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NEW YORK CITY IN THE NINETEENTH CENTURY.

BY JOHN AUSTIN STEVENS.

Second Paper.

THE CONSTRUCTIVE PERIOD—COMMERCIAL EXPANSION. 1800-25.

(From a historical address.)

FROM its earliest beginnings New York has been a trading city. Founded by the Dutch, commerce was its chief, indeed its only business, during their rule, and the incoming of the British changed the direction but not the nature of its trade. Beaver-skins, which the wild country produced in abundance, were then in great demand in Europe, and with flour were the chief articles of export, while the import list included about everything needed in the daily economy of life.¹ The narrow policy of Great Britain, which held her colonies to be of right tributary to herself, did not favor home manufactures in America, yet they had their beginning here in the Stamp act period, 1765. The Chamber of Commerce, the first American society of that order, was founded in 1768 when the repeal of the revenue acts seemed to favor a revival of trade with the mother country. Its motto, "*Non nobis nati solum*" (We are not born for ourselves alone), was a proud one, and well suited to a city which thus early was showing cosmopolitan tendencies;

¹The old seal of the city and province was significant. It bore the arms of a windmill with a flour-barrel and a beaver as supporters.

THE AUTHORSHIP OF THE KENTUCKY RESOLUTIONS OF 1798.

BY ETHELBERT D. WARFIELD, LL.D.

THERE are few documents of the earlier period of our national life which possess a greater interest than the series of resolutions adopted in Virginia and Kentucky in 1798-9. They were the first official party documents formulating the tenets of that school which was fast crystalizing into a party. At the time, they were but authorized expressions of the position the strict constructionist occupied, and had from a party standpoint no deeper significance. Every day similar expressions were passing current. The ideas were common to the whole of that great or fast increasing body which opposed the policy of the administration, and trembled before the self-conjured spectre of a monarchy. But as time slipped by they became the repository of the principles of the men who had laid the foundations, and the eyes of later builders were turned to them as containing the purest type of democracy. Hence it was that the matter of authorship, while by no means unnoted at the time, was yet of too little importance to be dwelt on, while to-day it is of only less import than the contents of the documents themselves.

Those who played the chief roles in the Virginia legislature on the occasions of the introduction of the resolutions of 1798, and of the subsequent confirmation of their doctrines, happily survived for many years and left no shadow of doubt upon them. Quite otherwise was it with those whose names have been connected with similar action in

Kentucky. George Nicholas, who by a strange contortion of critical acumen has long been the reputed mover of these resolutions, died in the year 1799. John Breckinridge, the actual mover and probable author, died in 1806, after a brief career in the senate and the cabinet, but before any question arose as to their authorship.

The present status of the case may be briefly explained. Almost all the recent works that treat of these resolutions directly or indirectly, attribute their authorship to Mr. Jefferson, and their introduction into the house of representatives of Kentucky to George Nicholas, the brother of Colonel Wilson Carey Nicholas and of John Nicholas, and a man very prominent in the state politics of the time. The basal fact of all this is the letter to be found in editions of Mr. Jefferson's works, as to "—— Nicholas, Esq." Upon it the whole tissue rests. Take it away and the fabric tumbles to the earth. Any reconstruction must, indeed, involve some of the essential facts in this. But the accepted view has taken color from this letter, and others commenting upon it, to such an extent that it has greatly extended the errors naturally to be drawn from it.

This letter is reprinted here in full, as it is the text of this discourse. The punctuation will be seen to differ slightly in the two published copies. That here used is as nearly as possible that of the manuscript, which it is rather difficult to reduce to any accepted system.

"Monticello, December 11, '21.

