pointing to the declarations of 1798, pronounced them the true repository of the principles of their party, and left it to a younger generation to try what could be made of them in actual practice. It would doubtless have been far happier for the country if they could have been tried and tested at once by practical experiments, as the principles of the Federalists were triumphantly proved in the first years of our national life. But they were to be handed down only as the rallying cry in the gathering for a great and notable triumph.

The victory of Jeffersonian Democracy in 1800 was complete and final, and the new century witnessed a change of régime of the most radical character. In very many respects there has been

no return to the old order of things, and probably can never be. The old Federalist party had many fine old-fashioned notions which were a good deal tinged with aristocratic memories of the colonial days, and which were forwarded by the natural nobility of Washington and the taste for show that amounted to a foible in Adams. Indeed, although the country generally was feeling after the "democratic simplicity" which Jefferson introduced, it was a new thing, and they did not know exactly how it was to be attained, without sacrificing the dignity of the government. The new president broke the spell when he rode to the Congress-house and tied his horse to the fence and went in. Thenceforth it was the essence, not the semblance, of authority, that was all powerful. The new order of things exercised a great spell over the populace, and the Federal party melted away and left the field more and more to the new party, till in 1816, when Mr. Monroe was chosen to the chief magistracy, there was practically no opposition.

It is the experience of many centuries that the royal minister naturally seeks to exalt the prerogative of the crown, and the leader of the administration to strengthen the hands of government. None could expect a party in power to be instant, in season and out of season, to curb its own authority. Hence it was that, when Mr. Jefferson and his followers found the control of affairs in their hands, they grew far less jealous of the "overgrown central government"; and while they in some measure pruned

away growths that they were in a sense pledged to remove, they, nevertheless, fostered and grafted in others which hardly harmonized with their policy of the old days of opposition. The task of constitutional construction was naturally a difficult one, and even under the teaching of the Resolutions of '98 there was room for differences of opinion. No one could set up an exact standard. There were few who dared attempt to exclude certain plain and obvious powers, which were only given to the central government by implication from the Constitution. The great controversy lay as to where the limit of implication was to be set. The same man might well draw his bounds differently at different times, and a party could hardly be expected to observe entire consistency on such a point. Hence it was that the Republican or Democratic party shifted its ground on many occasions.

The first testing of the principles of '98 by the Jeffersonians that had any importance, occurred in 1803 in connection with the purchase of Louisiana. That measure was extremely popular, and there was no question that the majority of the people were eager to give their sanction to it. The future of the new West was beginning to dawn on the minds of many men, and the opening of the way to the Gulf and of the great country beyond the Mississippi to be an important object. But the President was seriously in doubt if, under the Constitution, there was any power to acquire territory. The unhappy remnant of the noble old Federalist party, torn by internal dissensions, broken by reverses,

and fast becoming little and narrow—a faction rather than a party—opposed the ratification of the purchase. With his usual caution, Mr. Jefferson sought the opinion of his principal followers. Three letters upon this subject may be read in his published works written to Mr. Madison, Mr. Lincoln, and Mr. Breckinridge, respectively, in the month of August, 1803. In his letters to Mr. Madison and Mr. Lincoln he proposes an amendment to the Constitution, authorizing the acquisition of Louisiana and the prospective addition of Florida also. He again wrote to Mr. Breckinridge on the 13th of August a letter which has never been published, and it was probably in this letter that he enclosed a draught in its simplest form of what he thought necessary to be proposed to Congress at the next session. It is as follows :

Resolved, By the Senate and House of Representatives of the United States, both Houses concurring, that the following amendment to the Constitution of the United States be proposed to the legislatures of the several States, which, when ratified by three fourths of the said legislatures, shall be valid to all intents and purposes as a part of the said Constitution : Louisiana, as ceded by France to the United States, is made part of the United States.

