# THE SOUTH JUSTIFIED.

## AN ADDRESS

DELIVERED BEFORE

## FRANK CHEATHAM BIVOUAC NO. 1,

OF THE

## Association of Confederate Soldiers

TENNESSEE DIVISION,

SATURDAY, AUGUST 18th, 1888.

BY HON. PETER TURNEY.

NASHVILLE, TENN.:
ALBERT B. TAVEL, STATIONER, PRINTER AND BINDER.
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"The objects of this association being social, historical and benevolent, and its labors being directed to cultivating the ties of friendship between the survivors of the armies and navies of the late Confederate States; to keeping fresh the memories of our comrades who gave up their lives for the cause they deemed right; to the perpetuation of the records of their deeds of heroism; to the collection and disposition, in the manner it deems best, of all materials," etc., we cannot and must not in anywise in the least sympathize with that spirit of seeming apology we sometimes meet. We retract nothing, and believe the cause for which our comrades fell was just; that they and we were not traitors or rebels against the authorized action of that government from which we seceded; otherwise it would be unlawful and immoral to attempt to keep alive and perpetuate the memories of those who fell, or to preserve for history the records of their deeds of heroism. Nothing unpatriotic, immoral, unlawful or treasonable should be the basis of any association. It would be unpardonable in us to perpetuate, by positive activity, that course of ours which would brand us as rebels against law, and teach our children that we have violated morals, order and social and political obligation.

We are proposing to do none of these things. A conviction of right and duty impelled us to enter the service of the Confederate States as soldiers. Our comrades who gave up their lives did so in obedience to love of country and its constitutional foundation. The Confederate States were not and are not responsible, morally, legally or politically, for any drop of blood spilled in the late war between the States. Under the principles

of the Union as it then existed, the right of secession was clear. In support of this right I will say but little else than cite authority. The agitation of the slavery question in its several aspects, with centralization for its great purpose, was a main cause of trouble and separation.

The words of the Constitution were: "*No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.*" * *

Of this clause Judge Story, in delivering the opinion of the Supreme Court in Prigg *v.* Pennsylvania, said: It cannot be doubted that it constituted a fundamental article, without the adoption of which the Union *could not* have been formed." 16 Peters. It must, therefore, of course have been a condition of the Union's continuance.

We will see how this provision of the Constitution was observed and treated by the abolition or free States. Between the years 1810 and 1850, the losses to the South in fugitive slaves amounted to $22,000,000, an annual loss for that period of $550,000. The ratio of loss increased as the slave population increased. To what it amounted at the date of secession I am unable to state just now; the curious however may readily ascertain. The census for 1810 gave a slave population of 1,191,400; that of 1820, 1,538,100; that of 1830, 2,009,030; that of 1840, 2,487,500; that of 1850, 3,204,300; that of 1860, 3,979,700. Estimating the average value at $300.00, the South lost by the emancipation $1,193,910,000.00, exclusive of at least $6,500,000 in fugitives between the years 1850 and 1861.

The claim of the party of coercion that morality justified the infliction of that loss on the South is met and fully answered by their head, President Lincoln, who said in the Hampton Roads conference that "the people of the North were as responsible for slavery as the people of the South." History shows the North to be equally responsible at the least, and, I undertake to say, more so, and I feel sure that I am able to prove it should it ever become necessary.

About the first of May, 1850, the New York State Vigilance

Anti-slavery Committee, of which the famous Gerritt Smith was chairman, held its anniversary meeting in public in the city of New York. I give a single passage from its official report: "The committee have, within the year since the 1st of May, 1849, assisted one hundred and fifty one fugitives (for that, you know, is our business) in escaping from servitude." I cite this as one of many specimens of the respect the anti-slavery people had for constitutional guarantees and protection.

In speaking upon the clause of the Constitution just cited, Mr. Seward, of New York, said in the Senate of the United States, on March 11, 1850: "The law of nations disavows such compacts; the law of nature, written on the hearts and consciences of freemen, repudiates them. I know that there are laws of various sorts which regulate the conduct of men; there are constitutions and statutes, codes mercantile and codes civil; but when we are legislating for States, especially when we are founding States, all these laws must be brought to the standard of the law of God; must be tried by that standard, and must stand or fall by it. To conclude on this point, we are not slave-holders; we cannot, in our judgment, be true Christians or real freemen if we impose on others a chain that we defy all human power to fasten on ourselves." He also said: "Wherein do the strength and security of slavery lie? You answer that they lie in the Constitution of the United States and the Constitutions and laws of the slave-holding States. Not at all. It is in the erroneous sentiments of the American people. Constitutions and laws can no more rise above the virtue of the people than the limpid stream can rise above its spring. Inculcate the love of freedom, and the equal rights of man under the paternal roof; see to it that they are taught in the schools and in the churches; reform your code; extend a cordial welcome to the fugitive who lays his weary limbs at your door and defend him as you would your paternal god; correct your error that slavery has any constitutional guaranty which may not be released and ought not to be relinquished; say to slavery, when it shows its bond and demands the pound of flesh, that if it draws one drop of blood, its life shall pay the forfeit; inculcate that free States can maintain the rights of hospitality and humanity; that executive authority

