T. T. PLAYER'S SPEECH.

Mr. Chairman:

It is said of one of the Emperors, that he had proscribed from his pageant the busts of two of the most esteemed and honored among the Romans—The exclusion, instead of being an indignity, as it was manifestly intended to be, is remarked upon and regarded as the most triumphant testimony of their worth. It cannot be much more a distinction to be found in this debate than it was in the procession of Tiberius. The themes upon which the discussion has necessarily ranged, have long been familiar in this hall and to this public, and one who touches the question at all, is either condemned to touch it with the hand of a sciolist, or to ring the changes on topics as unprofitable as they are stale. I am, however, too well persuaded of one truth in polemics to permit even this debate to escape me. Much passes for argument here, as elsewhere, merely because it is unanswered, and hence it is not unfrequent that gentlemen obtain a victory in a controversy of this character, more by default of their adversaries, than by the intrinsic strength of their own efforts. If defeat is wrought upon the cause of convention, it will not be because I, as one of the sentinels, have slept upon my post; for although the contest must at last be settled by an array of numbers, and not by the power of individual combatants, our fall will not be the less gallant because the ensigns of liberty are displayed, while the responsibility of those engaged in our discomfiture must be greatly increased by the energy of our defence.

This debate in its progress, has undergone so many changes, that it has become matter of grave consideration, to know what in truth we are discussing.—Not certainly the merits or defections of partizan leaders, as some gentlemen seem to imagine. In discussing the expediency or impolicy of assembling in convention, what does it make, for or against the issue, that distinguished individuals have differed from each other or been inconsistent with themselves? As well might you turn aside to pursue the incendiaries when a city is in flames. That Mr. Calhoun, or Mr. Lowndes, or Mr. Cheves, or any other gentleman of talent or distinction, has thought in this way or the other, or that they have changed with the times or without the times, is matter for their consideration and not the deliberations of this committee. That the President has been pleased to take views which may be esteemed wise, or the reverse, of the tariff acts, is matter affecting his present or perhaps his future reputation; but that it has the slightest pertinence to the debate which is in progress, I deny most positively. To a mind disposed to take opinions upon trust and to defer implicitly to the accepted tenets of sages or "saints in politics," it may be satisfactory to enquire into the glosses and crede which each in his turn may assume or profess; but to a mind deeply imbued with the subject and earnest in its pursuit of truth, no one consideration, but its own unbiased convictions can act with a feather's weight in inclining it to an opinion or its contrary —Discarding then all impertinent and immaterial discussion, what is the subject under debate?

The grounds which I take (for I assume to be the exposit or of my own opinions only) is, *that by the passage of tariff acts for protection, Congress has been guilty of perverting an express trust in the constitution; that this "violation of perversion" is "deliberate, palpable, and dangerous," and*

that it is "not only the right but the duty of the state, to interpose in its highest sovereign capacity, for the purpose of arresting the evil."—To these issues I shall direct the attention of the committee.

And first, "that tariff acts passed for protection, are perversions of a written trust in the constitution." I take it for granted, it is sufficiently obvious that protection was the purpose for which these acts were passed. Judge Baldwin avowed it in 1828—Mr. Mallary has done so time and again—President Jackson has been equally explicit in the avowals which he has made of his adhesion, and it has become matter of common fame that this was the sole and manifest purpose of all the adherents of the system—a purpose obviously variant from the defined trust for which the taxing power was conferred—Every perversion of a power is a fraud—and every question of fraud is made up of intention and fact. The declarations to which I have adverted, establish the intention; the actings and doings with a view to that purpose, are, therefore, all that remain to be noticed, to establish the charge. But the question arises, may the Legislature, in making up the issue of fraud, go beyond the acts and the constitution in its enquiry? To this end, the Legislature is not hedged in by the strict rules which restrain the powers of a court of law, and admitting that it were, no tribunal on earth is estopped by legal subtleties in exposing a fraud. The established rule of investigation, and the only one which puts limits to the inquiry, is that the tribunal examining the charge shall confine itself to such evidence as is furnished by the declarations and acts of the conspirators at the time the fraud was in progress. To show the intention I have adverted to the declarations, not of those who were "art and part" merely, but of those who were the very head and front of the measure, and to show that that purpose was attempted to be concealed, it is only necessary to recur to the face of the several acts, covering the fraud under the forms of the constitution—Upon paper, and as far as the question can be reached by philological tests, the tariff acts are a body of revenue laws, purporting to be framed with a view to raise money for the exigencies of government, and tried by such evidence only as is furnished by inspection, they would be pronounced constitutional—With the accompanying declarations, however, of the corrupt authors and agents in their formation, the conclusion is irresistible, that although framed under the taxing clause, they were intended, not to raise money, but mainly "to protect domestic industry against foreign competition."* The point necessarily presented by this state of facts then is, can acts framed under the clause in the constitution giving the right to levy money by imposts, be framed, consistently with the terms of that clause, for any other substantive end, than that which is there expressed? That end, as I said before, was to raise money, and the term "collect," shows that to be the only object intended to be effected by the power used directly and in good faith—Acts, therefore, such as the tariff acts for protection, passed under that clause with any other object than to "collect," or raise, or levy money under whatever shifts or devices their purposes may be concealed, or by whatever colourable conformity they may adapt themselves to the text of the constitution, are frauds upon, and therefore violations of, the trust which is there *expressed*.

The attempt of the member from Charleston (Mr. Huger,) to impugn

*See Baldwin's Speech, 1828.

the argument by reference to the clause giving power to Congress to "regulate commerce," is itself an abandonment of the controversy on the impost clause; for if he was not conscious that the argument could not be sustained on that clause, why place it on another? The power evidently must result, if it exist at all, either from one clause or the other—not from both—and the member from Charleston being constrained to fall in the end on the clause giving power to regulate commerce, we must regard him as having made his election to rest the argument there—and in courtesy to him, if not for the conviction of the committee, we must give some slight examination to that clause. I understand the end for which that clause was inserted to be, to enable Congress to foster commerce, by laying down such rules as would enure to the advantage of our commercial relations. But allowing, that in pursuing that end, it might have recourse to indirect means with a view to attain it, still the question arises, does a specific power to regulate commerce carry with it the substantive, independent right *to regulate manufactures;* for this is the right now claimed. An end which cannot be reached directly, cannot rightfully be obtained by an obliquity in the means. It follows, then, that if the power claimed cannot be exercised under the impost clause, it cannot be exercised at all; and upon this we are asked by the member from Charleston (Mr. Huger,) if these acts are fraudulent, how far are they so? "If a fraud has been committed, show its extent, for Congress prima facie have the right to lay imposts, and those who charge a fraud in the exercise of a legitimate power must not only show its existence, but its extent." These acts are *entire*—there is no process of legislative analysis by which the alloy can be separated from the metal; the fraud if it exist at all, must pervade every part and contaminate every part, and therefore the very admission that the acts are *at all* objectionable on grounds of fraud, precludes gentlemen from defending them, *or any part of them*, on the ground that they may be justified under a bona fide exercise of a power granted. If a question had been submitted to the honorable gentleman in the exercise of his late judicial functions, whether or no an *entire contract* could be good in part and bad in part, he would have treated the very question as a want of proper courtesy to his station—yet the acts under consideration are not only *entire acts*, but *entire contracts* too (for every statute is in essence a compact) and if contaminated *in part* by fraud, must be wholly void and inoperative. But there is another satisfactory answer already given by the member from Richland (Mr. Preston,) to this argument, to wit, if those who have been art and part to this fraud claim to be screened on the ground that their acts are in part fair and bona fide, it is they and not we who must show how far they deserve that character.

