Commonwealth of Massachusetts.

House of Representatives, Feb. 25, 1839.

The Committee on the Judiciary, to whom were referred the petitions of Aroline Augusta Chase and 785 ladies of Lynn; of Polly W. Howland, and 169 women of Brookfield; of S. P. Sanford and 210 females of Dorchester; and of Phebe Cotton and 150 ladies of Plymouth; in relation to distinctions of color—having considered the memorials with the respectful attention due to any and all requests emanating from such sources, and with the mature deliberation required by the importance of the subject, submit the following

REPORT:

Fourteen hundred females have exercised the right, no less clearly defined than sacredly guarded by the Constitution, "to request of the legislative body by the way of addresses, petitions, and remonstrances, *redress of the wrongs done them, and of the evils they suffer.*" No light cause should draw the matrons and maidens of Massachusetts from the retirement of the homes they bless with their virtues and adorn by their graces. Their appropriate sphere has heretofore been in the domestic circle, where there is still space ample enough for the

exercise of the gentle charities which make life happy. The necessity for the interposition of their powerful influence to resist oppression, or to avert some pressing social or moral evil, while it must demand would fully justify, their appearance in the halls of legislation. In such exigency, as they would be compelled by duty to encounter the unenviable notoriety of public exhibition, they might well brave the misconstruction of motives and the ungenerous reproach to which they would be subjected. Even if they come *uncalled*, before the representatives of the people, respect for their sex should ensure for them the common courtesy of a patient hearing. Whether the requests of the ladies of Lynn, Brookfield, Dorchester, and Plymouth, are perfectly consistent with feminine delicacy, it is not requisite to decide. Undoubtedly, the fathers, brothers, and lovers of the fair memorialists, have reflected on the subject, and advised their daughters, sisters, and those more dear than either, that it was proper for them to solicit redress of wrongs, real or imaginary. It is to be lamented that the light of chivalry has grown so dim over the ancient Commonwealth, that not one of its brave men has lent his name, to aid the prayers of a thousand fair women: and it is to be regretted, that among the friends of those women, there were none to whom they could have confided the vindication of matrimonial privileges, and entrusted the unpleasant task of demanding reformation in particulars which cannot be investigated without raising a blush on the cheeks of that sex in whom modesty is not the highest of the virtues.

It is the province of the Committee to decide on questions of law and not of propriety. They have directed

their inquiries towards the expediency of the changes of the statutes which are indicated by the memorials.

The petitioners unite, with the exact similarity of printed forms, in asking the immediate repeal of all laws of the State which make any distinction among its inhabitants on account of color.

Counsel learned in the law, and eloquent in the exposition of its provisions, volunteered to sustain the request of the ladies of Lynn. They pointed to two distinctions as resting on the diversity of complexion, one in regard to marriage, the other relating to military duty. The first only, as the Committee conceive, is derived from the authority of the Legislature of Massachusetts; the last is established by the Congress of the United States.

The fifth section of the seventy-fifth chapter of the Revised Statutes, reaffirming an act of 1786, declares, that "no white person shall intermarry with indian, negro, or mulatto." The first section of the chapter next following that quoted, pursuing the policy of the restriction imposed, enacts that all marriages forbidden by reason of near consanguinity, close affinity, or the obligation of prior alliance—those of parties unable to form valid contract for want of mental capacity—and those between white person, negro, or mulatto, if solemnized within the Commonwealth, shall be absolutely void without a decree of divorce. More effectually to restrain incestuous and unnatural connexions, a penalty is imposed on the magistrate or minister who shall celebrate the rites of unlawful wedlock.

Such are the provisions of the laws which the ladies of Lynn, and their sisters of Brookfield, Dorchester and Plymouth, demand should be abolished forthwith.

Since the spirit of the Revolution broke the chains of slavery in Massachusetts, no inequality of civil rights has here existed. The man of color may exercise the elective franchise, to the fullest extent, in the choice of his rulers. If possessing intelligence and integrity to secure the confidence of his fellow-citizens, no restraint, save that of prejudice, prevents him from seeking the highest honors and holding the most elevated offices of church or state. No written rule excludes him from filling the seat of the chief magistrate, reclining on the cushioned basis of the senator, occupying the bench of the judiciary, or holding any post of civic or municipal distinction. His property is sacred; his house is walled about with the legal ramparts of the castled home; his offspring enjoy the common benefits of education with the children of other races. If he be deprived of any of the privileges of freedom, of any excitements of ambition, of any of the enjoyments of social happiness, it is by a power beyond that of the laws.