We have already seen that the great advocate of the Resolutions of '98 differed from his leader on this subject. He was ready to infer this much, however narrow he thought the bounds of constitutional inferences should be drawn. Perhaps the practical party-leader became uppermost in him at

this time, and he feared that if his party committed itself to the policy of procuring an amendment, it would lose Louisiana. It required a two-thirds vote to pass such a bill, and the Federalists had a very active remnant still in the field. The result showed that this would have been a real danger. For when the treaty came up for ratification in the Senate, only one Federalist, General Dayton, voted for it. Under whatever pressure or inducement he formed his opinion, Mr. Breckinridge was firm in the conviction that no special authority was necessary in the premises, and though pressed to introduce some measure into the Senate, steadily declined and opposed the policy with such success that the project was abandoned, and the President was at last content with an act authorizing him to occupy and temporarily govern the new territory. This is a strange and instructive commentary on the fallibility of human judgment. These men certainly were in the fullest sympathy five years before, and affected to lay down the limits of motion under just such conditions; and yet, in the first test, so imperfect was the rule of conduct that, both adhering to it, they were found in diametrically opposite positions. Is it any wonder that in the hour of fiercest conflict those who equally acknowledged the authority of the Kentucky Resolutions, should have differed no less radically?

But it was not long before an even more singular contrast was to be exhibited to the world, in this connection. The eagerness of the West and South forced Mr. Madison to give his sanction to the

war of 1812. The measures preceding the war, the non-intercourse act, the embargo, and the war itself, weighed fearfully on commercial New England. There, too, the last broken remains of Federalism languished in a hopeless, and therefore bitter, opposition. The burden laid upon them at last seemed greater than they could bear, and in 1814 a convention of delegates from the New England States met at Hartford, Connecticut, agreeable to the call of the Massachusetts legislature. The committee which recommended the calling of this convention, spoke with much vigor in its report, and declared that, "when the national compact is violated, and the citizens of the State are oppressed by cruel and unauthorized law, this legislature is bound to interpose its power and wrest from the oppressor his victim."[1] Twenty-six delegates came together and debated the situation *pro* and *con* behind closed doors, very little to their own satisfaction and greatly to the alarm of the country, and especially of the President. The result was a report which discouraged precipitation or any immediate action, and, while it firmly asserted the right of a State to resist oppression, declared that, in the opinion of the convention, the time for such action had not come. One paragraph, which is characteristic of the whole report, is particularly worth quoting. It declares:

"In case of deliberate, dangerous, and palpable

[1] For very full reports of the antecedent legislative action and the proceedings of the Hartford convention, see *Niles' Register*, 1813–1814.

infraction of the Constitution affecting the sovereignty of the State and liberties of the people, it is not only the right but the duty of such a State to interpose its authority for their protection in the manner best calculated to secure the end."

Mr. Madison, at that time President, was harassed and almost in despair at the dark outlook on every side. In his eyes the Hartford convention was the gathering of a body of arch-conspirators. Restless and uneasy, he watched it with armed men, and to his ears these words came like the wicked voice of treason. It may well be inquired if he remembered that it was he who, sixteen years before, had penned the third resolution of the Virginia series, declaring :

"That in case of a deliberate, palpable, and dangerous exercise of powers not granted by the compact, the States who are parties thereto have a right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them."

The one is scarcely more than an echo of the other, and the parallel is heightened by the fact that the sentiment of the seventh resolution, expressing attachment to the Union, which Mr. Madison so constantly insisted in later life was always to be taken in connection with the third resolution, has its counterpart in the report of this convention.

In one material respect the declarations of this convention differed from those of 1798. The measures of redress proposed were very different. In the former case an appeal had been made to the

sister States, and then to Congress. No sooner was it apparent that both of these appeals had failed, than it was clear that the sentiment of the people was with those making the appeal, and that they were on the eve of a political revolution. Now, however, the States and Congress were plainly against those who made their plaint,—hopelessly and irredeemably so. Their cries had long gone up in vain. Some new course was, therefore, requisite. The course adopted consisted in proposing certain amendments to the Constitution which, it was fancied, would secure the rights which were asserted. To this proposition they sought to give force by a half-spoken threat of extreme measures.