"DEAR SIR: Your letter of November 19 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 to 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 of congress found themselves of no use there, brow-beaten as they were by a

bold and overwhelming majority. They concluded to retire from that field, take a stand in their state legislature, 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 original 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 anyone 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 tranquility 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 communicated with is my doubt. I think Mr. Madison was either with us or consulted, but my memory is uncertain as to minute 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 drawn in many respects with the skill and adroitness of a state paper, and yet the apology for his failing memory is proved to be not unnecessary by the ref-

erence to Mr. Madison in the Virginia legislature, and the antecedent statement that the republicans had retired from congress in order to take up a stand in the state legislatures. Mr. Madison's move was still in the unknown future, while the latter movement not only never occurred, but Mr. Jefferson and the rest of his coterie were full of joy at certain gains in the next congressional elections, as may be seen in their letters.

The link in the chain that connects George Nicholas with these resolutions are briefly these: The above letter, and a letter from Mr. Madison to "—— Townsend, (S. O.)," which declares George Nicholas to be the father of the person to whom that letter was addressed, and *a fortiori* the mover of these resolutions. This latter letter was written under date of the eighteenth of October, 1831, after Mr. Madison had accomplished his four-score years, and was in answer to several questions in regard to the Virginia and Kentucky resolutions which were the theme of frequent discussion in connection with the attitude of South Carolina, and the well-known speech of Colonel Hayne. One of the questions touched upon the very point in question, and concerning it he says:

"Again, whether the father of the Mr. Nicholas referred to in the letter of December 11, 1821, as having introduced the resolutions of 1798 into the Kentucky legislature, be not the same individual to whom Mr. Jefferson alludes as the brother of Colonel Wilson Carey Nicholas, in a letter addressed to the latter on the fifth of September, 1799; vol. iii, p. 420. He was the elder brother, and his name George. He died prior to the Kentucky resolutions of 1799."

It appears from this letter that the correspondents had before them the published works of Mr. Jefferson (plainly the well-known edition of 1829), and Mr. Madison, in answering this letter, has too clearly made his only task the replying to the superficial question, accepting without con-

¹"Madison's Works," vol. iv, p. 198.

sideration that the letter was properly entitled to the caption it bore, Proceeding on the premises then at hand, the answer was simple enough. If the letter was addressed to a Nicholas, then it must have been to a son of George Nicholas, for Wilson Carey Nicholas was excluded by the references to him in the letter; and the third brother, John Nicholas, while active in the opposition to the Alien and Sedition laws, played his part elsewhere and was never connected with the affairs of Kentucky.

The whole matter, however, rests upon a fundamental error, and one which Mr. Madison could not have failed to detect, had he only addressed himself for a moment to recalling the occurrences of those memorable years, and the men they made and the reputations that sprang out of them.

The fact is, that the Jefferson letter was not written to any Nicholas whatever. It was addressed to the eldest son of John Breckinridge, sometime senator from Kentucky, and attorney-general in Mr. Jefferson's cabinet; this son, Joseph Cabell Breckinridge, being at that time a member of the Kentucky legislature. The original of this letter is still in existence among the papers of the Breckinridge family. It bears the superscription: "Free. Th. Jefferson," and the address: "J. Cabell Breckinridge, Frankfort, Ky.," and is postmarked Charlottesville. It is written upon a single sheet, the letter occupying two inner pages, while the address appears upon the outer or fourth page, which also bears evidence of the wax that once sealed it. How this letter came to be mislabeled as to "—— Nicholas, esq.," and to be printed thus in all of the editions of Mr. Jefferson's works, is, of course, only to be conjectured. It may have been done by the writer's own hand at some later date or even contemporaneously; and if this be so, in either case it would offer further evidence to the decadence of a memory, which he himself confessed even while he gave examples of its lapses. But it seems far more prob-

able that it was the addition to an unlabeled copy from the hand of an editor and was the result of an unhappy attempt at drawing a conclusion from internal evidence. This, coupled with a slight exercise of "historical imagination," would readily lead one to infer that George Nicholas, so well known in Kentucky politics, was the person spoken of as "your father," in such close connection with Colonel Wilson Carey Nicholas, the more so that the circle which held this tiny state secret was so small and evidently so intimate. That this is so is the merest hypothesis, but it is an hypothesis that is supported by all the facts at our command, and that solves the problem. Certainly the letter itself, in Mr. Jefferson's unmistakable hand, his superscription including his "frank" and the postmark, all upon a single sheet, and coming from the natural repository, is the *best* evidence in the fullest legal sense, and beyond all question incontrovertible.