It will be perceived that I do not deny to Congress the power to protect manufactures—but only the power to protect them by imposts laid with a view to that end. The power to encourage "useful arts," (among which manufactures stand pre-eminent) by patents, is clearly in Congress; *but the clause conferring the power is an affirmative pregnant, and of course exclusive of all other means of protection.*

But again—the right to protect manufactures is not only a perfect right in Congress, so far as the end may be obtained by patents,—but it is *an inchoate right in the states, by imposts with the consent of Congress—*

under the 2nd clause of the 10th Sect. of the 1st. Art. of the Constitution.

In stating this argument I can do nothing more than I have been obliged to do through the whole debate, condense and arrange the labors of others. Imposts can only be laid for one of three purposes—1st. The execution of inspection laws—2d. for revenue—or 3d. for protection. The clause under review could not have contemplated an appeal to Congress by a state, to be permitted to lay imposts, for either of the two first purposes; for by the words of the clause, a state may lay imposts for the execution of its inspection laws without the consent of Congress; and it is part of the clause also, that the proceeds of imposts laid by a state shall be paid over into the national treasury; excluding the idea that the appeal to Congress which the clause contemplates, could be for revenue purposes. It follows, as of course then, unless gentlemen can show some fourth purpose for which an impost may be laid, that the contemplated object for the application of the state for permission to lay the impost, must be, *to protect her manufactures.* This construction is sustained by the consideration that it consists with equity, that a state should protect its own manufactures and that it should not lay the whole confederacy under tribute for that purpose.

It is said, however, by the member from Charleston, (Mr. Huger,) that if the tariff acts are violations of the constitution, they are not "deliberate, palpable, and dangerous" violations, and not coming within these words of the Virginia resolutions, which are brought before the committee with the force of authority, the state has no right to interpose for the purpose of arresting their operation. I shall not argue that these acts are *deliberate* violations of the constitution, for if they are not, *it is a new feature in the character of fraud, that it can be committed on sudden heat!* But I contend that they are also *palpable* violations of the constitution, and if the right to interpose with a view to arrest their operation depends upon the fact of their being palpable invasions, the right is complete on that ground. The difference between that which is *physically* and that which is *morally* palpable, is obvious. The one is tangibly and intuitively—the other, only analytically and *inductively clear.* The inquiry whether a fraud is palpable, is a question, *whether it can be detected upon fair induction,* and whether we can get with a reasonable degree of certainty at the fraud, by an exercise of the ordinary means for investigating the facts and circumstances which establish it. Whether this has been done, is a matter of which the committee must judge. If it has not, then I take the ground that *concealment is a necessary badge of fraud,* and the fact that these invasions of the reserved rights of the state have been furtive, only renders them the more dangerous, (their insidious character disarming vigilance and eluding detection,) and instead of diminishing, but serves to increase the necessity for resistance. Then, are the tariff acts *dangerous* violations of the constitution? Every violation of the constitution is dangerous *as a precedent,* if not otherwise. But these acts are especially dangerous *as the substratum* of the most stupendous system of fraud and imposition that has ever disgraced the history of legislation—I allude to the American system—which in all its parts is based upon this extortionate and unauthorized tax; for without the taxing power first exercised, no violations of the constitution in which money is an agent, can be committed. But it is dangerous *of itself,* as tending to the prostration

of commerce—as encouraging swindling and speculation—as making the regular capitalist and manufacturer the victims of adventurers upon mere legislative exclusion, and as prostrating the energies, paralizing the commercial enterprize, and impairing the commercial confidence of the country.

The committee will perceive that in coming to the conclusions to which my argument on the constitution has brought me, I have studiously rejected all foreign aid, in expounding that instrument, as unsatisfactory in the main, and peculiarly inapposite in the matter under review. Regarding the outrage as a *palpable* invasion of the *letter* of the constitution, I am constrained to have recourse to such modes of interpretation as consist only with a correct exposition of the obvious import of the *words* of the instrument, and to repudiate all collateral aids, as foreign to its terms, and as instead of going to explain an ambiguity (for there is none) tending to supercede the positive terms and provisions of the deed itself by parol averment, (and that too subject to the objections of being mainly "ex parte," frequently under bias, always upon mere declaration, and often conflicting,) *to raise a trust variant from the obvious import of the words of the deed*, which I am not to tell the member from Charleston, at least, is against law as well as against reason.

We are told Mr. Chairman, that admitting these acts to be violations of the constitution, they can only be arrested by nullification, and that "*eo instanti*" the acts are nullified, the state is out of the pale of the confederacy. Although it is begging the question to say, that unconstitutional acts of Congress can only be arrested by nullification, and although the question as to the right of a state to nullify an act of Congress, is improperly interposed between the committee and the main subject under debate, with a view to distract our councils; yet, as I am sure that a state has the constitutional right to *declare an unconstitutional act of Congress null*, and yet to remain in the confederacy, I will turn from what I regard the direct course of the argument, for one moment, to defend this odious and reviled doctrine. Whatt hen is the principle asserted? It is, if I understand it, that *the state has the right to declare*, and the consequent power to enforce the declaration, (for all sovereign rights are perfect) *that acts passed by Congress against the constitution, are "unauthoritative, void, and of no force."* It will hardly be denied by gentlemen, that where sovereigns are in controversy upon political rights, and there is no appointed umpire to settle the dispute, each party being equal in degree, has a right to judge "as well of the infraction, as of the mode and measure of redress." There are numerous possible cases of such controversies under the constitution—For example, suppose that Congress, in readjusting the representation under the present census, should introduce a clause into the act by which we are to be deprived of a representation for three-fifths of our black population. Here is an invasion of an important *political* right; but where is the tribunal to determine the controversy? How could the parties come before the supreme court? I admit, that if they were to elect this tribunal as an umpire, and bring the point before it by consent upon a feigned issue, or in any other form, they would be bound in good faith to abide its decision. But unless they were thus to elect it an umpire, it cannot obtain jurisdiction of it under the constitution; for *cases, are controversies about property, or private, civil rights*, and no contest in regard to *private* rights could arise on the outrage, from