The remarkable thing in the history of this movement is not so much the adoption under like pressure of the principles of the Resolutions of 1798 and the use of almost identical language, both in form and substance, but the circumstance that not once in this report is the example or authority of those resolutions cited or in any way referred to. To have thrown themselves openly upon the doctrines of those famous papers would have won respectful attention and perhaps success for them ; for the administration would not have dared to repudiate them, even had it wished to. The principle would have been at once consented to, and the application alone questioned. But this they would not do. They preferred to stand on the principles themselves, or, at least, on the necessity of the case. Nor is the reason far to seek. It has already been said that these men were mainly representatives of

the old Federalist party. Though that party had outlived its mission, and from being the repository of many noble principles and the champion of many honorable measures, had sunk through too great greed of power into a body of wranglers and obstructionists, it still had some able members who retained a living hold on the principles that had once been its glory, and were bound to its poor skeleton by the splendors of its traditions. The one sentiment that still survived with unimpaired vigor and pervaded the bosom of every member of the faction, was a hatred of the Republican party, of all its leaders and all its measures. It found itself now professing that party's old principles, but it was unwilling to acknowledge the fountain whence they sprang. Nothing would have drawn them to such a profession. The Republicans also were somewhat backward in seeing the resemblance. They, at least, saw nothing unconstitutional in the laws now complained of, nor could they discover any analogy between 1798 and 1814. Thus a partisan spirit blinded the eyes of both parties, and while the one shrank from drawing a precedent from the promulgations of the other, that other looked with unmasked condemnation on the reassertion in almost identical language of their great fundamental party platform.

There was a happier issue out of their troubles near at hand than the New England Federalists dared even to hope for. The American Commissioners obtained far better terms than the United States had any just cause to expect, and concluded a

treaty with Great Britain, the provisions of which in some important points were quite indefinite ; and these were made to assume a favorable aspect from the timely victory at New Orleans, which closed the war of 1812, being gained, indeed, after the treaty was agreed to. The result was a very general satisfaction with the administration ; and the hands of government, which had for a time been weighed down by the travail of war, were now steadily strengthened and raised up. Monroe came into the presidency with what has been called the "era of good feeling," and for a time Jeffersonian Democracy was almost the only political creed publicly professed. The evil of too unlimited a prosperity soon showed itself. Many measures were carried through the houses of Congress that would not have been considered by the same party at an earlier date at all constitutional. Even Mr. Madison had difficulties in applying the doctrines of 1798 to practical legislation. He vetoed the bills for internal improvements, but gave his consent to the bank ; while others, perhaps equally entitled to represent the spirit of his party, supported the measures directed towards internal development, but bitterly condemned the United States Bank. As the whole power and patronage became more and more fixed in the one party, the uncertainty of its policy steadily increased. Natural tendencies towards disruption began to show themselves as time passed, and personal difficulties between the leaders, especially on the election of John Quincy Adams to the Presidency, afforded occasion for the entrance of the wedge of separation.

And, indeed, all men cannot be orthodox. The infirmity of human nature is too great for men to hold any faith, religious, political, or of what kind soever, in perfect purity and accord for any great length of time. The party of Jefferson, Madison, and Monroe, might be all or nearly all the people. But, even if that were so, it would be impossible to persuade them of it. They might hold, each man for himself, the old principles pure, but there was yet no consensus of opinion. Some of the sacred flames had died away upon the altars. But every man thought it was his neighbor's and not his own. There was the oracle, spoken plainly in all men's ears in that year of blessed memory, 1798, but none could say for another what high priest should interpret the mystic words. The division of opinion began while the whole country still shared the veneration for Mr. Jefferson. And it was some time before any party arose that was willing to cite the example of the Federalists. At first it was an internecine war, and each faction looked upon every other as schismatic.