can forbear to favor slavery." Thus it was urged and attempted to be taught that the Constitution was the embodiment of crime, and oaths to support it of no effect or binding force; that we must regard such obligations as baubles, as things to deceive, as snares to entrap. We were asked to make such doctrines a part of our education and a controlling feature of our religion; to make perjury a pillar of Church and State, and the crime of larceny a commendable virtue. The seeds so sown bore fruit.

Article IV., Section 2, of the United States Constitution ordains: "A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

In two instances, Kent and Fairfield, Governors of Maine, refused to comply with this provision on requisitions by the Governor of Georgia for negro thieves. Governor Seward (afterwards Senator), of New York, made a similar refusal to the same State, saying it was not against the laws of New York to *steal* a negro. He made a similar refusal to Virginia. These Governors were sworn to support the Constitution of the United States, and certainly understood its plain command.

In 1793, while Washington was President, an act was passed to carry out the provision for the return of fugitive slaves. It was adopted unanimously in the Senate, and nearly so in the House. The Federal and State Courts held it to be constitutional, and yet these Governors refused to execute it.

On 7th January, 1861, more than two weeks after South Carolina had passed her ordinance of secession, Mr. Toombs, of Georgia, in a speech in the Senate, said: "The Supreme Court has decided that by the Constitution we have a right to go to the territories and be protected with our property.' Mr. Lincoln says he does not care what the Supreme Court decides, he will turn us out anyhow. He says this in his debate with the honorable Senator from Illinois (Mr. Douglas); I have it before me. He said he would vote against the decision of the Supreme Court." This charge upon Mr. Lincoln was never denied by himself or friends.

Instances of disregard of the Constitution by those sworn to observe it might be readily multiplied; but I only want to make prominent the principles moving the South to its course.

Having seen our rights under and by the Constitution, I will turn attention to that course. The Southern States claimed they were sovereign, having all powers except such as were specially delegated to Congress. They demanded that property in slaves should be entitled to the same protection from the government of the United States, in all its departments everywhere, which the Constitution confers upon it; the power to extend to any other property, provided nothing shall be construed to limit or restrain the right now belonging to every State to prohibit, abolish or establish and protect slavery within its limits; that persons committing crimes against slave property in one State and fleeing to another, shall be delivered up in the same manner as persons committing crimes against other property, and that the laws of the State from which such person fled shall be the test of criminality; that Congress should pass efficient laws for the punishment of all persons, in any of the States, who shall in any manner aid and abet invasion or insurrection in any other State, or commit any other act against the laws of nations tending to disturb the tranquility of the people or government of any other State; that the people of the United States should have an equal right to emigrate to and settle in the present or any future acquired territories with whatever property they might possess and be protected in its peaceable enjoyment until such territory may be admitted into the Union with or without slavery, as she may determine, on an equality with all existing States,—as the Supreme Court had decided, and as the "originally small party" now decides in principle, when in its June platform of 1888 it declares: "The government by Congress of the territories is based upon necessity, only to the end that they become States in the Union; therefore, whenever the conditions of population, material resources, public intelligence and morality are such as to insure a stable government therein, the people of such territories *should be permitted to form for themselves Constitutions on State government, and be admitted into the Union.*" Time and circumstances work wonderful changes. What howls were raised

by that party over such doctrines a few decades back, and now with what deafening cheers it greets them! How many of you, my friends, ever hoped to live to see the day when the party of coercion would not only endorse, but actually adopt, a chief article of your faith in the right and act of secession? I answer, not one; nevertheless, you have seen it. Wonder of wonders!

All our demands were reasonable and comformable to the Constitution; still, they were stubbornly refused by those high in authority who had sworn to support the Constitution, and who were followed in their course by the people they represented.

After all this, and after South Carolina had seceded, the other States of the South were so anxious to continue the Union under the Constitution and to stand by and perpetuate its principles, a peace congress was called. Virginia taking the lead, called that congress, which met in Washington City, in February, 1861. Judge Chase, a teacher of the anti-slavery movement, afterwards Mr. Lincoln's Secretary of State, and later Chief Justice of the United States, was a delegate to that Congress. As such delegate he, on 6th March, made a speech in which he said: "The result of the national canvass which recently terminated in the election of Mr. Lincoln, has been spoken of by some as the effect of sudden impulse or of some irregular excitement of the popular mind, and it has been somewhat confidently asserted that, upon reflection and consideration, the hastily formed opinions which brought about the election will be changed. It has been said also, that subordinate questions of local and temporary character have augmented the Republican vote and secured a majority which could not have been obtained upon the national questions involved in the respective platforms of the parties which divide the country. I cannot take this view of the presidential election. I believe, and the belief amounts to absolute conviction, that the election must be regarded as a triumph of principles cherished in the hearts of the people of the free States. These principles, it is true, were originally asserted by a small party only. But after years of discussion they have, by their own value, their own intrinsic soundness, obtained the deliberate and unalterable sanction of the people's judgment. Chief among these principles is the restriction of slavery within State limits,

