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"LIBERTY AND MY NATIVE SOIL."

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## MESSAGE.

OF THE GOVERNOR OF S. CAROLINA.

To the Honorable Members of the Senate, and of the House of Representatives:

Gentlemen:—The representatives of the good people of the State, you have met here to consider of and provide for their welfare. The "universal frame" is governed by immutable and unerring laws—the same yesterday, to-day, and forever, and all its harmony. But humanity is left in its blindness and feebleness, to provide for its own changing and never satisfied necessities. I need scarcely remind you, that the law-making power imposes on the law giver the highest responsibilities which individuals can incur in relation to their fellow-man. It involves not only the obligation of providing for the passing day, but after generations have a claim upon you, to which you are bound to respond—not that anything that you may enact will be immutable, but that your enactments may serve as guides and lights to those that may come after us. To me the constitution has imposed the humbler, but delicate duty, to give you from time to time, "information of the condition of the State," and to recommend to your "consideration such measures as I shall judge necessary or expedient." And I shall enter upon this duty in the perfect confidence, that coming from all parts of the State, with full knowledge of the condition and wants of your constituents, you will readily perceive any omission and correct any error of my own. Perfection is not to be expected in the works of man, and a few are found who are hardy enough to question the wisdom of some of those laws which have been ordained by almighty wisdom for the government of the moral world. It is not then matter of surprise, that still more complain of those which emanate from the hand of man. Some are governed by what might be characterized a perversity of thought, others are from defect of education incapable of reasoning aright, and a still more numerous class are benighted by their selfishness. Hence the clamor which is raised not only here, but every where else where law governs, about its delays and uncertainties. To frame laws therefore, to meet the views of every individual, is not impracticable, but any attempt to do so would be productive of nothing but anarchy. All that can be attained, is to preserve the old, and frame new those best suited to the wants and necessities of the great mass of the people.

There is no one who is conversant with our general laws, and has witnessed their effect and operation, but must admire and approve of their general fitness. The English Common Law, founded on the wisdom and experience of ages, shorn of some of its rude proportions by successive enactments of our Legislature, and by slow and cautious judicial decisions, and moulded to a form suited to our peculiar circumstances, and the genius of our people, is the great foundation of those rules by which we are protected and secured in our lives, liberty, and property. They may be susceptible of improvements, but as a principle of legislation, I would lay it down as a rule, that any attempt to change these great landmarks by legislation, ought to be done with great care and circumspection. A particular case may develop apparent evil, but there is danger in remedying that, others of greater magnitude will grow out of the remedy, and long experience has persuaded me that the safer course is the correction of it by what is sometimes stigmatized as Judicial Legislation, but not therefore the less safe or salutary. It is not the province of the Judge to make the law, but to apply the principle to the practical concerns of life, and it is no cause of wonder that the wisest are sometimes mistaken in its application, in some of the infinite variety of cases that daily arise. These errors are developed by time, and the true correction is in the correct application of the well settled principle. The great beau-

ty and excellence of the common law, is its wonderful adaptation to all times, places, and circumstances. I do not mean that one common law would equally apply to all countries, but that in every country in which right prevails, must have, so to express it, a common law of its own, possessing similar properties, founded on the usages and necessities of its citizens; it provides a remedy for every wrong, and would be unwise to fetter it by arbitrary rules, the operation of which cannot be foreseen, unless the evil admits of no other remedy. I have therefore, nothing to propose to you on this head, nor does any important defects in our statutory law, affecting the rights of property, now occur to me. Mankind readily accommodate themselves to any system of laws which are founded on correct morals, and are known and understood, and the same dangers and difficulties present themselves in reforming and modifying the statutory laws as in the common law. Neither ought to be handled without great caution and circumspection. If evils do exist, they will be found on a careful examination, not so much in the laws themselves, as in the machinery by which they are carried into effect. It is vain to expect their legitimate and successful operation in the hands of unskilful artists, where the machinery is defective, or the power employed is insufficient for the work to be performed. Occasional complaints against delays in the administration of justice has suggested these remarks, but when it is known they are heard throughout the world, wherever the laws are administered through the agency of Courts of Justice, it gives assurance that they arise rather out of the necessity for caution and deliberation in meeting out justice than in the varied systems through which it is done. No community will or ought to be satisfied with any system, which does not secure reasonable despatch in its administration, and if there be any defects in our own, they ought to be corrected. The mere machinery of the law does not affect private rights, and these may be safely changed or modified to suit the exigencies of the times.