The first great strain put upon the doctrines of 1798 in the Democratic party itself, was the first-fruit of the South Carolina form of the doctrine of Nullification, as developed in the tariff controversy of 1829 and the succeeding years. President Jackson, Mr. Calhoun, and Mr. Clay, well represented at that time three phases of political thought; and yet they all were prepared to stand upon the Kentucky Resolutions. When, in his great debate upon the Foote resolutions, in the Senate of the

United States, Mr. Hayne planted himself and South Carolinia Nullification on those resolutions, the Whigs and Administration Democrats were not backward in assailing this position. And so the conflict deepened. The tariff question was settled, apparently to the discomfiture of the Nullificationists, yet not without concessions to them; but after it, came the great slavery issue to try men's souls. In this struggle the principles of '98 were the shuttlecock of parties. Men could not agree upon their final and undeniable meaning; and, indeed, it must always be a problem open to doubt, and every solution must be full of saving clauses. Some attempt at analysis is however essential to the completeness of this sketch, and if the distinction between theoretical and practical politics is kept constantly in mind, some light may be thrown upon the subject.

The Kentucky Resolutions enunciate with admirable distinctness the theory that the Union is not a National so much as a Federal Union; that it is a pact, and the States alone are parties to that pact; "that to this compact each State acceded as a State, and is an integral party, its co-States forming as to itself the other party," and that by this compact they created a general government for special purposes only. The inferences from this fundamental position are then pressed very far; great force is put forth to accentuate the amendment which provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," and, by in-

ferential arguments, to restrict the exercise of any and all implied powers. It is distinctly declared that there is no common judge between the parties; but "each party has an equal right to judge for itself as well of infractions as of the mode and measure of redress."

The last sentence contains the pith of the problem. What exactly does this mean? How far is this to be pushed? If it is to be taken as meaning that upon any grievance, real or fancied, against the general government, or against any individual State, a State has the indefeasible right to proceed to act in a sovereign capacity as it shall see fit, or that instantly upon the assumption of this right to judge it may remain, or cease to be, a member of the federation as it shall elect, then here is the fully-fledged doctrine of States' rights. Each State has the "right to judge" "of infractions," and also "of the mode and measure of redress." This sentence taken alone would seem to give to the Union no firmer tie than that of any league of States for whatever purposes united, and to depend for permanence solely on the forbearance of the individual States.

The spirit of this single sentence is not carried through the whole instrument. The ninth resolution indicates a tendency to depend, not on the will of any one State in such an issue as was then before the country, but upon the determination of the States. The plural may or may not be significant. Two or three, or a dozen, or a majority of the States, would not alter the case. Any number

less than the constitutional two thirds, and that number acting in any other wise than under the prescribed course of the Constitution, and by any other means than by an amendment, would still leave the State action in the same category. But the eighth section is an appeal for a repeal of the laws complained of. Was this section an exercise of self-restraint, expedient but not compulsory; or was it the means the Resolutions meant to prescribe as appropriate? The two considerations of what was regarded as justifiable and what was regarded as expedient would naturally be blended in such a document, and this renders any absolute decision on one or two points impossible. For example, the States denied the appeal to them, and the Congress the appeal to it. Did the statesman who drew this paper, and those who acted with him, consider that this closed the matter, and that the protest of the next year was the only course they could then pursue? Or did they hold that they could have refused to permit the obnoxious laws to be executed in their States? or have regarded the act as a breach of their compact, and retired from the federation, and only refrained from doing so out of a spirit of forbearance, and for the sake of expediency, seeing the political revolution drawing near? Mr. Breckinridge's speech does not illumine the subject greatly, although it must be remarked that States, not a State, still stand for the acting power. An instructive, but not a convincing or deciding side light, is thrown upon the subject by a comparison of the two draughts. The Jefferson draught con-

tained in its eighth resolve two clauses which were omitted by Mr. Breckinridge, both of which carried out the spirit of the first resolution, and specified the power as a right of the individual State in a way quite without parallel in the resolutions as adopted. The first of these is as follows: "That in cases of an abuse of the delegated powers the members of the general government being chosen by the people, a change by the people would be the constitutional remedy; but where powers are assumed which have not been delegated, a nullification of the act is the right remedy; that every State has a natural right in cases not within the compact (*casus non fœderis*) to nullify of their own authority all assumptions of power by others within their limits." And the second is this, "Will each take measures of its own for providing that neither these acts nor any others of the general government not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories."