not war upon slavery within those limits, but *fixed opposition* to its extension beyond them." "Mr. Lincoln was the candidate of the people opposed to the extension of slavery. We have elected him. After many years of earnest advocacy and severe trial, we have achieved the triumph of that principle. By a fair and unquestionable majority we have obtained that triumph. Do you think we who represent this majority will throw it away? Do you think the people would sustain us if we undertook to throw it away? I must speak to you plainly, gentlemen of the South. It is not in my heart to deceive you. I therefore tell you explicitly that if we of the North and West would consent to throw away all that has been gained in the recent triumph of our principles, the people would not sustain us, and so the consent would avail you nothing. And I must tell you further, that under no circumstances will we consent to surrender a principle which we believe to be sound and so important as that of restricting slavery within State limits."

Here was a positive assertion that Lincoln and the party which had elected him would not respect the decision of the Supreme Court. Then if the Constitution as construed by that court, a tribunal constituted for the purpose, was to be so emphatically disregarded and ignored, what remedy was left for the South? If that organic law by the terms and assurances of which the States became parts of the Union is repudiated, was the South required in morals or good faith to fold its arms and quietly submit? I answer no. Mr. Chase proceeds: "Aside from the territorial question, the question of slavery outside of the slave States, I know of but one serious difficulty. I refer to the question concerning fugitives from service. The clause in the Constitution concerning this class of persons is regarded by almost all men *North and South as a stipulation for the surrender to their masters of slaves escaping into free States. The people of the free States, however, who believe that slave-holding is wrong, cannot and will not aid in the reclamation, and the stipulation therefore becomes a dead letter.* * * * You, thinking slavery right, claim the fulfillment of the stipulation; we, thinking slavery wrong, cannot fulfill the stipulation without consciousness of participation in wrong."

This leaves no room to question the policy marked out by Mr. Lincoln. The speech of Mr. Chase, his chief adviser, distinctly announced that in two essentials the Constitution should not be observed and executed. He avows that the Constitution shall not be the law of the land, but that the will of the party coming into power shall be that law, a declaration in words that the Constitution is a dead letter. The course to be pursued was the usurpation of the powers and their absorption in centralization of government. It is admitted that that party understood the Constitution as we did, but that for years it had been its settled and fixed determination not to execute it; that while it would solemnly swear to execute it, it would not do so; that it had triumphed on its purpose and principle of disobedience, and it would avail itself of that triumph and subvert and overthrow the principles of the government and obliterate the Constitution it must swear to maintain, and by virtue of which only it could take control and management.

Try the questions by the rules laid down by Mr. Chase for his party, and who are the rebels, the traitors, the conspirators against the government? The assertion that the Southern States are, is the cap, the climax of deliberate and criminal impudence or inexcusable ignorance. The entire speech of Mr. Chase is interesting as part of the history of its time and the spirit of the party about to take control of the government. All Southerners, especially those of Confederate blood and extraction, should read it. They will find in it much to defend us against the charges of treason, conspiracy and rebellion, and much to shift these charges to the shoulders of others. It proves, as was said by Hon. C. J. Ingersoll, of Pennsylvania, in the House of Representatives, on 9th June, 1841, that "the abolition agitation is (was) a conspiracy in the true definition of that offense. It is the combination of many to break law, which is the definition of conspiracy; none the better that the conspirators are, many of them, persons of fair character and *perhaps pious designs.*"

The South was left without protection of constitutional guaranties and without hope in the decisions of the court of last resort; it must therefore resort to its only remedy, secession. It