But outside of and beyond this letter there is not the least question that George Nicholas had no part in the offering of these resolutions. He was not in the Kentucky house of representatives in the session of 1798-9, and there is no mention of his name for many years after the events that in anywise connects it with this affair; while, on the other hand, the evidence that attributes to John Breckinridge the whole activity in the chain of circumstances that led up to and culminated in the passage of these resolutions is voluminous and complete. Some selections from the mass of proof easily producible on this point will show how conclusive it is. The *Kentucky Gazette* for the week following the passage of these resolutions reports them *in extenso*, attributing them to John Breckinridge. Humphrey Marshall, his contemporary and immediate predecessor in the United States senate, says in his "History of Kentucky:"²

²"History of Kentucky," by Humphrey Marshall, vol. ii, p. 255.

"Mr. John Breckinridge, an influential member from Fayette, introduced into the house of representatives a concatenation of resolutions, with no little ostentation, on the subject of these proscribed laws."

He then proceeds to review them at length, referring again and again to the mover by name. Another contemporary, a man among the foremost in Kentucky politics—Caleb Wallace, Esq.,—writes to John Breckinridge at Frankfort, in the interval between this action by the house and the concurrence by the senate, as follows:

"Lexington, 13th Nov., '98.

"MY DEAR SIR: I am happy to find that the resolutions, which have been adopted by the house of representatives, meet with the warm approbation of the people. I am still anxious to hear that they have also been concurred in by the senate, which I hope has been the case. My health and some business will prevent my being in Frankfort before next week. . . . Your resolutions have given the palsy to the friends of the Federal administration in this quarter, which I believe will be their effect throughout this state, and I hope will have considerable effect in some of the other states, and check the high-toned nerves of the administration. I am, dear sir,

"Your friend and servant,

"CALEB WALLACE."

Surely the proof is complete. If it were necessary, a mass of like evidence could be adduced, and the whole series of histories of Kentucky quoted to the same point. This is certainly unnecessary, and the more so that much must needs be said to further establish their preliminary point in the course of the discussion of the remaining proposition. It may be accepted, then, that George Nicholas was brought into this question by a purely gratuitous assumption, that John Breckinridge was the mover of the resolutions, and consequently he is the person adverted to as "your father" in the letter of December 11, 1821.

The next step is to see what can be drawn from the facts clustering about the "consultation," both by way of adding clearness to the position assumed, and also as throwing light on the question of the draughting of the paper. Mr. Jefferson refers to this "consultation" between Mr. Breckinridge, Colonel Nicholas, and myself. Was there then any

known opportunity for such an interview? There are numerous letters from different parts of Virginia, written during a visit to that state in the interval between the passage of the Alien and Sedition laws, and the assembling of the Kentucky legislature in the early winter. The letters that are attainable are family letters, and nothing was said in any of them of such an interview. This is not remarkable, for the letters as far as known are all of such a character that any such reference would have been stranger than the absence of it; and again, there is a current that runs through all the correspondence of the republican leaders of this period of distrust of the post-office and dislike to put any of their plans to the risk of being discovered before the proper time. If we may rely on Mr. Jefferson's letter on this very subject, it is easy to detect such a tendency. These letters, then, do not relate any facts in regard to such an interview, but they show that their writer was in that part of Virginia. The life-long intimacy between the statesmen is sufficient to base a very strong probability on, that they must have seen each other during this trip. This is but another link in the chain—circumstantial, indeed, but in due course, and corroborative of the facts known. Having, then, this "consultation" as the probable birth-movement of the document, the question presents itself, What was the position of the parties at the time? The whole country was excited in more or less degree by the struggle over the Alien and Sedition laws. The great head of the opposition was undoubtedly aroused to the sense of need of extraordinary resistance. Mr. Breckinridge was the representative of Kentucky, and as such he came prepared with a numerous series of resolutions passed by local meetings, and full of the fierce spirit of resistance which had been Kentucky's constant attendant from her earliest days. A page of her history interjected here may be of some weight on the side of the far greater likelihood that from Mr. Breckinridge emanated the framework of the document than from Mr. Jefferson.