Knowing this equality of the inhabitants of the State, it was not unreasonable, although it might be ungallant, to suppose, that the fair memorialists might not have understood precisely what they wanted; or to believe that they acted under misapprehension; or were influenced by misrepresentations. There are, unfortunately, territories of the Union, where heavy disqualifications oppress one portion of the population. It was suspected, that petitions prepared for the meridian of slavery or disfranchisement, printed and imported into the free latitude of the north, might have been ignorantly subscribed, without fully comprehending their terms and effect.

The compliment to the *modesty*, at the expense of the legal skill of the females, was declined. The learned

counsel of the ladies of Lynn, denied that they desired to change, in practice, the rights of marriage. They were described and believed to be as amiable, intelligent, and virtuous, as they undoubtedly are beautiful : persons who, if every restraint were removed, would refuse to form impure alliances or countenance licentious connexions. Many of them, it was asserted, might not have known the particular and prominent subject to which their words necessarily applied, but felt conscientiously bound to protest against any distinction, if any should be discovered, which was founded on false principles. They intended to ask, not that red, black, and white might be mingled together, but that no citizen should be degraded, branded with inferiority, or prevented from associating with every other as equal.

For others, it was passionately denied, that those who came to instruct the Legislature in its duties, were ignorant of their own. It was represented, on the presentation of their petition, in substance, but not in terms, that they were accomplished politicians in petticoats, deeply skilled in jurisprudence, and desirous of vindicating alike the rights of men and women. Infinitely more was claimed for them, than they could possibly have desired to assert for themselves.

All demanded that their requests should be considered with deliberation, and declared that they were worthy of the gravest attention of the representatives of the people, as involving foundation principles of government.

The ladies of Lynn contended, that the restriction on the marriage of white, black, and red, was against the Constitution of Massachusetts, and wholly void. They must be aware, that the argument on the constitutionality of an existing law, belongs to the judicial and not to the

legislative department. Either of them, whose taste may lead to the alliance with one of a different color, by forming such connexion, may present the question to the courts established as interpreters of the Constitution and laws. Their own preference to resort to the Legislature as the fountain of right, cannot confer the jurisdiction bestowed on another tribunal.

To show the expediency of repealing the portion of the law of which they complain, they declare that it is unequal, branding one class with infamous disqualification. The Committee have been unable to perceive the soundness of the objection, even with the light thrown over it by the eloquence of the advocate. The law declares, that the white shall not intermarry with the colored; that the colored shall not be joined to the white. It extends to all citizens, without discrimination. Neither by expression nor implication, does it make the slightest superiority in one race or inferiority in another. If it had forbidden one to enter into connexions which were left free to another, there would have been reason to charge unjust preference and wrongful partiality. While the law applies to all colors, to all races, spreading its protection for morality and purity over every member of the community, it should not be denounced as unequal.

Some arguments urged by those who presented the petitions or sustained the demands of the ladies, are of a character quite too delicate to be extensively examined. The law, in its effects, was said by one to consign the females of the colored race to prostitution, and the males to vice. It would be slanderous to suppose that virtue is limited by shades of color. The indian, or negro, surely, may as honorably and worthily sustain the relations of domestic life with the partner of his own complexion, as

if his selection were enlarged by choice through the whole circle of the rosy daughters of Europe. If it be true that he sinks into profligacy, the fault must be with the defect or neglect of the means of moral and religious instruction, which the kind sympathy of the memorialists might be usefully employed in supplying or remedying. Another argument of equally equivocal propriety for the advocates of females, was publicly advanced. It claimed that the law should be repealed, because the children of white and black parents, whose union is peremptorily forbidden, were subjected to the disqualifications of illegitimate birth. The same unhappy consequences are visited on the offspring of those incestuous marriages forbidden by divine and human laws alike. The policy of those penalties, preventive of sin and crime, imposed by the necessities of a moral community, if it can be discussed at the tea tables of the petitioners, cannot be conveniently explained in any other place, except the lecture room of the physiologist.

The power of the Legislature to regulate marriages, has been held unquestioned through more than half a century, and has been confirmed by a long series of judicial decisions. If it impairs the licentiousness of choice for individuals, its exercise is for the promotion of the general happiness and welfare. The restriction on the matrimonial alliance of those closely connected by the ties of kindred, derived from a source higher than human authority, is liable to every exception urged by the memorials against the restraint to which they object. Resorting to a thread-bare and thousand times repeated question, they have asked whether the Legislature could prohibit marriages because the parties had red, black, or light hair? It may be replied, that the power, which they acknowl-

edge to exist of prescribing the form of the celebration of the contract of marriage, determining the *ages* of those who may enter freely into the holy state of matrimony, or ascertaining the *degrees of affinity*, depending on the *blood*, which forbid its banns, may prescribe other conditions. Whenever the common good shall require further provisions for the promotion of that happiness which has its best security in public virtue, they may doubtless be applied to other circumstances than those of years, complexion, degrees of blood, or shades of color.