which the court could lay hold of it, with a view to relief. The mistaken idea that a state may become a party in the federal court upon a disputed question of *political* right, is derived from a misapprehension, 1st. of the character of the tribunal, and 2d. of the character in which states make their appearance as parties, plaintiffs or defendants, in *suits* to be determined by the court. The court is a *civil* and not a political tribunal, and the states in appearing before it *as parties to a civil suit*, appear there in no other or higher relation than as bodies corporate, contesting an invaded franchise, or asserting no higher rights than attach to such bodies—*rights merely civil*. The controversy put, cannot be *a case* under the constitution which the supreme court could reach, and therefore the parties must of course determine for themselves. But again: Congress can confer no title of nobility—suppose it were to pass an act that each senator should wear a ribbon and be styled Earl—how could *a case of law or equity* arise between the state and federal government on this act, the outrage being merely *political?* In these and many like cases there can be *no common umpire*, because the powers of the supreme court defined in the constitution could never reach them.

But in regard to the outrage under consideration the *practical* relations of the state and federal governments are "pari passu" with the cases just put; for admitting that the jurisdiction of the supreme court could reach it, that jurisdiction is forestalled and ousted by a fraud predicated on and taking advantage of one of its decisions. It does not become Congress then to complain (even admitting that we allowed the jurisdiction of the court to be competent) that we contest the reference of these acts to the supreme court, when in the very passage of them, they have practised a fraud, arresting the court from the exercise of its regular functions. By the case of Fletcher and Peck, the court determined, that it could not look beyond the caption of the law, for the purpose of ascertaining the intention of the Legislature, and therefore the *intention*, the "corpus delicti" of the fraud, cannot be reached and of course cannot be corrected. It is said, however, that "eo instanti" the state annuls the law, it is without the pale of the confederacy. There is a very sensible distinction between *annulling a law* of Congress and *declaring an unconstitutional act of Congress null.* The first is evidently *revolution*, and the last directly *the reverse*—That which is a law must conform to the constitution, and, therefore, an interposition by the state to arrest its operation is arresting the government. On the contrary, *an unconstitutional act of Congress being subversive of the compact, declaring that fact, and accompanying the declaration with suitable means to render it effective, so far from subverting, goes directly to sustain the government.*

Some grounds have been taken in the course of the debate not strictly in justification, but in palliation of the tariff acts, which however are erroneous and which should not therefore go unnoticed. It is said by the member from Charleston that, if these acts are violations of the constitution, the burthens cannot be exactly estimated, and that is urged as a reason for forbearance. I apprehend this is a perfectly immaterial issue, and I am not disposed to expend my force in a contest with shadows. If a convention were to sit with a view to redress that convention would not be composed of arithmeticians. In truth, Mr. Chairman, I cannot see how gentlemen propose to settle *controversies on constitu-*

tional liberty by arithmetical calculation, or by tale and weight, unless upon the principle on which the clergy once decided questions of theology, by the cube root!

We are told by the same gentleman, that *prices* have not been increased permanently by the successive tariff acts. If I show that the *necessary tendency* of the system is to enhance prices, permanently, I think I shall have shown, that any temporary depression or equality in prices since the passage of the acts, is not to be referred to the system itself, but to causes which have no connection with its regular operation. There are two meanings to the word *price*, which I think necessary to be noticed, in order to a proper understanding of the subject.—1st. *the money price* which is the cost of the article in market overt—2d the *real price* which is the *cost of production*. It is obvious that the first is not materially affected by the last, or at all events, is more dependant upon collateral and incidental causes than on the material used, the labor employed, or the capital engaged in making the article. The price of an article in market may be affected by the rate of exchange—bankruptcy—competition—false rumours —smuggling—the auction system—war—non-intercourse—the appreciation or depreciation of currency—increased demand and supply, and an infinite variety of causes, which it would be as impossible to enumerate or foresee, as to calculate the rise and fall of a barometer for the next half century. The actual price, however, never fluctuates but as the *elements of price* which go to make up the cost of production fluctuate, that is to say, the *wages of labor*, the *profits of stock*, and the *cost of the raw material*, and these remaining equal at any two given points of time, "ceteris paribus," the prices must be identical. And it is to be observed, that the average of prices in *the long run*, (whatever incidental causes may interpose to vary them for a time) must in two countries, depend upon *the relative cost of production*, and therefore, that when the cost of production must be permanently less in one country than another, the *general average* of prices must be proportionably lower. The following statement will show with definitive certainty the relative costs of production in England and the United States. "From the testimony of our own manufacturers taken "before the committee on manufactures, at the last session of Congress, "(1827–28,) we refer particularly to the testimony of Mr. Dexter and Mr. "Shepperd, it is apparent that the lowest average of manufacturing labor, "is $6 per week in one of the factories, and $4,50 cents in the other, for "grown male hands, working 11 hours a day. By reference to the high- "est British authorities on this subject it will be seen that the very highest "average for similar labor is $2,66 a week in some parts of Great Britain, "and $1,66 in others, for grown male hands, working from 16 to 18 hours "per day. Taking into calculation the longer continuance and superior "productiveness of a day's labor in Great Britain, it may be fairly set "down, as the result of a general comparison, that manufacturing labor in "the United States is 150 per cent. higher than it is in Great Britain.

"In forming an estimate of the comparative profits of capital in the two "countries, we cannot resort to a better criterion than the market rate of "interest. We may safely assert that any amount of money can be ob- "tained in Great Britain, upon good private securities, at an interest of 5 "per cent. whereas, there is not, we believe, a state in the union, in "which a money lender cannot obtain 6 per cent. with the same kind of

"security. Taking these data as the basis of comparative estimate of the "profits of capital in the two countries, it results that they are 100 per "cent. higher in the United States than they are in Great Britain.