For some time Kentucky had been in a state of ferment. The bonds that bound her to Virginia first galled her. The prospect that, if she held fast to the new-born nation, she would be cut off from the cherished Mississippi trade, woke in her a doubt, which grew to organized negotiation with Spain—a negotiation entered into by many of her principal citizens, among whom was George Nicholas. Once within the union, good faith practically stilled this faction. But she threw herself with no reserve into the arms of the anti-federalists, and watched with jealous eye the every act of the administration. As a part of this programme she was loud in her protestation of French inclinations. The scandalous conduct of Genet stayed for a moment the tide, and borne on a reflux wave Humphrey Marshall, the cousin and brother-in-law of the chief-justice, was sent to the senate as a federalist. But the Alien and Sedition laws broke down every barrier. Says Humphrey Marshall:³

"In August the country was greatly agitated in consequence of the passage of the Alien and Sedition laws by congress.

"Many meetings of the people were held in different parts of the state, on this occasion; and probably they were never more unanimous than in the condemnation of those laws—never failing to express great attachment to the constitution of the United States (the formula being in that wise) and almost as uniformly deprecating a war with France, and expressing their abhorrence of an alliance, offensive and defensive, with the rotten or the tottering monarchy of Great Britain, while in reality no idea of the latter was indicated by the government or its friends."

Toasts were drunk at every important dinner, condemning the obnoxious laws, lauding the leaders of the opposition, reasserting devotion to France, and fondly regarding the cherished Mississippi trade. The peculiar machinery of local government which she possessed in common with Virginia was set in motion. Mass meetings were held in every county town on the county court day, and vigorous resolutions were passed. Each one was but a reflection of

³"History of Kentucky," vol. ii, p. 251.

every other. The same sentiments were expressed in nearly the same form. The first of these came from the influential county of Clarke so early as the twenty-fourth day of July. The resolutions offered were passed with a single dissenting voice, and are appended as an example of the whole:

"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 necessary—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."⁴

In a few days, Lexington, the county-seat of Fayette, the home both of George Nicholas and John Breckinridge, followed with a very similar set of resolves, and the one voice that was raised against the Clarke County action appeared in a letter over the signature of "Philo Agis," in which he said: "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."⁵ Then George Nicholas, ever ready to run a joust in the cause of agitation, came forward in a document with the caption, "The Political Creed of George Nicholas." This fairly bristled with righteous indignation, pointed invective, and readiness to resist. This he followed up by a widely printed letter "to a friend in Virginia," dealing with the same matters.

These are but a few of the numberless examples of opposition, running the whole scale from mild remonstrance to extravagant bravado, which these laws awoke. In them are the germs of all that the future resolutions contained and the demand for such action on the part of the state. It was armed with such documents as these, pervaded with the spirit therein expressed, that he who finally introduced the resolutions went to the council, whence they are supposed to have issued.

But leaving for the present this line of research, note the contemporaneous expressions. Here Mr. Jefferson's statement, that silence was of his special injunction, must have its due weight. Here, too, must be placed his statement in

⁴From (Lexington) *Kentucky Gazette*, August 1, 1798.

⁵From (Lexington) *Kentucky Gazette*, August 22, 1798.

the well-known letter to Colonel W. C. Nicholas of the fifth of September, 1799,⁶ wherein he urges the necessity for such resolutions as Mr. Breckinridge drew and offered in the legislature of that year. He says: "As to the preparing anything, I must decline it to avoid suspicions (which were pretty strong in some quarters on the late occasion)." Exactly how much is to be drawn from this expression it is impossible to say; it will be largely determined by the personal feelings of the reader. But it seems to be capable of being thought a complete confession or a denial of any part, according as the suspicion was true or false. On the other hand, Mr. Breckinridge's family have always bitterly resented any attempt to question his right to the entire credit both of conception and execution. They have always pointed with confidence to the fact that it was a daily theme of conversation, a thing treasured, an heirloom of great price. Not until some rumor had awakened his son, and he had inquired of Mr. Jefferson and received the much quoted letter, was there any question of his being alone in the matter. That letter has been bitterly attacked. One of his sons characterized it as an attempt to rob his dead friend of his laurels, and again said: "Mr. Jefferson considered it too great an addition to his fame to be reputed their author ever openly to deny it."