Of the patience, diligence, zeal and ability of the Law Judges and Chancellors, with most of whom I have acted for many years, I can speak with confidence, and I pay them no compliment in saying that no state in this Union is served in this department with more fidelity and ability, and if there are any unnecessary delays, they will be found in the want of sufficient time to despatch the business with that caution and circumspection which is indispensable to its correctness. I may have occasion during the present session to call your attention more particularly to this subject, and will for the present forbear to press it further.

### DISTRICT POLICE.

Amongst the subjects requiring your immediate attention, and calling for radical reform, is our District Police. That it is badly administered at least in some departments, is universally known and acknowledged, and I am persuaded that if the defects in the system itself and the equally defective execution of it had been clearly seen and well understood, a corrective would have been before applied. The Commissioners of Roads, of the Poor, and of Public Buildings, have discretionary, not to say unlimited power of taxation over the citizens, and yet in effect they are accountable only to themselves, not only as to the fact, but for the manner of disbursing the fund and the uses to which they are applied. I do not intend to impute any thing improper to any individual or particular Board of Commissioners, but it is a power susceptible of the greatest abuses, defying detection, and I am satisfied that they themselves would generally desire the strictest scrutiny into their accounts. They are by law required to exhibit their accounts to the Attorney General and Solicitors, but this is necessarily matter of form. These officers are for the most part necessarily ignorant of the propriety and necessity of the disbursement of these funds, nor will the most specious vouchers suffice to demonstrate it. There is no one to question their propriety, and what they exhibit on their face is taken for granted. The administration of the Free School Fund is equally exposed to abuse, and there is one instance falling within my own knowledge, in which a Board of Commissioners had been imposed on by one of its members, by the fabrication of receipts in the name of fictitious persons, representing the disbursement of funds; and it is no unworthy compliment to the honesty and integrity of our people, that instances of this sort are so rare, when the facilities and temptations to fraud are so great.

This is not all. It is confidently believed that if the labor authorized by law for keeping our roads in repair, was rigidly required and judiciously directed they would generally be kept in good condition. It is believed too, that that the poor are wretchedly provided for, although the sums annually

exacted in the form of taxes are ample, and that it is notorious, that the Free School fund, large and liberal as it is, has failed almost wholly of the objects for which it has been appropriated. There is, unquestionably, defects in the system itself; but the great defect is in the want of principle and rule in its administration.

That these evils do exist is universally known and conceded. The difficulty is as to the remedy, and I feel great distrust of my ability to suggest one which will prove effectual. The leading feature of any remedy, ought to be to secure the prompt accountability of all the Boards of Commissioners or other agents, to an authority independent of their own; and I would respectfully recommend, as worthy at least of an experiment, the appointment of a Court or Supervisors, of the Police in each district to be appointed by the Executive with the advice of the Senate, to consist at least of one for each member of the House of Representatives, allowing at least one of each Parish—clothed with all the powers of these several Boards of Commissioners, and with power to appoint overseers of the roads, of the poor, of public buildings, and of free schools, in such numbers as they may think fit, to be charged with the execution of the laws provided for their respective departments within the precincts to be assigned to them, and to account to the Judges or Supervisors at regular periods, for the manner in which they have discharged their duties and disbursed any funds that may have been committed to them. I submit, too, that the Judges or Supervisors should be required to meet regularly at the Court House of their respective districts at least once in every three months, and hold their sessions publicly, and be authorized to punish all delinquencies in the overseers. The report of the Circuit Solicitors to the Legislature in December, 1839, will supply a useful guide in framing the details of such a system, and their able arguments as to the necessity of a radical reform of our District Police, supersedes the necessity of vindicating it here. The proposed reform has at least the advantage of securing accountability to an independent authority. Clothed with limited judicial authority it might be rendered eminently subservient to the purposes of justice, particularly in the trial of slaves and free persons of color for capital offences. The tribunals which now exercise this power, it is known, are generally not only ignorant of the principles, but even the forms of law, and incapable of analyzing and comparing facts. Independent of the humanity concerned in it, it has always struck me as a strange incongruity in our laws, that whilst the life of a slave is put in jeopardy on a trial before such a tribunal, the slightest injury to his person entitles the owner to resort to the highest tribunal in the State.—If there be a class of offences of which they are capable, requiring a more summary mode of trial, make them an exception. It is believed too, that the jurisdiction of contracts to a very limited amount, of petty trespasses and misdemeanors, might be safely confided to it, and would relieve the Superior Courts of a burthen, which unimportant in itself is calculated to delay and obstruct matters of more consequence.—The want of men to fill the offices of Judges was a leading, and according to my recollection, the only reason for abolishing the County Courts in 1799, and that is no matter of surprise, as that generation was brought up during the Revolutionary War, when there was no means of obtaining an education, and yet the memory of some of the Judges is cherished by the old inhabitants, as examples of strict impartiality and ability in the administration of Justice.—But that objection no longer exists. The South Carolina College has shed its light throughout every portion of the State, and it is believed that in every district, educated gentlemen, some of whom have studied law as part of a finished education, and in other instances retired lawyers, will be found willing and able to serve the country in the capacity of Judges of such a Court, and one such at the head of the Court of each District, would ensure it confidence and respect.