"When such a difference as this exists between wages and profits in "England and the United States, the latter cannot expect, unless in few "cases, to manufacture as cheaply as Great Britain. In many instances "the whole value of the raw material would not be sufficient to make up "the difference in price caused by difference in wages and profits. Thus "to take an example in cotton fabrics, using again the calculation made "in the Southern Review: Assuming the cost of the raw material to be "25 per cent higher at the British than at the American factories, (a very "high estimate,) we have all the elements for calculating the comparative "cost of producing cotton manufactures in the two countries. It only "remains for us to ascertain the proportion which each of these elements "bears to the aggregate of the manufacture. The best informed states-"men and statistical writers of Great Britain, concur in the statement, "that dividing the average cost of producing cotton manufactures into "36 parts, 9 of those parts consist of the raw material, 15 of the wages of "labor, and 12 of the profits of capital. What then, let us enquire, will "it cost to produce in the United States a manufacture, which it will "cost 12 cents a yard to manufacture in Great Britain. Of the British "cost of producing such an article, according to the above proportion, 3 "cents would be the cost of the raw material, 5 cents the wages of labor, "and 4 cents the profits of capital. The American cost of producing the "same description of manufacture, upon the grounds already established, "would be 22 3-4 cents, of which 12 1-2 would be the wages of labor, 8 "cents the profits of capital, and only 2 3-4 cents the cost of the raw ma-"terial. It is thus shown upon principles which we hold to be incontes-"tible, that even assuming an equal perfection in machinery, and an equal "degree of skill in the use of it, the cost of producing cotton manufac-"tures in the United States, after deducting 10 per cent. for the superior "cheapness of our water power, will be 80 *per cent. higher than they are* "*in Great Britain. It will be perceived that the wages of labor alone* "*amount to more than the entire cost of production in Great Britain.* It "is also worthy of notice, that the difference of the cost of the raw mate-"rial, in the two countries, gives to the American manufacturer an ad-"vantage of only 3-4 of a cent. in the yard, over the British, to counter-"balance an advantage on the other side, of 11 1-2 cents (more than three "times the value of the raw material) in the wages of labor and profits of "capital."*

We are told, however, that the tax being paid by the consumer, and not by the producer, the plantation states only suffer in common with other consumers, and hence that the common idea that we suffer in proportion to the interest which we have in foreign commerce, is a common error—To me, if not to others, names are nothing. It is immaterial by what name the plantation states are, the devoted victims to this fraud; it cannot be denied that they are subsidised by a tax falling exclusively on foreign commerce, *to the extent to which they are interested in that commerce. The duty is paid by the article and not by the agent,* and of

* 4th No. Southern Review, 588—9.

course the burthen falls upon the commodity and not upon those through whose hands the exchange is effected. The average exports of the United States are computed at 58 millions annually; the average exports of the plantation states at 35 millions. Imports and exports must be equal in a series of years—and hence an average duty of 45 per cent. on imports must render the plantation states, (without looking beyond the mere relative proportion of imports,) who are the meritorious cause of an importation to the annual amount of 35 millions, tributary in the proportion of 35 to 23. Whatever of this duty is paid on this part of the imposts (the 35 millions) by the merchant, he is able to levy again on the consumer, with an additional per cent. taxed on the amount of the impost; but the planter is without recourse. He can make no reprisal; for the tax, so far as he is a consumer, *ends in himself*. It may be asked, however, if the merchant too, is not to a considerable extent a consumer? Granted—but if he is enabled to become a consumer, *by virtue of a commerce which is sustained by the productions of the planter, does he not consume as the agent of the planter*, and is he not able, in his subsequent dealings with the planter, to shift the entire burthen of his own consumption to the shoulders of the planter, by taxing it on such commodities as he vends to him? So that in this contest for indemnity and escape, the planter is made the *scape goat*, upon whose head the whole burthens of the merchant are made to fall. But what becomes of the domestic manufacturer in the scuffle? He too has his recourse—for if he consumes the dutied articles, he is enabled to sell his own productions with an indirect bounty of 45 per cent. to the planter, through the agency of the merchant, and admitting his capacity to glut the home market, (which he professes to do, and export over and above) he too is rid of the entire burthen.

The proper ground upon which to place this argument, however, is the ground upon which it was put by Mr. Davis, of Massachusetts, during the last session of Congress, and by discarding all intermediate agencies, to regard the planter and the home manufacturer as competitors for the domestic market. This is the fact, under whatever modifications the exchange may exist, and thus stripped of all convolutions and circuities, the inference becomes easy. The planter bringing the returns of his industry to a glutted market, (for it must be kept in mind that the manufacturer, by his own showing, is not only able to supply the home market, but to export,) the tax levied on his imports, must fall on himself and none other; the home manufacturer either consuming his own goods, or, if he prefer to consume the imports of the planter, selling his own productions to the planter at an increase of price equivalent to the tax with which the imports of the planter are compelled to sustain the competition. It must appear obvious then, that the contest about the character in which the planter is burthened, is a quarrel about names, and that in this war of words the substance of the controversy is permitted to escape.

The removal of a few obnoxious items from the tax at the last session of Congress, which is relied on as furnishing grounds to presume a general repeal, I regard as raising a presumption exactly the reverse. The conspirators are thus relieved from all cause of quarrel, and the necessity for a continuance of the spirit of adjustment and compromise under which the system grew up is thus effectually dispensed with; while those who have hitherto regarded each other in hardly a spirit of toleration, are thus con-

nected in the indissoluble ties of interest and regard. The removal of these items, regarded as a relief from our burthens, is worse than mockery—compared with the great mass from which they were subtracted, they are but as feathers taken from a Camel's load, which is crushing him to death.

The successive bankruptcies which ensued upon the passage of the several tariff acts, and which have been looked to as a probable ground for an abandonment of the system, I regard as having a directly contrary tendency. It will be recollected that these acts served as lures, by which many were enticed into this system without capital, who were successively made victims to the evasions of the several acts. These are the sufferers by the system, and it was the hazardous enterprize of these adventurers which for a long time put in jeopardy the interest of the regular manufacturer upon permanent capital. But the extinction of the summer flies who were hatched in the heat and moisture of government protection, so far from injuring the steady market of the surviving manufacturer, whose business was based upon permanent capital, only serves to ensure him a better and safer market for his products, especially when it is remembered, that Mr. Mallary's bill passed at the last session of Congress, is to a great extent a security against evasions of the existing high duty system.