The secret must indeed have been well and closely guarded. Mrs. Breckinridge, who survived her husband more than half a century, was of the strongest conviction of his singleness in this matter, and Humphrey Marshall in his "History" speaks again of Mr. Breckinridge as "the author and advocate of the resolutions on the subject of the Alien and Sedition laws." No one can read his severe strictures on Mr. Breckinridge and doubt that he believed him to be both their author and mover. Moreover, his opportunities of knowledge were the very best, and he had

⁶"Jefferson's Works," vol. ix., p. 305 (Ed. 1853).

good reason to use his invective against the head rather than against a subordinate leader of the party whose principles he detested; and this not only at the time of action, but afterward in the hour of retrospection. Not only was this so, but there were family ties that bound him to Mr. Breckinridge and dictated as lenient a policy toward him as possible. The relationship was not, indeed, close, but it was rendered far more intimate by the peculiar strength of all bonds of relationship under the Virginia system, and the vigor of these ties was nowhere more clearly recognized than in the clanship which has ever prevailed among both the Marshalls and the Breckinridges. Could he, therefore, either as the leader of the federalists in Kentucky or as the historian of that state, have found an opportunity to pass Mr. Breckinridge by and assail Mr. Jefferson, there is small room for doubt but he would have eagerly embraced it.

Certain letters might be quoted to show that the authorship and advocacy were regarded as resting together, not, indeed, by direct statements to that effect, but by plain implication. It must be remembered that the fact was not called in question for many years, and hence it is a little to be wondered at that no one rose to declare, "I know and do fully believe that John Breckinridge was the sole author of these resolves." A single quotation may, however, be made in passing, as an illustration of the kind of evidence these letters offer. This is taken from a letter written by the famous—or infamous, if you will—Matthew Lyon, sometime member and chief agitator of congress from Vermont, but at the time of the passage of these resolutions, member-elect from Kentucky, and later a staunch supporter of Mr. Jefferson in the contest with Burr. This letter was written March 2, 1802, when Mr. Breckinridge was in the senate, and in course of some remarks in praise of his successful assault upon the judiciary bill, Mr. Lyon says of his speeches:

"They were worthy of you, who had hitherto distinguished yourself far above every other orator and *writer* in the Kentucky resolutions respecting the Alien and Sedition laws."⁷

In the teeth of all this we have Mr. Jefferson's direct claim in the letter to J. Cabell Breckinridge, and what is, perhaps, of equal value to many (especially to those who remember the many little slips and lapses of memory, or assumptions by virtue of his party headship, which can be traced to Mr. Jefferson), Mr. Madison's statements when nullification stalked abroad that that word was not to be found in any draft of the resolutions that came from the pen of Mr. Jefferson, but only in those of '99. Both men were very old, and that Mr. Madison's memory was none of the best is evinced by the sudden awakening he experienced when he happened upon a copy of what is edited as Mr. Jefferson's original draft and which has "nullification," at least verbally, writ large upon it. This he says was by some strange accident sent him as a copy of the Kentucky resolutions of 1799. He writes to M. P. Trist, September 30, 1830,⁸ explaining this at length. This letter, together with two others, the one to J. C. Cabell on May 31, 1830,⁹ and the other to Edward Everett on August 20, 1830,¹⁰ afford the strongest evidence that Mr. Madison thoroughly believed that Mr. Jefferson was the original draftsman. In the letter to Mr. Everett he makes this very strong statement of Mr. Jefferson:

"It is certain that he penned the resolutions of '98, and probably in the terms in which they passed."