It is impossible to escape the conclusion that the Jefferson draught, containing these statements in the eighth resolve in connection with the statements of the first resolve, lays down a doctrine that needs only to be acted on by bold and uncompromising men to be all that the advocates of nullification in South Carolina held that it was. Had the Jefferson draught been the one adopted in Kentucky, and had there arisen severe prosecutions under the Sedition law, there is little reason to doubt that under the temper of the time, the whole programme of the opponents of the national government might have

been attempted at once. The effect then might easily have been final and fatal to the young State. The Jefferson draught, so far from sustaining the position once occupied with regard to it by many Jeffersonians, who were misled by the error in the copy of the Kentucky Resolutions published by Elliot in his "Debates," which omits the clause, "its co-States being as to itself the other party," out of the first resolution, and by a mistaken notion that the Breckinridge Resolutions were identical with the Jefferson draught, and that Jefferson never wrote the word nullification, in fact, goes further than the Resolutions, as adopted, and specifies more plainly the right of a single State to obstruct national legislation, than did the Resolutions themselves; reaching this result more completely than did the Resolutions of 1798 and 1799 combined, for the famous nullification sentence of 1799 retains the plural form of 1798, and is in these words: "That the several[1] States who formed that instrument being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification by those sovereignties of all unauthorized acts done under color of that instrument is the rightful remedy."

In fine Mr. Madison has expressed the most guarded sentiments. Mr. Breckinridge, abandoning the general terms used by Mr. Madison, still holds a somewhat imperfectly defined middle ground, and Mr. Jefferson represents the most advanced type of

[1] This word may, however, be construed to give a disjunctive effect to the whole.

States' rights found in any of the accepted formulas of 1798 and 1799. The difference does not consist in the use of the word nullification, or the substitution for it of some equivalent term, for the circumlocutions do not alter the meaning, and the "interpose for arresting," and other similar terms employed by Mr. Madison, have the same force as the "nullify" of his coadjutors. The difference, if difference there is, lies in the difference in the parties acting, in the *State* or the *States*. Mr. Madison seems to have fairly intended, as he claimed in later life, no action by any number less than a majority of the States.

The action, too, is throughout State action, the cause in jeopardy State sovereignty. This is notable in connection with the fact that in quoting the reservation, "to the States or to the people," of the undelegated powers, no quarrel lies between the nation and the people, but only between the nation and the States. The right of petition, the right of the ballot-box, the right of revolution, was conceded by all. It was not the people who felt attacked, it was the citizens of the States. No effort was, therefore, directed to decide what undelegated powers were reserved to the people and what to the State, and this question is only once remotely touched on, and that by Mr. Madison in a letter, when he expressed a doubt if the people of the State in convention were not the proper party to "interpose" instead of the legislature: in other words, whether the ordinary governmental machinery sufficiently represented the people, or if it was not necessary that the protest should proceed from

the same sovereign assembly which made the compact. None of the draughtsmen regarded the people as capable of acting directly in the premises. They were to act as citizens of the States, and, except by States, no action was possible, the citizen of Kentucky holding the same relation to the nation that a Spaniard once held to the alliance of the Holy League.

How early these views began to take on the later forms a single example will suffice to show. Tucker in his edition of Blackstone's Commentaries, published in 1803, in commenting on the United States government, says: "The Federal government, then, appears to be the organ through which the united republics communicate with foreign nations and with each other. Their submission to its operation is voluntary; its councils, its engagements, its authority are theirs modified and united. Its sovereignty is an emanation from theirs; not a flame in which they have been consumed; not a vortex in which they have been swallowed up; each is still a perfect State,—still sovereign, still independent, and still capable, should the occasion require, to resume the exercise of its functions in the most unlimited extent." [1]

Thus early was the implied doctrine very distinctly declared, and from this time forth a growth of States'-rights principles clustered about the Resolutions of 1798. They were not only the foundation-stone of the Democracy, but just as the party of nullification and secession was a direct outgrowth

[1] Vol. I. App., p. 175.

of that party, so were its doctrines developed out of the principles of this formula and based upon it; but whether logically or illogically deduced therefrom, is a question which has torn the minds and hearts of men in vain in the sphere of practical politics. Whatever conclusion may be arrived at upon that point, it is an historical fact beyond controversion that the Nullifiers never doubted, nor hesitated to affirm that the Kentucky Resolutions contained the germ of all that they professed.