### EDUCATION.

In the increasing usefulness and growing prosperity of the South Carolina College, the State is reaping the full fruits to the liberal patronage which she has heretofore bestowed upon the institution. It ranks now among the most useful asylums of learning in the Southern portion of the Union, and under its present wise and prudent and energetic government, it bids fair to take the lead of all. It is only a few who have lived, like myself, in times preceding the organization, who can realize the benefits resulting from it. Before, the organs of imparting science and learning within the State, were a few grammar schools, widely dispersed, in which the ancient classics were principally taught, with which were occasionally united a few of the elementary branches of the occult sciences—higher grades of mental

culture were reserved for the very few who had the means of going to some of the Northern or foreign colleges to complete their education; and mental darkness pervaded the land. But under the fostering influence of this institution, the lights of literature and the sciences have penetrated the recesses of the mountains, the islets of the sea coast, and spread over the whole intermediate space. The number of students is now something like four-fold what it was a few years ago, and this addition would seem to indicate the necessity of an addition to the number of Professors, and necessarily enlarged accommodations for the students. I will not anticipate what the board of trustees, whose peculiar duty and province it is to advise on this subject, may suggest. But I will not allow myself to question, that whatever appropriations may be necessary to sustain and promote this invaluable institution will not be withheld.

Of our Free School system I shall forbear to say anything at present, as a Committee of the House of Representatives were charged, at the last session, with examining into it, with a view to its improvement, and it may be reasonably expected that they have bestowed upon it all the attention that so important a subject deserves; and that they will bring together all the information that could be obtained. The system, in its present form, as well as the manner in which it is carried into effect, is the very worst that can be conceived, and calls loudly for improvement. But as the starting point of any improvement, I would suggest the absolute necessity of appointing a general Supervisor of the schools, without which it is respectfully submitted, all attempts at improvement will be vain—without it, nothing like system, so necessary to every enterprise, can be obtained—next to this, the most important is the means of obtaining competent instructors.

### ELECTION OF ELECTORS FOR PRESIDENT AND VICE PRESIDENT.

It will not escape your notice, that by the act of Congress, the first Monday in November next, is fixed for the election of Electors for President and Vice President. For the last fifty or sixty years, they have been elected by the Legislature, the time appointed for the election being within the period of its regular annual sessions, but the time now fixed is between the election of a new Legislature and the term prescribed by the Constitution for their assembling. If the Legislature determine to exercise the power themselves, the questions will arise, 1st. Whether you have the power to adjourn yourselves over to that day—if not, 2d. Whether you have an authority to provide for the assembling the newly elected members, and if neither, 3d. Whether the Executive has, under the Constitution, authority to convene them. I do not, myself entertain any doubt on either of these questions. In the memorable session of November, 1834, specially called to provide against the operation of the obnoxious tariff laws of the United States, the newly elected members were convened before the time appointed by the Constitution, by the proclamation of Governor Hamilton, upon the advice at least of the Judges of the Court of Appeals, of which I was a member, and it is a little remarkable that irreconcilably divided as we were upon the political questions that agitated the whole State, we all, without concert, came to the conclusion that the newly elected members constituted the true Legislature, and so advised him. The conclusion at which I then arrived, was not without due deliberation, and I believe it has been sanctioned by general public opinion. I have certainly not changed my own. It follows that this Legislature has no authority to adjourn itself over to a time beyond the next election of members, and I think there is as little doubt that you have no authority to prescribe a time for their meeting. If you may, there is nothing to restrain you from prescribing rules for its course of legislation. The question is resolved by familiar rule—that an agent or representative cannot, by the appointment of a substitute, extend his authority beyond the time limited by the authority under which he acts.