The repeal of the law which the ladies seek to abolish, preventing the marriage of black and white, would be construed to be the declaration of the Legislature, not only that the restraint should be removed, but that the union heretofore prohibited was fit and proper, and would give the sanction of legislation to unhallowed nuptials.

That law was established by the fathers and founders of the Commonwealth in early time, and has held its guardianship over licentious passions, until recently, without one murmur rising against its operation.

It recognises the distinctions impressed on the families of the human race by that Infinite Wisdom, which nothing but the insanity of fanaticism dares to arraign. They exist independent of human enactments. Not even the supremacy of the Constitution declaring all men to be free and equal, has force to make them of the same complexion. No statute can annul the law of nature, and bleach the skin of the Ethiopian or darken the face of the European. The ladies of Lynn, if they do not respect the salutary acts of the legislation of a century, may have regard to the ordering of that Providence which has impressed marks of separation, that it seems a vio-

lation of a beneficent though mysterious ordering, to blend together by the union they may have contemplated.

A law long established should not be repealed except for the purpose of remedying an existing evil, or introducing some probable improvement. The ladies consider that no law on the subject is needed. They agree, that respect for public opinion and for decency, would, for the present, impose such prohibition on the union of the white wife with the black husband, that it could seldom happen. They disclaim, for themselves, and for their relatives, and friends, any desire, to derive indulgences from the relaxation of the strictness of the law. Another party, as much interested as the ladies who signalize their benevolent disposition before the Legislature, refuse to aid their requests. Intelligent persons of color, while they have been restrained by shame, and by a sense of gratitude for good intentions, however misdirected, from presenting remonstrances on the subject, freely declare that they would reject the alliance with those of the white race with abhorrence. There would seem to be no pressing necessity for the immediate repeal of a law expressing so perfectly the prohibition which each declares should be rigidly enforced.

If no regulation of the intermarriage of those of different colors had been placed on the statute book, it might be doubtful at least, whether its pages should be encumbered with any provision on the subject. Whether the blue-eyed daughters of the Anglo-Saxon lineage shall mate with the dark African, or the red Indian, is perhaps as much matter of taste as of legislation. Except from the evidence furnished by the petitions, it might be supposed, that the whole could safely be left to the moral sense of the community. With that testimony, it

may be desirable to retain still longer provisions restraining unhappy connexions.

Another supposed distinction of color made by the Legislature of Massachusetts, was pointed out as existing in the militia law. On this point the Committee were favored with a written argument, equally elaborate and ingenious, on the effect of the laws of the State and nation and the construction of the Constitution of the Commonwealth and of the Union.

The fifth section of the twelfth chapter of the Revised Statutes, embodied in the new military code, provides, that every able bodied white male citizen, unless exempted by age or other specified exception shall be enrolled in the militia and be subject to its duties. This is but the recital, in terms, of the act of Congress, the supreme law of the land, which, by silent exemption, releases the colored citizen from the burden of service in the lines of martial service.

If every word was stricken from the statute of Massachusetts, which relates to enrolment, the obligations of her citizens to do military duty would remain unimpaired, for they depend upon the authority delegated to and exercised by the Legislature of the Union.

If the Legislature of the Commonwealth, should attempt to hold the colored citizens to service in the militia, they would still be exempted from duty by the act of Congress. Although their names might be inscribed on the rolls of the companies, their appearance to bear arms must be voluntary; they could not be subjected to discipline when embodied, and the requisition would be nugatory and idle. Obedience to orders would depend upon their own pleasure, and the absurd condition would

exist of a military force subject to no lawful command, and able to disperse at their own will.

The ladies of Lynn, who seem at first to have entirely overlooked or forgotten the origin of the exemption of which they complain, attempt boldly to cut the knot which cannot be untied. They declare, that the act of Congress, as to this particular, is unconstitutional and void.

It is greatly to be regretted that the opinions of the stateswomen of Lynn should be in direct opposition to those of the statesmen, soldiers, and jurists, who have recently made a careful revision of all the laws, both state and federal, relating to the militia, and to those of all the justices of the supreme judicial court.