In the controversies that have grown out of the difference of opinion upon this and the kindred questions of interpretation, the student must proceed with caution. There are no calm, judicial, declarations, but every judgment is more or less biased by party spirit. It is no place, therefore, for dogmatizing. The only safe course is plainly to set forth the claims of all who speak with evident candor, and to endeavor to sift out of the great mass of profitless material some little that will serve to instruct, even if it fails to ultimately determine all doubts.

Mr. Madison was the only one of the draughtsmen of the Resolutions who survived long enough to leave his testimony upon the question of what was the view actually intended to be expressed. He speaks with conclusiveness so far as his own action is concerned, and although his words cannot carry with them the same weight as regards his co-workers, they must be admitted to possess great value in determining what were their ideas. Mr. Madison took an intense interest in the nullification contro-

versy of 1830 and the following years, and wrote a mass of comment upon the subject. Much of this is found in his letters written in these years, especially in the very valuable series of letters to N. P. Trist, Joseph Cabell, and Edward Everett; important matter is also contained in a communication published in the *North American Review* and in an article on nullification. In these papers he has expressed his own views very fully and decidedly, and they are of the greatest value for their interpretation of the papers drawn by him in 1798 and 1800.

His position is, that he never contemplated any attempt by a single State to prevent the law of the United States from being put into operation as was being attempted at that time in South Carolina. That in the first place any resistance was conditioned upon an open and palpable violation of the Constitution, that even in such a case the constitutional measures open to the citizens were to be exhausted for their relief and then, if the case was one of the extremest nature, the States were justified in physical resistance, and that this resistance ought to come from the States, not from a State. However, he admits that the same right may be extended to a single State, to a single county in a State, to a single citizen even, in the last resort; but at the same time he says that the proper remedies against "usurpations in which the Supreme Court concur" (it will be noted that this is an extreme case), are "constitutional remedies, such as have been found effectual, particularly in the case of the Alien and Sedition laws, and such as

in all cases will be effectual, while the responsibility of the general government to its constituents continues; remonstrances and instructions; recurring elections and impeachments; amendment of Constitution, as provided by itself."

"Finally, should all the constitutional remedies fail and the usurpations of the general government become so intolerable as absolutely to forbid a longer passive obedience and non-resistance, a resort to the original rights of the parties becomes justifiable, and redress may be sought by shaking off the yoke, as of right might be done by part of an individual State in a like case, or even by a single citizen, could he effect it, if deprived of rights absolutely essential to his safety and happiness." This of course puts the question on the very different ground of the inviolable right of revolution, and is based on considerations totally unlike the foundations of the Resolutions of 1798. His exact position in regard to his own deliverances is clearly laid down in a letter to N. P. Trist, of date February 15, 1830. "It was certainly not the object of the member (Mr. Madison) who prepared the documents in question to assert, nor does the fair import of them, as he believes, assert a right in the parties to the Constitution of the United States *individually* to annul within themselves acts of the Federal government, or to withdraw from the Union." And, in a letter to the same gentleman of date December, 1831, he further says that the utterances of Virginia "do not maintain the right of a single State, as a party to the Constitution, to ar-

rest the execution of a law of the United States, it seems to have been overlooked, that in *every* instance in those proceedings where the *ultimate* right of the States to interpose is alluded to, the *plural* term *States* has been used, the term State, as a single part, being invariably avoided."[1] And in the same letter he denies that the nullification party has any authority in the Virginia Resolutions for their proceedings, and expresses a question as to the fairness of the attempt to foist upon Virginia an intention which she and her people never entertained. These are only a few of the many instances of a sentiment that Mr. Madison frequently made public. He openly avowed that he was hostile to the nullification doctrine and defended himself, his own writings, and his great leader from the assertions that they were the fathers of that doctrine.