The expected interposition of Gen. Jackson is, I regret to say, a delusion, and I am almost tempted to say, a wilful delusion, to which some gentlemen are either really victims themselves, or seek to dupe a devoted populace through their attachment to an individual. A few plain facts must put down in a breath, all the unfounded hopes which have connected themselves with this expected source of relief. Unless we expect the President to immolate himself for our benefit, we need not hope for his interference in our behalf. His votes at his late election stood, 42 from the tariff party and 59 from the anti-tariff party, and hence the conciliation which he has been obliged to observe towards either interest in all his public acts. His late message, however, if any doubts could remain of the tenor of his opinions, must put the question to rest; for he distinctly reiterates the expression of Mr. Mallary, that the principle will not and cannot be abandoned. Suppose him, however, to be well affected to us, has he power under the constitution to repeal an act of Congress? If not, where is the hope of relief from him? My respect for the gentlemen who have pinned their faith upon this forlorn hope, can hardly restrain me from characterizing it as the merest weakness and delusion. But, sir, on the supposition that the President could compel the repeal of the act, that would not satisfy me. A repeal of the act would only break up the present combination, but would not prevent a recurrence of the evil in a more formidable shape, and enforced by a more imposing array of numbers—it would "scotch the snake, not kill it." I should regard no move in regard to the high duty system as satisfactory, that did not reach the root of the calamity, and not only repress the existing fraud, but serve as *a permanent indemnity against its recurrence.* Our interests are never safe while the *principle* is recognized, that Congress can lay imposts for protection.

Believing then that awaiting the relief which is looked for from a returning sense of justice, is vain—that the dictates of justice are lost, when its appeals are silenced by the clamours of insatiate avarice, and the re-

lentless calls of extortion—that any hopes founded in an abandonment of the scheme, as unproductive, are equally illusory; as at best, it is a choice with the manufacturer between the protection which he now receives and bankruptcy—and that all hopes founded in executive interference are barred by *the dependence of the President* on the tariff party, and the impotence of his constitutional functions; it cannot remain a doubt with the committee, that the state should interpose in her highest sovereign capacity for arresting the evil. With this view it has been proposed that *a convention of the people should be called.* In giving in my adhesion to this proposition, it might be sufficient to say, that I canvassed and was chosen, with an understanding that I was in favor of it. I do not adopt it from a belief that under the present disposition of political powers it would represent the state "in its highest sovereign capacity;" but under a belief that before the sovereign powers of the state are called into requisition, *a coincidence should be effected between the regular depositaries of political power;* and that it is the only efficient source through which that power, in contingencies which are incident to the crisis, might become developed and concentrated for the purpose of relief. The idea that a convention, if called, could change the constitution, is founded in an ignorance of the subject. The 2d clause of the 11th art. of the constitution of South Carolina, contains a negative of any such power, by confining the power of "*altering*" the constitution to two-thirds of two successive *Legislatures* only, and that too by a negative clause, directly succeeding the clause which contemplates the call of a convention—evincing clearly, that a convention was never intended to be called with a view to alter the constitution, but only in certain cases to ascertain the sense of the people in regard to any great public emergency, *and to harmonize the action of unorganized masses in cases in which the public safety may require concert.* If it should be at any time the sense of the people of this state, that the constitution should be abolished, no man on this floor would be so arrogant as to deny to them that right—but for such a case no provision is made in our constitution, as none should be made. With a view then to concert among ourselves, if for no other reason, *the conference and free interchange of opinion which a convention would induce, is indispensible.*

The idea that a convention would destroy our relations with the confederacy, is idle—No man could take a seat there, unless representing the sentiments of the people who chose him; and knowing the people not to be disaffected to the confederacy, but only to its *mal-administration*, I feel confident that no such proceeding would be attempted; and if tried, that it would be fatal to its projectors. Let me trust then, that *all such objections as seem to attach themselves to this* ADVISORY *measure, being obviated, the Legislature will no longer defer committing our present embarrassing relations to an intelligent and virtuous people, that our efforts for relief may harmonize to a point of common suffering or common security.*

NOTE—Upon a more careful examination of the author, from whom the allusion, at the commencement of this speech is drawn, (Gac. An. L. 3,) the speaker finds that his want of memory and his unliterary habits have betrayed him into a slight historical inaccuracy. The four first sentences will therefore be considered as expunged, and the following offered as a substitute—the speech as it is printed separately, being so amended.—

"It is said that in a funeral procession of an illustrious lady, the images of "two of the most distinguished among the Romans were omitted to be "displayed. 'For that reason they were present to every imagination, "and with a superior lustre eclipsed the splendor of the day.' The re- "mark which is made of the pageant of Junia, would apply with hardly "less force to this *funeral procession* of our rights. To be found in this "discussion, when one is condemned either to be trite or superficial, is "certainly to be regarded as any thing but a *distinction*.

HENRY L. PINCKNEY'S SPEECH.

MR. CHAIRMAN: I solicit the indulgence of the committee for a few moments. I would not have obtruded on their patience, (particularly after the able and ample discussion which has already been given to this subject by my colleague from Charleston, Mr. D. E. Huger, and those who have succeeded him,) but that I deem it a duty to my constituents, not to give a silent vote upon this occasion. The question which we are now called upon to determine, is, perhaps, the most solemn and important which has ever engaged the deliberation of this Legislature. And yet it has been so long before the people—it has been the source of such deep and general excitement—and it has been so intimately connected with, and had such powerful influence upon, our late general elections—that in all probability, the opinions of members are irrevocably fixed, and every gentleman has already determined the complexion of his vote. It is not therefore, with the remotest expectation of affecting the votes of others,—I have no such folly or presumption—that I now trouble the committee, but simply and exclusively to assign the reasons for my own. In assigning those reasons, as I shall impute nothing sinister to the motives of others, so, I trust, nothing improper will be ascribed to mine. I believe that all upon this floor are actuated by equal purity of motive, and disinterestedness and patriotism of principle and purpose. I believe that they all equally consult their country's good, and equally desire the honor and welfare of our beloved state. The only point of difference is, as to the mode by which those great objects may be most surely, safely, and efficiently attained. In the views which I entertain and the course I shall pursue, I may possibly be wrong—but they are the results, notwithstanding of a conscientious conviction of the injuries which have been inflicted upon our people, and of an honest desire, as far as I can, to aid in removing and redressing them—and, if I err, I have the consolation, at all events, to know, that I err with many of our purest patriots and most distinguished statesmen—with Calhoun and Harper—with Martin and M'Duffie—with Miller and Hamilton and Sumter—and "though last, not least" with my very able and eloquent friend from Richland, (W. C. Preston,) whom I would compliment if delicacy would permit me, and to whom South Carolina owes a large debt of gratitude for his zealous and uniting exertions in sustaining and promoting the great cause of southern rights and interests.