Has the Executive the authority to convene the newly to be elected members?—His power in this respect is limited by the Constitution to "extraordinary occasions." Is this one of that character? It may be said that it is not, because the occasion is foreknown. Now, if the passage of the act had been delayed until after the next session of the legislature, I can hardly suppose that even this objection would be raised, and yet this Legislature is as impotent to provide for the occasion, unless by changing the manner of appointing electors, as by the individual manner of appointing the electors, as would be the individual members in March next, dispersed throughout the State, and the "occasion" is the more "extraordinary," as there is no other means of providing for it, unless the Legislature shall see

fit to provide another manner of appointment.

The only alternative is to give the election to the people. The present system has worked well heretofore, and I am upon principle opposed to any changes, unless certain and practical advantages are to result from them. This certainly has one advantage. The members of the Legislature have greater facilities of ascertaining the qualifications and claims of the candidates than the great mass of the people, and are therefore less liable to be imposed on by the artful misrepresentations of designing men. If you should think otherwise, it will be for you to determine whether to elect them by districts or a general ticket. It is obvious that if the general ticket system is adopted, the up country will on account of the greater number of voters, have the entire control of these elections. Now, the representation in our State Legislature is apportioned generally amongst the Districts on the basis of taxation and population, with some concessions to the Parishes of the low country, on account of their peculiar territorial divisions, the result of a compromise between the up and low countries, with a view to establish something like a balance of power, if by any possibility conflicting interests should arise—the only value of a written constitution being to protect the weak against the strong. The principle of this compromise has generally governed in the election of Senators to Congress, by selecting one from each section of the State, and good faith requires that it should be carried out in the election of electors.

The Constitution of the United States authorizes the Legislature of the several States to prescribe the manner of appointing electors, and I have heard it urged that as the power was limited to prescribing the manner, the Legislatures themselves had not the power to appoint. Our long continued usage gives the answer to this argument; but if the question was now open, I do not think there would be room for much controversy about it. The power to appoint, necessarily involves the right to direct the manner in which the power is to be executed; and the idea that one may authorize that to be done which he himself is prohibited to do, would seem to involve a contradiction—a fit and willing agent might not be found, and it would be criminal to confide it to one who was unworthy of confidence, and if the position be correct, the power must remain unexecuted.

I submit these views with great deference and profound respect, and under perfect confidence that however you may dispose of the question, your councils will be directed with a single eye to the well-being of the State.

### FEDERAL RELATION.

I transmit herewith certain resolutions of the Legislature of the State of Virginia, which I am requested by the Governor of that State to lay before you. They are directed against that proviso of the bill then under consideration in Congress, appropriating money to prosecute the war or negotiate a peace with the Republic of Mexico—usually called the Wilmot Proviso, and affirms among other things, that the passage of that Proviso would make "it the duty of every slaveholding State, and of the citizens thereof as they value their dearest privileges, the sovereignty, their independence, their right of property, to take firm, united and concerted action in this emergency."

I am also requested to lay before you, and herewith transmit, certain resolutions of the Legislature of Connecticut, upon the same subject, approving and affirming the principles of the Wilmot Proviso. I have also received from the Governor of Rhode Island certain resolutions of the Legislature of that State, of the same import, which I also herewith transmit. These conflicting resolutions raised the question whether Congress had or had not the constitutional right to prohibit slavery in the States admitted into the Union heretofore and may be hereafter admitted. If the question was now to be agitated, for the first time, one who is familiar with the history of our Government and has studied our Constitution in the spirit of its original design, would be surprised that such a question was ever raised. The States of which the Union was composed at the adoption of the Constitution, were clearly intended to be placed on a footing of precise equality, and the framers of this instrument would have been startled at the idea that those afterwards to be admitted were to be regarded as unworthy of the sacred privileges secured to the original States, the right to legislate for themselves, and that Congress might, by act, prescribe rules for their legislation.—The argument in favor of this proposition is based on that provision of the Constitution which declares that "Congress may admit other States into the Union"—that this, in terms, is a discretionary power, and Congress may therefore annex any condition that it thinks fit, and consequently the right to interdict slavery or involuntary