It must always be remembered, however, that Mr. Madison was stronger in his proclivities towards a firm national union than any of those concerned in the declarations of 1798. He had originated the plan of the convention at Annapolis, which led to the Philadelphia convention of 1787. In that convention, which drew the Constitution, he had been a friend of a strong Constitution, he had, also, aided in the expositions of the Federalist, preserved the papers of the great convention for posterity, urgently advocated adoption in Virginia, and only under Mr. Jefferson's lead slowly drifted from his moorings and became a leading Republican.

[1] The italics are Mr. Madison's.

The sense of nationality deepened again as years passed and made the country really one, and he loved it with the tender love of a father. It must also be borne in mind that Mr. Madison had not gone to the same length in 1798 as either Mr. Jefferson or Mr. Breckinridge, nor so far in 1800 as Mr. Breckinridge in 1799. Nevertheless he was in the very inmost councils of the party, and knew, as few men could know, just what were the opinions of his comrades. His assertions, therefore, deserved great weight, and received it. The Virginia and the Kentucky legislatures joined in denying the doctrine of nullification, and in reprobating the attempt of the South Carolinians to fasten it upon the emissions of those bodies in 1798 and 1799.

Hence it was under the leadership of no less a person than Madison that the faction of the Democratic party which denied that their great cornerstone contained the heresy imputed to it, entered the lists, and with such avowals from Mr. Madison as they received, it cannot be claimed that they acted inconsistently. The suspicion is easily suggested, that in the one case the Virginia Jeffersonians were actuated by a personal interest that in the other was wanting, and that they acted, therefore, in both cases alike, not out of principle, but from the standpoint of selfish advantage. This may be true and yet throw a false light on their action. Partisanship, when not the child of prejudice, traces its pedigree at no far remove to self-interest. It is not at all uncommon in practical politics to find men professing earnest devotion to

the precedents of a former generation, a devotion usually inherited, while their own situation is constantly driving them to limit and curtail those precedents, sometimes to so great an extent as to rob them of all living force.

From these considerations it is evident that the Virginia and Kentucky Jeffersonian Democrats who were so active in condemning nullification in 1829 and 1830 might have clung to the Resolutions of 1798 under the lead of Mr. Madison with perfect consistency ; nor is it inconceivable that while in a perfectly candid spirit they regarded the crisis of 1798 and 1861 as demanding the most extreme measures, and, under this view, regarded the machinery put in motion as justifiable, they, nevertheless, did not consider the necessities and urgency of the situation in the period of the tariff contest as so extreme, or as warranting the action taken by South Carolina.

There was probably from the beginning an element in the South which was quite ready whenever occasion arose to support the most advanced doctrine of disunion. Doubtless this tendency was common to men throughout the Union whose natural inclinations led them to be impatient of restraint and suspicious of a strong government. That this tendency was more pronounced in the South, was probably due only to local and transitory causes. The opposition to the tariff in South Carolina aroused the more excitable portions of the citizens to resistance of a kind that can hardly be regarded now as appropriate or commensurate to the

grievance. Not at all abashed by the cold reception which their views met with from those from whom they expected sympathy, they persisted in directing local authorities to prevent the revenue officers from performing their duty, and for a time actually seemed on the point of nullifying a law of the general government, a course which nothing but the personality of Andrew Jackson prevented their carrying out. Nor were the leaders of this movement slow in putting themselves on what they believed to be a firm foundation. Promptly and without hesitancy they declared that they stood upon the principles of 1798, and that the resolutions of that year contained ample warrant for their conduct. That this was by no means unfamiliar to many Democrats, as a not impossible stretch of the doctrine, appears from the readiness with which it was acquiesced in by a large number outside of South Carolina, and the eagerness of others to disprove it by arguments often painfully subtle, and by their very refinement showing that it was not in their view to be treated as merely a quixotic claim.