Sir, the question now before the committee is not, as to the constitution-

ality or unconstitutionality of the tariff, nor as to the injustice and oppressiveness of the American system, comprehensively considered in all its branches and relations. Upon these points, I apprehend, there is now at least, little or no diversity of sentiment. The Legislature of this state, and indeed the Legislatures of all the southern states, have repeatedly expressed their solemn conviction of its unconstitutionality and tyranny. The people of the south have almost unanimously responded to these legislative declarations. In this state, particularly, popular opinion has been frequently and openly expressed, and in every form in which it is possible to express it. It is no longer a question with *our* people, sir, whether Congress has a constitutional right to foster one branch of industry at the expense of others; nor whether, under the false and fraudulent title of a bill to raise revenue, it has a right to pass a tariff of protection, for the purpose of building up the manufactures of the north upon the commercial and agricultural ruins of the south. It is no longer a question with our people sir, whether Congress has a right, under the flimsy and insidious pretext of promoting the "*general welfare*," to drain them of the hard earnings of their industry, for the purpose of carrying on internal improvements in other sections of the union, nor is it a question with them, sir, whether Congress has a constitutional right to apply the treasure, thus extorted from them, to the baleful purposes of the Colonization Society—a society of which it is the inevitable tendency, and indeed the open and avowed object, to destroy the value of our property, and then totally to abolish the peculiar institutions of the south. These are no longer questions with *our* people. They have been abundantly satisfied, by argument and reason, of the injustice and tyranny of these proceedings, and they have been still more feelingly convinced by that best of all possible teachers, practical experience. They have seen every prediction fulfilled—every statement confirmed—every anticipation realized. They have seen their foreign commerce wither and decay—the price of their great staples reduced—their incomes lessened—their embarrassments increased. They have seen their property depreciate, and, with its monstrous fall in value, even its existence put in jeopardy. In short they have seen South Carolina, with all her immense natural advantages, regularly becoming weaker and poorer, whilst other sections of the union, with no natural advantages to be compared to hers, have been rapidly advancing in wealth and population, and they perfectly comprehend the process by which these relative changes have been wrought. They understand fully the arbitrary system of legislative transfusion by which their wealth has been transferred to the veins of others. They *know* and they *feel*, that it is through their poverty—basely brought about by those "who feel power and forget right"—that other sections of the union have been made rich. The only question with our people, therefore, and consequently the true question for this committee, is—not the right, but the remedy—not the power of the majority to enslave and oppress us, but the mode and measure of redress.

Sir, if this system of taxation, grievous as it is, had been adopted for any national or patriotic objects, South Carolina would not only particularly, but cheerfully, have submitted. If it had been imposed, for instance, to redeem the public credit, to sustain the national honor, to repel a foreign foe, or for any other laudable or *common* purpose, the people of

this state would assuredly have exhibited the same magnanimous devotion the union, which has ever characterised them in times of national difficulty or distress. Indeed it is but common justice to my fellow citizens to say, that if at this moment the federal administration was involved in difficulties with a foreign power, they would instantly suspend their controversy with the federal government, and support the administration with all their hearts and to the utmost of their strength. But our people know too well—and hence arises the peculiar bitterness of their sufferings—that national interest or honor has no connection with this system. They know that it originated in avarice, and has been rivetted by fraud. They know that it was imposed, not for general, but for sectional purposes—not with a legitimate view to revenue, but to swell the fortunes of speculators and monopolists—not to sustain the public faith, but to provide the means of popular corruption, by squandering profusely the public treasure—not to secure or promote the welfare or independence of the whole union, but to render one portion of it basely tributary to the others. Our people know, moreover, that degrading and exhausting as this condition is, there is no rational prospect of a favorable change. They know that the advocates of protection have again and again declared that it is, and shall be, the settled and unalterable policy of the country. They know that Mr. Clay, the great champion and reputed father of this policy, has openly proclaimed that he would rather lose South Carolina from the union, than relinquish or abate it. They know, in short, that the tariff states are as deeply interested to maintain it, as the southern states to destroy it—and therefore that it is utterly vain to expect relief from those whose own interests and fortunes are absolutely identified with the existence of the system. Is it strange then under these circumstances, that our people should at length think that the argument is exhausted? Is it strange that they should have totally abandoned all idea of further remonstrance or petition? Or is it not perfectly natural and proper that they should call upon the Legislature, as they have done, to interpose, in some way, for their protection and redress?

But, Mr. Chairman, this is not all. Deeply as our people have suffered, in a pecuniary point of view, under the base injustice of this system, they have been still more outraged at the *reasoning and doctrines* by which it is attempted to be maintained. They are not only robbed and plundered, but they have had the mortification to see the robbery gravely justified as a constitutional right. Did they complain of the *destruction* of their foreign trade? They were told that Congress has an indisputable right "to regulate commerce." Did they complain that they were unjustly taxed to construct roads and canals in the north and west? They were answered that Congress has a right "to promote *the general welfare*," and, for this purpose, to expend the public money as it pleases. Did they deny the right of Congress, as a substantive power, to protect manufactures? They were told that it is necessarily incidental to the power to raise revenue, and that it is difficult to conceive the existence of the one without the other. Did they insist that such a power was not only not given, but had even been positively refused and rejected by the framers of the Constitution, in convention? They were answered that although the power to impose duties on imports originally belonged to the states, it had been completely surrendered to the general government—

that with this power, the right to adjust the duties, with a view to the encouragement of domestic industry, had also been relinquished—that it is a power which has always been exercised *by other nations*—and that to take it from our government would be to destroy its equality with other governments, and to render it at once an anomally and a cypher. Did they allege that the tariff, whilst it enhances the price of all they are obliged to purchase, reduces the price of all they have to sell, and that they are therefore injured by being forced to buy dearer and sell cheaper than they could do, if left to themselves? They were answered that Congress has a right "to regulate the capital and industry of the nation." Did they represent their European market would be lost, and that their produce, consequently, would rot upon their hands? They were told in reply, that a domestic market would be raised up, and that the northern manufacturers would take a portion of their cotton, and that too at the price to which their kindness had reduced it? Did they complain that whilst they were incessantly drained, they received nothing in return, and that whilst the "system" enriched those who were already prosperous, it took away from those who were poor and embarrassed? They were comforted with the answer that the money was expended for *the general good*, and that their patriotism would find abundant compensation for their sufferings in the rapid progress and improvement of other sections of the union. Did they complain, in short, that the tariff weighs, like an incubus on all the great interests of the south? They were assured, in reply, that it actually benefits them without their being able to perceive it—that the inevitable effect of the tariff would be to cheapen prices—that one of the greatest reasons with the manufacturers themselves, for desiring it, was, because it would force them to sell cheaper than they did before—and that if our people would only allow time for its full operation and development, they would themselves acknowledge it as a blessing to the south. Such were some of the complaints of our people—and such the answers usually given by the supporters of *the system*. Such arguments, of course, could only be regarded by every southern heart, as adding ridicule and insult to injustice and oppression. But, if our people were outraged by the *reasoning* of their oppressors in relation to *the system*, what must have been their astonishment and their dismay to find, when, in consequence of such repeated contumely, they at length spoke of standing on their rights, that all their rights were absolutely denied, and themselves regarded literally as colonists and vassals. Did they speak of exerting the sovereign power of the state? They were told, both in and out of Congress—in defiance of truth, and in the face of history—that there is no sovereign but the federal government—that the states, when they entered into the confederacy, delegated all their sovereign powers to the federal head—that the federal constitution is not a compact between the states, as states, but was formed by the people of the whole union collectively—and that the federal government is the sole and exclusive judge of the extent of its own powers, and of the constitutionality of its own proceedings. Did they remind their oppressors of the reserved rights of the states, and of the necessity there might be for asserting and enforcing them? They were told there were none, or, if any, too feeble and insignificant to mention—that every power, worth having, had been given to the general government—that the great object of the union was