The ladies deny, that Congress can discharge the colored citizens from military service, and ask, would it be constitutional "to omit the enrolment of any class on account of occupation as merchants, or mechanics, or on account of their size, or the sluggishness of their disposition," or by reason of the dark shade of their hair, or the hue of their eyes?

"It was most manifest," say the Commissioners, "that Congress, as incident to the power of organization, might include a greater or less class of citizens from time to time and at different times in the law of enrolment, and that it might also exempt from duty, by *classes*, or *descriptions of offices*, by *enumeration of persons*, or by *reference to occupations*, such as might fall within a general rule of comprehension."

The court have considered, "whether there would be any difference in principle, between an act of legislation designating persons to be exempt by their ages, and that of designating them by other descriptions. The existing

laws," say they, "exempt large classes of citizens, designating them by their offices, their occupations and their religious professions, and as a question of power we cannot perceive any difference between this and designating them by their age."

It must be entirely unnecessary to examine the structure of an argument, however beautifully built, when the foundation upon which it rests, is so defective that it cannot stand.

The Committee are of opinion, that the power of enrolling the citizens in the militia belongs to the United States, and not to the state sovereignty; and that the enlargement of the numbers and classes included by Congress rests alone with that body. The memorialists must resort to that body for the remedy by law of the grievances they imagine, or to the judiciary, for a revision of their decision.

One remark, the Committee feel bound to make in vindication of the law, which the memorialists misrepresent as consigning the colored citizen to infamy, by the silent omission of his name, and associating him only in exemption with those discharged from the line by reason of crime or idiocy. The same law which exempts the negro and indian, excepts the Vice President, and the judicial and executive officers of the United States, the Lieutenant Governor, various high officers of the executive and judiciary of the State, clergymen, professors of colleges, the society of the friends, and other classes of the most honored of the land. The ladies must be wonderfully fastidious in their taste to complain of being placed in such company.

Among the documents referred to the Committee, was a paper purporting to be a memorial of Phillis Hathaway, and other "ladies of color," against the petition of Miss

Aroline Augusta Chase. On inspection, it is evident, that the names subscribed are false and fictitious signatures: on perusal, that with neither wit nor wisdom, it was designed as a scurrile jest, insulting to the House and the people whom it represents.

Of the proficiency and accomplishments in penmanship of those who describe themselves as women of Brookfield, there was no opportunity to judge; nor of the authenticity of their signatures; for the names borne on the list of subscribers were all written by the same hand, if not by the same pen.

The petition of Samuel Curtis and 192 others, praying that a special act may authorize those of the memorialists who are of lawful age to marry with indian, negro, or hottentot, can only be considered such expression of ridicule of the object of the petitions, as might suit the license of the last hours of revelry, but is unfit for sober citizens to address to their Legislature.

On the memorials of the females, are names of children of tender age, who, as they cannot be supposed to have understood the provisions of the law, should be acquitted from the disgrace of soliciting the repeal.

The right of petition, made sacred by the Constitution, as the great remedy for the redress of civil wrongs, is violated as much, when the legitimate exercise is abused by the citizen, as when its very existence is denied by the government. When this right is no longer devoted to the public good, but perverted to frivolous and unworthy purposes, the value of the high privilege is debased, and the instrument, powerful, when rightly used, for the correction of errors, is debased to worthlessness. It is abused most dishonestly, when the names of children are obtained and made to pass for those of persons whose judgment should

have influence; and wantonly prostituted, when made the medium of ribald jest, licentious principle, or frivolous trifling. It is scarcely less profaned when inconsiderately used by those who do not know even the subject for which it is employed.

The substance of the petitions and memorials presented, is inscribed upon the records,—if they become the foundation of any change of the laws, they are preserved among the archives of the Commonwealth. He who shall explore the vast masses of documents daily piled on the tables of the legislative departments, until their accumulating masses threaten to rise even above the flags floating over the capitol, while he may wonder that it should ever have been necessary to enact decency by statute, will be surprised to discover that the mothers, and daughters, and sisters, of a virtuous people should have demanded the repeal of that statute of decency. Lest future historians should form an erroneous estimate of the manners and morals of the age, it is desirable to afford those persons styling themselves ladies, an opportunity to reconsider their opinions on matrimonial and constitutional rights, and to remove their names from the rolls on which they are written.

As the Committee believe that it is inexpedient to legislate on the subject referred to them, they recommend that the ladies of Lynn, Dorchester, Brookfield, and Plymouth, have leave to withdraw their several petitions, and that any member who has presented a false and fictitious memorial on the subject of color, may be permitted to take the same from the files of this House.

By order of the Committee,

WILLIAM LINCOLN.