was outlawed, the Constitution denounced "a dead letter." The evils likely and almost certain to flow from the teachings of Judge Chase's "originally small party" were seen and dreaded by the best and most patriotic minds of the North. Daniel Webster, who had no superior as a statesman, who was regarded the best constitutional lawyer in the land, and whose patriotism embraced the whole country, was alarmed and gave the best efforts of his life to check and paralyze the lawlessness of the "originally small party." In a reception speech made in New York on 15th March, 1837, he said: "We have slavery already amongst us. *The Constitution found it in the Union, recognized it and gave it solemn guaranties. To the full extent of these guaranties we are bound in honor, in justice and by the Constitution. All the stipulations contained in the Constitution in favor of the slave-holding States which are already in the Union ought to be fulfilled, and so far as depends on me, shall be fulfilled in the fullness of their spirit and to the exactness of their letter. Slavery as it exists in the States, is beyond the reach of Congress. It is a concern of the States themselves; they have never submitted it to Congress and Congress has no rightful power over it. I shall concur, therefore, in no act, no measure, no menace, no indication of purpose which shall interfere or threaten to interfere with the exclusive authority of the States over the subject of slavery as it exists within their respective limits. All this appears to me to be matters of plain and imperative duty.*" At Buffalo, on 22d May, 1851, he said: "There is but one question in this country now, or if there be others they are but secondary, or so subordinate that they are all absorbed in that great and leading question, and that is nothing more nor less than this: *Can we preserve the Union of the States, not by coercion, not by military power,* not by angry controversies, but can we of this generation, you and I, your friends and my friends, can we so preserve the Union of these States by such admission of the *powers of the Constitution* as shall give content and satisfaction to all who live under it, and draw us together, *not by military power,* but by the *silken cords of mutual, fraternal, patriotic affection?* That is the question and no other. Gentlemen, I believe in party distinctions; I am a party man. There are questions belonging to party in which I take an interest,

and there are opinions entertained by others which I repudiate, but what of all that? If a house be divided against itself it will fall and crush everybody in it. We must see that we maintain the government which is over us, we must see that *we uphold the Constitution, and we must do so without regard to party.* The question, fellow-citizens (and I put it to you now as the real question), the question is whether you and the rest of the people of the great State of New York and of all the States will so *adhere* to the Constitution, will so enact and maintain laws to preserve that instrument, that you will not only remain in the Union yourselves, but *permit your brethren to remain in it?* That is the question. Will you concur in *measures necessary to maintain* the Union, or will you *oppose such measures?* That is the whole point of the case." After giving a history of the formation of the Union, Mr. Webster proceeds: "Now I am aware that all these things are well known, that they have been stated a thousand times, but in these days of perpetual discontent and misrepresentation, to state things a thousand times is not enough, for there are persons whose *consciences*, it would seem, lead them to consider it their duty to *deny, misrepresent and cover up truths.* Now these are the words of the Constitution, fellow citizens, which I have taken the pains to transcribe therefrom, so that he who runs may read: 'No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' Is there any mistake about that? Is there any forty shilling attorney here to make a question of it? No, I will not disgrace my profession by supposing such a thing. There is not in or out of an attorney's office in the county of Erie or elsewhere, one who could raise a doubt or a particle of doubt, about the meaning of this provision of the Constitution. He may act as witnesses do sometimes on the stand. He may wriggle and twist and say he cannot tell or cannot remember. I have seen many such efforts in my time on the part of witnesses to falsify and deny the truth. *But there is no man who can read these words of the Constitution of the United States and say they are not clear and imperative.*

'No person,' the Constitution says, 'held to labor or service in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' Why, you may be told by forty conventions in Massachusetts, in Ohio, in New York or elsewhere, that if a colored man comes here, he comes as a freeman, that is, *non sequitur*. It is not so. If he comes as a fugitive from labor the Constitution says he is not a freeman, and that he shall be delivered up to those who are entitled to his service. Gentlemen, that is the Constitution. Do we, or do we not, mean to conform to it, and to execute that part of the Constitution as well as the rest of it? I believe there are before me here members of Congress. I suppose there may be here members of the State Legislature or executive officers under the State government. I suppose there may be judicial magistrates of New York, executive officers, assessors, supervisors, justices of the peace, and constables before me. Allow me to say, gentlemen, that there is not, there cannot be, any one of these officers in this assemblage or elsewhere, who has not, according to the form of the usual obligation, bound himself by solemn oath to support the Constitution. They have taken their oaths on the holy evangelists of Almighty God, or by uplifted hands, as the case may be, or by solemn affirmation, as is the practice in some cases, but among all of them there is not a man who holds, nor is there any man who can hold, any office in the gift of the United States, or of this State, or of any other State, who does not bind himself by the solemn obligation of an oath to support the Constitution of the United States. Well, is he to tamper with that? Is he to palter? Gentlemen, our political duties are as much matters of conscience as any other duties. Our sacred domestic duties, our most endearing social relations are not more the subjects for conscientious consideration and conscientious discharge than the duties we enter upon under the Constitution of the United States. The bonds of political brotherhood, which hold us together from Maine to Georgia, rest upon the same principles of obligation as those of social and domestic life." At Capon Springs, in Virginia, June 28,