the consolidation of that government—and that it possesses, accordingly, all power external and domestic, general and municipal. Did they speak of annulling or suspending the tariff acts by the Legislature or convention? They were told that a state has no such power—that the Supreme Court is the only competent tribunal to decide upon differences between the states and the general government—that resistance, by a state, to an act of Congress, would be treasonable—that all who should enforce it, would be liable to punishment as traitors—and that a state has not even a constitutional right *to express an opinion* as to the constitutionality or unconstitutionality of an act of Congress. Such are the doctrines of our oppressors—of Clay and Webster—of the old federal party under the elder Adams—and of the national republican party of the present day.—They not only justify the miscalled American system *upon principle*, but they actually deny the sovereignty of the states, consider them as mere corporations possessing little more than mere municipal power, and claim and assert for the federal government, not only the right to regulate the external or foreign affairs of the confederacy, but also *to bind the states*, and to direct and control *the private concerns of the people*, in any manner and to any extent which their own discretion may suggest. Is it any wonder then, that our people are excited by the conduct of a party, who, whilst they practice the grossest injustice and oppression, justify their practices by claiming *all power* for the federal government? Is it any wonder that our people, suffering as they have done, under the most galling pecuniary impositions, and seeing those impositions sustained by such doctrines, should be both indignant and alarmed? Is it wonderful, under such circumstances, that they should have convened in their primary assemblies, examined the dangers that surround them, and proclaimed their unqualified denunciation of the *conduct and principles* of the supporters of the system? Or is it wonderful, that having lost all hope, they should at last have considered the necessity of counteraction, have caused the elections to the Legislature to turn principally on the subject of our federal relations, and have endeavored to induce that body to place the state in an attitude accommodated to the crisis? No, sir! the only wonder is, that with evils of such magnitude so long surrounding them, they should have borne them as long and patiently as they have done. Nothing could have induced them to do so but a strong fraternal affection for their oppressors, and an unspeakable reluctance to affect the integrity or harmony of the republic. But our people are now satisfied that their forbearance is regarded as an acknowledgment of weakness—that their affection for their brethren is misconstrued into indifference or apathy in relation to their wrongs—and that the longer they submit, the greater and more degrading will be the impositions and indignities they will have to bear. They, therefore, call upon the Legislature to protect them. They call upon us to interpose the sovereign power of the state between them and their oppressors. And what then, Mr. Chairman, is our duty as the representatives of the people not as the representatives of our own immediate parishes or districts—but of the whole people of the state? Is it not to listen to their voice, and to comply with their requisitions? Sir, I sincerely believe that upwards of two thirds of the people expect and require decisive proceedings of some sort by the Legislature. Will not two thirds of the Legislature respond to the call? Sir, I hope and trust it

will—and the resolutions which have been reported by the committee on federal relations, and particularly the one respecting a convention, have been introduced for the purpose of answering and gratifying, as far as we can, the just and reasonable expectations of the people.

What then, are the objections to the call of a convention? All the objections which have been urged, either here or elsewhere, may be resolved into three—for in these three all the others are embraced.

The first objection is, that this is not the proper time to call a convention.

The second is, that a convention would be useless, except it be called to nullify—and that a nullification would lead to disunion and to civil war.

The third is, that a convention is illimitable—and that being so, it might and most probably would, in addition to the consideration of federal matters, effect alterations in the state constitution, injurious to the interests of the lower country. I ask the indulgence of the committee whilst I make a few remarks upon each of these objections.

The first objection is, that this is not the proper time to call a convention of the people. And here we are met both by friends and foes—both by some of those who concur with us in principle, as well as by those who support the doctrines of our adversaries. The first are good state rights men in the abstract, but they will not consent to the call of a convention. They agree that the tariff is unconstitutional and ruinous to our interests, but they will do nothing to arrest the progress of the evil. They admit the wrongs and sufferings of our people, but yet they will do nothing to redress them. They acknowledge that our cup of bitterness is not only full, but will probably be made fuller, even to overflowing, and yet they know no better remedy than continued acquiesence. They admit that the time may come, and probably will come, when South Carolina will have no alternative but to protect her rights and liberties *by force*, and yet they will adopt no *intermediate* measure now, which may avert a catastrophe so much to be deplored. In short they oppose the remedy we offer, and yet will propose no other in its stead. They think the time for a convention has not yet come; and they advise us therefore to defer that measure for some time longer, and to wait the progress of events. Such is the conduct of some of our friends. Nothing unkind to them is meant by these remarks. We know and rejoice that they agree with us in all the essential *principles* of state rights, and we trust that they will yet co-operate with us in carrying them into practice.

Very different from these are the grounds on which convention is resisted by our *political opponents*. They not only do not admit the unconstitutionality of the tariff, but they deny that it is a violation either of the letter or spirit of the constitution. They not only do not acknowledge it to be oppressive, but they even contend that it is actually beneficial. Some of them tell us that high duties have always lessened the prices of the articles, that goods are cheaper, and that our planters also get better prices for their produce than before; and they insinuate, of course, that these results have been produced by the successive augmentations of the tariff. Nothing can be more fallacious than these positions. That goods for several years back, have been cheaper than they formerly were, I will not deny—but it arose, not from our tariffs, but in defiance of their rigour. The