How far Mr. Madison was let into the inner courts on the occasion of this consultation is uncertain. No letter gives a clue to the maze, and it is yet very likely from all

⁷M. Lyon to J. Breckinridge, MS. Breckinridge papers.

⁸"Madison's Works," vol. iv, p. 204.

⁹Ib., p. 85.

¹⁰Ib., pp. 106, 109.

the known facts that Mr. Madison was not consulted, at the time or very near it, in person. Some further light may yet be won from the paper itself.

Upon a consideration of the resolutions themselves, they fall into two parts. The first part consists of the first eight resolutions, in which each is pointed, briefly expressed, and without unnecessary declamation or verbiage. The last resolution thus stands apart, strongly distinguished from its fellows by a large-voiced declamation, a certain application to everything and to nothing. This is very unlike the manner and matter of the preceding resolutions, and indicates a new hand, or a strange transformation in the draftsman. The diction and the sentiments, while having somewhat in common with, yet present a marked contrast to, the preceding matter—a contrast which is heightened rather than diminished by the striking similarity of a sentence or expression to be found isolated in the midst of the plain matter of the first part. Comparing them with the draft found among the papers of Mr. Jefferson and edited as the probable original, we notice a substantial agreement except in resolutions eight and nine. These are transposed. Eight, the representative of nine, is of a similar phraseology and very generally like the corresponding one in the final draft. It is, however, even more declamatory if possible, and has certain repetitions of several catch phrases, so after Mr. Jefferson's method that it is scarcely possible that anyone could fail to detect his hand. This, so plain here, is sufficient to convince anyone at all familiar with his style that Jefferson drew the resolution that concludes the set as adopted. This is so patent that it seems eminently probable that it was the moving cause of that "suspicion" which he alludes to in the letter to Colonel W. C. Nicholas. If it did not awaken suspicion it is passing strange.

One of the omissions, if they may be treated as such, of the Kentucky resolutions, as passed, is the word "nullification." This perhaps is a little strange both from Mr.

Madison's desire to show that his great preceptor had never used the word, and his fright on finding this draft, to think that he had to believe it of him; but even more from the fact that the resolutions of 1799 contain the dreadful term, and Mr. Breckinridge seems to have used it without qualms. It is, however, perhaps a little more than probable that Mr. Madison was the victim of an anachronism when he tried to relieve Jeffersonian democracy of the reproach of South Carolinian nullification. The tendency, if any is fairly to be drawn out of the changes in this resolution, is toward a simplification and an ordering of the contents. This is marked here and there in a relief from the cumbrousness of the cumulative style. All this points to a combination with Mr. Jefferson of just such an accurate, trained, legal mind as Mr. Breckinridge's. The mature work which he did upon the Kentucky constitution (which was more the work of his hand than of any other man's) gives evidence of his methods such as affords an instructive study, beside the very different hand in this document.

Again, there is a question as to the proper means of taking the steps which it is claimed the state may take. This question was an open one at the time. Mr. Madison writes¹¹ to Mr. Jefferson under date December 29, 1798, as follows:

"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."

Now it is undoubted that Mr. Breckinridge had no ques-

¹¹Madison's Works, vol. ii, p. 149.

tion as to the sufficiency of the ordinary machinery of the state to meet this extraordinary end, and in consequence, there is some likelihood that he alone is responsible for the declaration to that effect, lacking as it does any parallel to the drafts of the other statesmen. And upon this point depends the only rational solution of the change in order of the eighth and ninth resolutions. In the draft found among Mr. Jefferson's papers it is a mere directory clause added to the paper, simply to give directions as to the steps to be taken in asserting and making known the principles set forth in the foregoing resolutions. As we have seen, there was a question as to the proper method of acting, and, also, that Mr. Breckinridge was strongly inclined to support the right of the state to act through its ordinary instruments, while Mr. Madison in the above quoted letter to Mr. Jefferson, presses the necessity of an extraordinary instrument. If (and in an innovation such things come to be so regarded) Mr. Breckinridge regarded the necessity of acting by the ordinary officers of the state as a matter of principle and not as a mere form, it was eminently natural that he should move the resolution expressing this idea up into the body of the paper and place the peroration (and the ninth resolution is certainly of this nature) last. This would be the only logical course. From this point of view, the transposition ceases to be the mere arbitrary measure it has always been considered, and shows the hand of one asserting himself as the person responsible for the sentiments and acting both freely and logically upon the paper as first drawn.