1851, Mr. Webster said: "The leading sentiment in the toast from the chair is, the Union of the States. The Union of the States! What mind can comprehend the consequences of that Union, past, present and to come? The Union of these States is the all-absorbing topic of the day. On it all men speak, write, think and dilate, from the rising of the sun to the going down thereof. And yet, gentlemen, I fear its importance has been but insufficiently appreciated." "How *absurd* it is to suppose that when different parties enter into a *compact* for certain purposes, either can disregard any one provision and expect, *nevertheless, the other to observe the rest.* I intend for one to regard and maintain and carry out to the fullest extent the Constitution of the United States which I have sworn to support in all its parts and provisions. It is written in the Constitution: 'No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' That is as much *a part of the Constitution as any other, and equally binding and obligatory as any other on all men, public or private.* And who denies this? *None but the abolitionists of the North.* And pray, *what is it they will not deny?* They have but the one idea, and it would seem that these fanatics at the North and the secessionists at the South are putting their heads together to defeat the good designs of honest and patriotic men. They act to the same end and the same object, and the Constitution has to take the fire from both sides. *I have not hesitated to say, and I repeat, that if the Northern States refuse wilfully and deliberately to carry into effect that part of the Constitution which respects the restoration of fugitive slaves, and Congress provides no remedy, the South would no longer be bound to observe the compact. A bargain cannot be broken on one side and still bind the other side.* I say to you, gentlemen, as I said on the shores of Lake Erie and in the city of Boston, and as I may say again in that city or elsewhere in the North, that you of the South have as much right to receive your fugitive slaves as the North has to any of its rights and privileges of navigation and commerce. I am as ready to fight and to fall for the constitutional rights of Virginia as I am for those of Massachusetts."

Now, if Daniel Webster, whose greatness of mind and nobility of soul are better and more impressively and significantly expressed by the isolated name, "Daniel Webster," than they would be by the use of any or all the adjectives of our language defining those virtues, and whose patriotism was as broad as the land, who loved the Union for its constitutional ties and guaranties, and who hated slavery in every form, and was willing to use all lawful means for its abolition—if he, with his universally known character and convictions, was ready to fight and to fall for the constitutional rights of the South, where was the wrong, or even the slightest mistake, on the part of the Southern man who had been reared in the education that the institutions of the South were sound in law and in morals?

He told us we had the constitutional right to the property; that if the North disregarded the *compact in any one particular* we were released from all obligation to observe the rest.

Trying the principles of the "originally small party" of Mr. Chase, Mr. Lincoln and Mr. Seward by the plain and incontrovertible rules of constitutional law as laid down by Daniel Webster, we find they can only exist in the palpable and gross violation of the Constitution as it then was.

Mr. Webster's argument is so full, clear and exhaustive that I will not be guilty of the folly of attempting to add to or elucidate it. I commend it to the attention and perusal of all Southern men and women. Its teachings should be transferred to our school-books to supercede and paralyze the false and poisonous manufacture of history that has found its way into so many of the books that have been introduced into the schools of the South, with the purpose to mislead and disease the minds of our children as to the purpose, policy and good faith of our separation from the government of that "originally small party" so much contemned if not despised by Mr. Webster, and to which he administered such rebukes as to induce us to believe he could and would keep it in check and perhaps obliterate it.

If Daniel Webster could have been spared to the Union, there would not, in my opinion, have arisen cause for separation. His death in October, 1852, unbridled the fanaticism of that "originally small party," and brought it into power eight years later,

when it proposed to conduct the government on its peculiar sentiments of morality, regardless of the constitutional limitations and restrictions which had been upholden and enforced by the Supreme Court for more than seventy-five years.

It was "the higher law party" acting without warrant of authority, and in violation of that compact of which Mr. Webster said one party could not disregard any one provision and expect the other to observe the rest. That great man loved law, system, order; had great respect for the ability, patriotism and integrity of the Supreme Court of the United States, and would certainly, I think, have acquiesced in its decision made at December term, 1856, that Congress had no power to exclude slavery from the territories. His course through life warrants the conclusion that he would have urged it as a settlment of that agitation.

Our affairs having reached the crisis indicated, the work of secession began. The question is, Did we have that right, which we exercised in the hope that war would not follow? We proposed to quit in peace.

The first authority I rely on in support of the right is a speech of Mr. Lincoln (the head and leader of coercion), made in the House of Representatives on 12th January, 1848. He said: "Any people, anywhere, being inclined and having the power, have the right to rise up and shake off the existing government and form a new one that suits them better. This is a most valuable, a sacred right, a right which we hope and believe is to liberate the world. Nor is it confined to cases in which the whole people of an existing government may choose to exercise it. *Any portion* of such people that can, may revolutionize and make their own so much of the territory as they inhabit. More than this, a majority of any portion of such people may revolutionize, putting down a minority, intermingled with or near them, who may oppose their movements. Such minority was precisely the case of the tories of our own Revolution. It is a quality of revolutions not to go by old lines or old laws, but to break up both and make new ones."

There is no room for enlargement, expansion or extension of this view of Mr. Lincoln on the right of revolution in any form it may take.