There was, and is, room for doubt whether a complete subscription to all the declarations of the Resolutions of 1798 would not in the last analysis force many to the position occupied by the Nullifiers in the tariff conflict, if the mind confined itself solely to the theoretical study of the instruments themselves. And it is hard to see how the element of bad faith can be introduced into their position so far as their interpretation of the doctrines of the resolutions is concerned.

Practically the nullification measures collapsed at the time, but convinced against their will, the South Carolinians retained their theories, and cultivated and disseminated them. A much more serious conflict was even then looming up in the future. The institution of slavery soon gathered to itself all the teachings of the Nullifiers upon the tariff measures, and the slow revolving years crystallized the half-formed and partially accepted teachings of 1830 into a system. The whole South, jealous of its "peculiar institution," gradually became more or less permeated with the most extreme construction of the Resolutions of '98, and South Carolina once more took the initiative in 1861. In both instances it was claimed that the teaching was plain upon the complete and inalienable sovereignty of the individual States, upon the right of a single State, or of any number, more or less than a majority, indifferently, to nullify a law of the central government, and if upon sufficient pressure, to secede. It may sound like an extreme statement, but as a part of the creed in these cases was that, in case of infractions the individual State was to be "the judge of the infraction as well as of the mode and measure of redress," the final truth is that the teaching extended to declaring that the individual State was at liberty whenever and upon whatever pretext it saw fit to prevent the execution of national laws within its limits or to take itself out of the pact.

For all of this it is claimed that the authority was to be found in the Resolutions of 1798. Nor can it be denied that this claim was made with all can-

dor and with the highest confidence. It was in the teeth of the assertion of Madison and those who shared his views, but as it claimed to stand less on the official relation of its interpreters than on the logic of the case, it claims a right to be considered, and it did not fail in making itself heard and felt.

The two branches of the Democratic party were equally persistent, and split more and more widely as the irrepressible conflict drew nearer and yet more near. Between the two schools there was a gradation through almost every possible shade of opinion. The arbitrament of the sword, perhaps justly regarded as the court of last resort in all questions of practical politics, has apparently determined the extension of the more advanced theory of States' right. But it would be a mistake to think that those convinced against their will are not in a large degree of the same opinion still on the theoretical point. There is no lack of support at the present time rendered to the orthodoxy of both interpretations of the Resolutions, and the difference is not likely ever to be practically reconciled.

So brief a sketch as that attempted in this chapter cannot fail to be hopelessly inadequate to the task it undertakes. The tangled threads of the subject can only be traced by minute and detailed study of a complex and stormy period, and the most painstaking investigator often finds himself at fault, or is baffled by the fierce party spirit which has thrown many a difficulty in the way of a final and triumphant solution of all the questions that are involved. Nevertheless, there are a few

principal threads which may be followed with some certainty, and the clue which they afford is reasonably reliable. It has only been attempted here to follow up such lines, and the results, while not complete and exhaustive, at the same time, it is believed, are not misleading.

In conclusion it is sufficient to call attention to the fact that the Kentucky Resolutions have been one of the most potent factors in American history. Their influence has been deep and far-reaching, bearing ample testimony to the eminent statecraft of which they are the repository. They embody no fleeting party platform, but are the basal principles of one great political school, which will probably continue so long as we remain a nation. Their importance therefore is not to be lightly estimated. For occupying the great place they do in our history, every question connected with them becomes of high interest to the statesman and the political and social philosopher, as well as the historian. And one definite hope may well be expressed, that hereafter, as the conflict of parties grows less intense over the principles of '98, a juster spirit may pervade the comment and criticism upon them, that those who deserve to be honored for their acts in connection with the action of that memorable year may receive their meed of praise with a more equal hand, and that the really important place in the Constitutional History of the United States which the Kentucky Resolutions occupy, may receive the honest recognition of all, without prejudice from partisan influences.

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