It is well to hold fast to the fact that there has never been found among Mr. Jefferson's manuscripts a copy of the resolutions as passed, and that this is significant in the face of his well-known habit of preserving all his papers, all must admit; that, moreover, the paper he sent to Mr. Madison was sent before he could have heard from Kentucky of their passage, though after their actual passage; that

the draft he sent differed from the actual set, not only in the points already noted but in others more or less significant. Hence it is plain that if he was concerned in the drafting, Mr. Breckinridge was independent, and the one really responsible for the principles presented to the legislature.

If a little of that historical imagination which has already been freely used on this problem be brought to bear just here, it may be possible to produce a solution out of the tangle that will be at least quite as probable as any hitherto set forth. Taking the testimony of Marshall and Lyon and Caleb Wallace as directly to the fact of the right of Mr. Breckinridge to all credit; taking the stir in Kentucky, the substantial demand for such action, and the similiarity in general tenor of the informal resolutions passed at various times—the “consultation,” the reiterated claim of the Breckinridge family, the age of Mr. Jefferson at the time of writing the Cabell Breckinridge letter,—as all pointing to the same conclusion; adding to that such measure of proof as may be drawn from the internal criticism of the document itself and from a comparison with the other draft, and of the sentiments of the persons concerned as to matters treated of, and you have the ground whereon the attempted explanation rests. It is as follows: Mr. Breckinridge discussed the matter with Mr. Jefferson in the “consultation,” making the local Kentucky resolutions his basis. Drafts were drawn in course, the quasi-original draft being one of them. Mr. Jefferson drew in the main the ninth resolution, and Mr. Breckinridge, to the same extent, the others. The latter also, feeling that the matter was in his own hands, freely altered where he thought best, and from him alone the final draft emanated. While, then, the resolutions were, indeed, joint work, it would be a fair claim that the whole credit belonged to the latter; yet the former, from his conscious place of headship and often-exercised right of considering himself the fountain-head of “republicanism,” might

with good faith have claimed, nearly a quarter of a century afterward, substantial authorship.

It was quite early in his career, and before he had attained to the complete headship of a party, that Mr. Jefferson, in compliance with a request of Mr. Madison to see what could be done through the Maryland representatives in the old federal congress as to the Potomac business, talked the matter over with Mr. Stone and wrote to Mr. Madison:

"Finding him of the same opinion, (I) have told him I would, by letters, bring the subject forward on our part. *They will consider it, therefore, as originated from this conversation.*"

Pray, why should "they" not have considered it as originated from Mr. Madison's letter? It is seemingly very plain that it sprang from no other source. Be that as it may, it has a tendency at least to weaken some of the weight to be given to any general claims of authorship, origin, etc., on the part of this great *Deus ex machina*.

The one point is settled beyond a peradventure—John Breckinridge was the *mover* of these famous resolutions, his foundation-stone of strict construction. The other point—of *authorship*,—it is to be feared, will long remain unsettled—probably always. Mr. Jefferson has preëmpted the claim in the domain of history, and will yield hardly to any attempt at an ouster. In Kentucky, at least, the memory of her son and his life-long services will long keep green, and his completest meed of praise will be awarded him with wide hand, in this as in all else.

NOTE.—The letter of J. Cabell Breckinridge to Mr. Jefferson, to which the letter of December 11, 1821, above quoted, is the answer, is of sufficient interest and importance to be appended to this sketch. It is given from a contemporary copy from the letter-book of Mr. Breckinridge, now among the Breckinridge papers. It is as follows:

"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 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 4, 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 collusion 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."