Mr. Rawle, of Pennsylvania, an eminent jurist, who had been United States District Attorney under President Washington, and had been offered by him the Attorney-Generalship of the United States, and who was a firm supporter of the administration of the elder Adams, wrote in 1825: "Having thus endeavored to delineate the general features of this peculiar and invaluable form of government, we shall conclude by adverting to the principles of its cohesion, and to the provisions it contains for its own duration and extension. The subject cannot, perhaps, be better introduced than by presenting in its own words an emphatical clause in the Constitution: 'The United States shall guaranty to every State in the Union a republican form of government, shall protect each of them against invasion, and on application of the legislature, or the executive when the legislature cannot be convened, against domestic violence.' The Union is an association of the people of republics; its preservation is calculated to depend on the preservation of these republics. The principle of representation, although certainly the wisest and best, is not essential to the being of a republic, but to continue a member of the Union it must be presumed, and therefore the guaranty must be so construed. It depends on the State itself to retain or abolish the principle of representation, *because it depends on itself whether it will continue a member of the Union.* To deny this right would be inconsistent with the principles on which our public systems are founded, which is that the *people* have in *all cases to determine how they will be governed.* This right must be considered as an ingredient in the original composition of the general government which, though not expressed, was understood, and the doctrine heretofore presented to the reader in regard to the indefeasible nature of personal allegiance is so far qualified in respect to allegiance to the United States. It was observed that it was competent for a State to make a compact with its citizens; that the reciprocal obligations of protection and allegiance might cease on certain events; and it was further observed that allegiance would necessarily cease on the dissolution of the society to which it was due." "*The secession of a State from the Union depends on the will of the people of such State. The people alone,* as we have seen, hold the power to alter their Constitution.

The Constitution of the United States is, to a certain extent, incorporated into the Constitutions of the several States *by the act of the people.* The State Legislatures have only to perform certain organical operations in respect to it. To withdraw from the Union comes not within the general scope of their delegated authority. There must be an expressed provision to that effect inserted in the State Constitutions. This is not at present the case with any of them, and it would, perhaps, be impolitic to confide it to them. A matter so momentous ought not to be entrusted to those who would have it in their power to exercise it lightly and precipitately, upon sudden dissatisfaction or causeless jealousy, perhaps against the interests and wishes of a majority of their constituents. In the present Constitution there is no specifications of number after the first formation. It was foreseen that there would be a natural tendency to increase the number of States with the increase of population then anticipated and now so fully verified. It was also *known,* though it was not *avowed* that *a State might withdraw itself."*

This comes from one who was an officer under the first administration and familiar with the interpretation of the Constitution by its framers.

Senator Wade, of Ohio (afterwards Vice President of the United States), in the United States Senate, on 23d February, 1855, said: "Who is to be judge, in the last resort, of the violation of the Constitution of the United States by the enactment of a law? Who is the final arbiter, the general government or the States in their sovereignty? Why, sir, to yield that point is to yield up all the rights of the States to protect their own citizens and to consolidate this government into a miserable despotism. I tell you, sir, whatever you may think of it, if this bill pass collision will arise between the State and federal jurisdictions—conflicts *more dangerous* than all *the wordy wars* which are got up in Congress, conflicts in which the State will never yield; for the more you undertake to load them with acts like this, the greater will be their resistance." "I said there were States in this Union whose highest tribunals had adjudged that bill to be unconstitutional, and I was one of those who believed it unconstitutional, and that, under the old resolutions of 1798 and 1799, a *State must not only be the judge of that but of the remedy in such case."*

There was no mincing there, no stringing together of words for sound's sake, but a solid shot, straight to the mark, from anti-slavery quarters.

In his address in 1839, before the Historical Society of New York, Mr. John Quincy Adams said: "With these qualifications we may admit the same right as vested in the people of every State in the Union, with reference to the general government, which was exercised by the people of the united colonies with reference to the supreme head of the British empire, of which they formed a part, and under these limitations have the people of each State in the Union a *right to secede from the confederate Union itself.* But the indissoluble Union between the several States of this confederate nation is, after all, not in the right but in the heart. If the day should ever come (may Heaven avert it) when the affections of the people of these States shall be alienated from each other; when the paternal spirit shall give way to cold indifference, or collision of interest shall fester into hatred, the bonds of political asseveration will not long hold to other parties no longer attached by the magnetism of conciliated interest and kindly sympathies, and *far better will it be for the people of these dis-United States to part in friendship than to be held together by constraint;* then will be time for reverting to the precedents which occurred at the formation and adoption of the Constitution, to form a more perfect Union by *dissolving that which could no longer bind,* and to leave the separated parties to be reunited by the law of political gravitation to the center."

Acting upon this principle, the Legislature of Massachusetts, the home of Mr. Adams, in 1844, resolved "that the project of the annexation of Texas, unless arrested on the threshold, *may drive* these States into *a dissolution of the Union.*" On the same subject, on 22d February, 1845, it resolved, * * * "and as the powers of legislation *granted in the Constitution* of the United States to Congress, *do not embrace* the case of the admission of a foreign State or foreign territory by *legislation* into the Union, such act of admission would have no binding force whatever on the people of Massachusetts."

Here we have the unequivocal assertion of the right to secede. In 1814, on the call of Massachusetts, several of the New Eng-

land States met in convention in Hartford and promulgated the following: "It is as much the duty of State authorities to watch over the rights reserved as of the United States to exercise the powers which are delegated." "In cases of deliberate, dangerous and palpable infractions of the Constitution affecting the sovereignty of a State, and liberties of the people, it is not only the right, but the duty of such State to interpose its authority for their protection in the manner best calculated to secure that end. When emergencies occur, which are either beyond the reach of the judicial tribunals, or too pressing to admit of the delay incident to their forms, *States which have no common umpire must be their own judges and execute their own decisions.*"

We of the South were watching over not only our reserved rights, but also those guarantied to us as well. We had the deliberate, dangerous and palpable infraction of the Constitution. Emergencies had reached beyond the cure of judicial tribunals, for the "originally small party" positively refused to recognize and obey the courts, and the time had come when we might, as the Hartford convention said we had the right to do, become our own judges and execute our own decisions. The principles set forth by that convention were signed by a number of the leading men of that day, and amongst them, Nathan Dane, founder of the professorship of law in the Cambridge University, and who was author of the ordinance for the government of the northwestern territory in 1787. He, like Rawle, understood what was meant by the framers of the Constitution. He lived in their day and with them, and we may regard his utterances as an authoritative construction of the instrument.

On the 9th November, 1860, Horace Greeley wrote: "The telegraph informs us that most of the cotton States are meditating a withdrawal from the Union because of Lincoln's election. Very well; they have a right to meditate, and meditation is a profitable employment of leisure. We have a chronic, invincible disbelief in disunion as a remedy for either Northern or Southern grievances. We cannot see any necessary connexion between the alleged disease and this ultra heroic remedy. Still we say, if any one meditates disunion, let him do so unmolested. That was a base and hypocritical row that was raised at Southern dic-

tation about the ears of John Quincy Adams because he presented a petition for the dissolution of the Union. The petitioner had a right to make the request; it was the member's duty to present it. And now, if the cotton States consider the value of the Union debatable, we maintain their perfect right to discuss it. Nay, we hold with Jefferson to the *inalienable right of communities to alter or abolish forms of government that have become oppressive or injurious;* and if the cotton States decide that they can do better out of the Union than in it, we insist on letting them go in peace. *The right to secede may be a revolutionary one, but it exists nevertheless,* and we do not see how one party has a right to do what another party has a right to prevent. We must ever resist the asserted right of any State to remain in the Union and nullify or defy the laws thereof. To withdraw from the Union is quite another matter. And whenever a considerable section of our Union shall deliberately resolve to go out, we shall resist all coercive measures designed to keep it in. We hope never to live in a republic whereof one section is pinned to the residue by bayonets." * * * "Let the people reflect, deliberate, then vote, and let the act of secession be the echo of an unmistakable popular fiat. A judgment thus rendered, a demand for separation so backed, would either be acquiesced in without the effusion of blood, *or those who rushed upon the carnage to defy and defeat it would place themselves clearly in the wrong.*"

Judge Story, in his Commentaries on the Constitution, says: "Though obvious deductions which may be and, indeed, have been drawn from considering the Constitution as a compact between the States, are, that it operates as a mere treaty or convention between them, and has an obligatory force upon each State no longer than it suits its pleasure or its consent continues; that each State has a right to judge for itself in relation to the nature, extent and obligations of the instrument, without being at all bound by the interpretation of the federal government, or by that of any other State, and that each retains the power to withdraw from the confederacy and dissolve the connection, when such shall be its choice, and may suspend the operations of the federal government and nullify its acts within its own territorial limits, whenever in its own opinion the exi-

gency of the case may require. These conclusions may not always be avowed, but they flow naturally from the doctrine which we have under consideration."

Judge Tucker, professor of law in the University of William and Mary, in Virginia, and one of the earliest commentators on the Constitution, in 1803, wrote: "The Constitution of the United States then, being that instrument by which the federal government hath been created, its powers defined and limited, and the duties and functions of its several departments prescribed, the government thus established may be pronounced to be a confederate republic, composed of several *independent and sovereign democratic states* united for their common defense and security against foreign nations and for purposes of harmony and mutual intercourse between each other, each State retaining an entire liberty of exercising as it thinks proper all those parts of its sovereignty which are not mentioned in the Constitution or act of union as parts that ought to be exercised in common." "In becoming a member of the federal alliance, established between the American States by the Articles of Confederation, she expressly retained her *sovereignty* and *independence.* The constraints put upon the exercise of that sovereignty by those Articles did not destroy its existence." "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 authority is an emanation from theirs, not a flame in which they have been consumed, nor a vortex in which they are swallowed up.* Each is still a perfect state, still sovereign, still independent, and still capable, should occasion require, to resume the exercise of its functions as such in the most unlimited extent."

In speaking of our separation from Great Britain, Chancellor Kent says: "The principle of self-preservation and the right of every community to freedom and happiness gave sanction to this separation. When the government, established over any people, becomes incompetent to fulfill its purposes, or destructive to the essential ends for which it was instituted, it is the right of the people, founded on the law of nature and the reason of man-

kind and supported by the soundest authority and some illustrious precedents, to throw off such government and provide new guards for their future safety."

With a single exception, I have confined my citations of authority to the northern anti-slavery States, the home of the "originally small party." No Southern man, no slave-holder ever more clearly announced and advocated the sovereignty of the States, or that the Constitution was a compact between the States, or that one party could not violate it in one or more particulars and require or expect the other to observe the residue. No stronger argument can be made that the Constitution is a whole, and to be binding on one side must be obeyed as a whole by the other. The Constitution was the chain that linked the States in union; the breaking of one link dissolved the tie.

The authorities all tend to the one inevitable conclusion, that the Union exists alone by the Constitution and its observance in every particular. Being the terms of union, one party may not be permitted to violate it in any particular and insist on its observance by the other as to any of its terms, whatever they may be. The right to its enforcement as a whole, or its rejection as such, is inalienable and indestructible.

In the investigation of the question, my trouble has not been in finding authority of the highest and clearest and most convincing character. It has been in avoiding its multiplicity. I have relied on the testimony of those not at all in sympathy with the institution of slavery, passing by the opinions and utterances of Southern statesmen and jurists.

Under the condition of things as slightly, and but slightly, portrayed in this address, the Southern States began the work of secession and organizing a new government. They hoped, as they rightfully might, that they would not be interfered with; that there would be no war. In this they were mistaken. The "originally small party," which had then come into power, ordered the relief squadron, with eleven ships, carrying two hundred and eighty-five guns and twenty-four hundred men, from New York and Norfolk to reinforce Fort Sumpter—peaceably if permitted, forcibly if they must. This was of itself an act

of war. After several attempts and failures on the part of Gen. Beauregard to have some understanding with Maj. Anderson, seeing that unless he took action his forces would be exposed in front and rear, and perhaps destroyed for usefulness, he fired the first gun of the war. This he did in self-defense. He was in command of forces of a government foreign to that of the United States. The harbor of Charleston belonged to the Confederate States, or rather to the independent government of South Carolina. Being then the property of another government, there was no authority resting with or in the government at Washington to interfere with it. It was that government's duty to withdraw its troops, at least when demand was made by Gen. Beauregard. Failing to do so, it became his imperative duty to take the necessary steps to remove them and to resort to such force, mild or violent, as would bring about that removal. It became necessary to strike the first blow. That blow was in self-defense. The overt act on the part of the United States justified it. Neither nation or individual is required to wait until stricken after the assailant has assumed the attitude of offense with the present ability to strike.

The squadron was ordered to Fort Sumpter to attack. The order will bear no other interpretation. There can be no authority to order the reinforcement of a foreign port in times of peace and with hostile demonstrations. That was an act of war, was the first assault, the inauguration of the war by the United States. If ever there was a case of pure, unmitigated, unmixed and positive justification and self-defense, the law and the testimony make that case for the Confederate government and Confederate soldier.

We yielded to the logic of force. The right still lives. A new government has been built upon the downfall of the old ones. We have promised our allegiance to it. We will keep the faith plighted at all hazards and to the last extremity, so long as the Constitution is respected. The element of evil and discord has been removed. Old things have passed away, and there will be, we venture to hope, no other sectional jealousy. Our devotion to the Constitution at all times; our conduct as soldiers for four years, battling from field to field, from time to time, hold-

ing in check one million five hundred thousand soldiers with six hundred thousand, give assurance that we will always be worthy citizens of a constitutional Union, and may be confidently relied on in times of need.

I know that in many things I have repeated an often-told story, but, in the language of Mr. Webster, "to state things a thousand times is not enough in these days of misrepresentation, for there are persons whose consciences it would seem lead them to consider it their duty to deny, misrepresent and cover up truths."

In this effort my purpose and desire have been to awake the Southern man and woman to the importance of having their children study our lost cause from constitutional, legal and historical standpoints, that they be not misled. It is time we were seeing after their school-books ourselves and not trusting too much to others.

Our cause was worth all we sacrificed to it. Though lost it deserves vindication. Its defense by our arms at least checked centralization. Understanding the principles of self-government, for which our comrades battled and died, our children will stand at their graves with love, admiration and approval of their course, and offer up the prayer, "God bless and perpetuate their memories."

I am thankful for this opportunity and this occasion to defend the right.