natural tendency of high duties is to create high prices; and if prices were low notwithstanding our tariffs, it could only be because they were counteracted by other and very powerful causes. During the late wars, in which almost every civilized nation was involved, an immense amount of capital and labor were abstracted from mechanical employments. The price of labor naturally rose, and with it the prices of manufactures; and during the whole of that period, they were probably at their highest. But with the return of peace came a redundant supply of capital and labor, extensive and wonderful improvements in machinery, and with them, of course, a natural and necessary depreciation of manufactured articles. It is absurd, therefore, to impute this depreciation to our tariffs. Cheap as goods may have been, had no high duties been imposed, they would have been considerable cheaper still. Remove them now, and prices, low as they may be, would fall yet lower. It is well known, too, as regards the last tariff (that of '28,) that prices were kept down, notwithstanding its severity, by the very heavy importations which were made in anticipation of its passage, and by the prodigious quantity of smuggling to which it gave rise, and by which it was evaded. It will not do, therefore, to say that the cheapness of goods has been owing to our tariff laws. The fact on the contrary is, that our restrictive policy, instead of being the real cause of the fall in prices, has actually kept them higher than they otherwise would have been; and we have thus been prevented from enjoying, as other nations have done, all the advantages which we should have otherwise derived from the general depreciation of manufactured articles. As to the assertion, Mr. Chairman, that our planters get better prices for their staples than they did before, the fact is not so. The assertion is disproved, not only by the actual experience and deteriorated fortunes of the planters themselves, but by the official records of the country. But, even admitting that they do, the true question still would be, not what do they get for their produce, but how are they allowed to dispose of their incomes, not, for how much they can sell their crops, but how much of their proceeds they are compelled to pay in unjust and unnecessary taxes? Let any planter estimate his annual expenditure, in articles of consumption, under the present tariff, and compare it with what it would be under a reduced system of duties, such as that of 1816, and he will ascertain at once the enormous proportion of his income which is wantonly taken from him by the government; and why is it taken? Let those who talk of the high prices of our products answer?—let them explain, if they can, why our citizens should be compelled to pay for northern manufacturers double the price for which, but for the tariff, they could obtain similar articles, and of a far superior quality, from Europe! Let them do this—let them explain, if they can, the *right* of the north to *enslave* the south—and when they have done this, we will allow them the full benefit of their assertion respecting the prices of our products.

But, Mr. Chairman, it is said, that even admitting the tariff to be injurious, the reduction, at the last session of Congress, of the duties on tea and coffee and salt and molasses, is a sure augury of its final dissolution, and that in a few years more it will crumble into atoms. Those who urge this argument also advise us to postpone a convention because the president has placed his veto upon the Maysville, Rockville, and other internal improvement bills. This they regard as perfectly tantamount to the de-

struction of the system—and they think, therefore, that as soon as the public debt is paid (which, they say, will be in a very few years) the tariff will be reduced to the standard of 1816. Sir, I cannot concur in either of these opinions. The duties on tea and coffee were reduced, not only because those articles did not enter into competition with any thing American, and the duties on them, therefore, might be safely reduced without imparing or deranging *the system*, but because the reduction really benefitted the tariff states themselves, whilst it also threw out a bait, a delusive prospect of relief, to the injured people of the south. The reduction of the duties on salt and molasses was a mere piece of political jugglery, by which, however artfully designed, no one has been deceived. The tax on molasses was unpalateable to the east, and it was therefore given up. The salt interest was the weakest in the catalogue, and it was ascertained, by calculation, that it might be sacrificed without materially affecting the strength of the combination. It was important, also, to conciliate North Carolina which had become somewhat clamorous and discontented on the subject. The duty on salt was therefore altered; and the tariff states now have the system exactly in the shape in which it is most favorable to themselves, and in which it bears with exclusive and unmitigated rigour on the south. And they will keep it so. Sir, in relation to internal improvements, no man can honor Gen. Jackson more sincerely than I do for the manly independence of his veto on the bills referred to. No man can honor him more sincerely than I do for the noble effort he has made to turn back the tide of corruption, to arrest the progress of usurpation, and to preserve the rights and sovereignty of the states. But, Mr. Chairman, the president cannot save us. With all the best dispositions in the world, he can neither save nor help us. It is vain to indulge the hope. He may, indeed, arrest the system of internal improvements for a time, but it will either revive with redoubled strength, or else the monies, which would otherwise be applied to it, will be appropriated in some other way equally ruinous and destructive to the south. Suppose the public debt should be paid in a few years—it is certainly doubtful—but suppose it should! What then? Will the tariff be reduced—will the majority give up their power—will the tariff states allow their favorite system to be destroyed—will they allow the work of years to be swept away in a moment—will they consent that all their factories, in which millions upon millions have been invested, shall be utterly ruined by the influx of foreign commerce which would overwhelm them in a moment—will they incur certain ruin and bankruptcy to gratify the south? Never sir! never, at least, as long as avarice loves money, or ambition power! never as long as manufacturers, or the agents of manufacturers, shall occupy seats upon the floor of Congress! never as long as northern imposition shall be only resisted by southern resolutions and remonstrances? No sir! to induce avarice to relax its grasp—to induce monopoly to forego its gains—to induce ambition to relinquish power, some argument must be used more imposing and effective than silent acquiescence? No sir! the supporters of the American system never *will* abandon it—never at least until they shall be convinced, by calculations, that they *hazard less* in repealing or modifying, than by continuing to enforce it. If then the tariff will not be repealed—and I am sure it will not, for public opinion is as decidedly in its favor every where else as it is against it

in the south—what will be done with the surplus monies in the treasury? Why they will either be applied to internal improvements upon a more dangerous and extended scale—to *national* works, as they are called, such as the Buffalo and New Orleans road—or they will be distributed amongst the states, conformably to the recommendation of the executive, in proportion to their representation in Congress. And either of these systems will be ruinous to us. Should internal improvements be revived, South Carolina will continue to be drained of four millions of dollars annually, without receiving literally one dollar in return. Should the distributive project be adopted, she would only receive, at the best, some two or three hundred thousand dollars. This project, I conceive, is radically objectionable in every point of view. It is unnecessray, unequal and degrading to the states. It involves the anomaly, to use no stronger term, of taxing the people first in order to divide the money amongst them afterwards. Money, not wanted by the government, is decidedly better in the pockets of the people. It is unequal, because many states, largely represented in Congress, contribute but little to the treasury, whilst others, with smaller delegations, contribute largely, Those which pay the least, therefore, would derive more than those which pay the most. No wonder the scheme is popular with the non-paying portion. It is degrading to the states. It would convert them into mere pensionaries of the federal government. It would destroy their sovereignty, and make them literally, nothing more than corporations. Instead of taxing their own people, raising their own supplies and exercising themselves the essential attributes of power, they would hang, like suppliants, at the door of the federal treasury, depending upon it for their annual allowance to carry on their operations. It is bad enough that individuals or companies should beg, or receive donations from the government. This is enough for popular corruption. It would be too bad that states should exhibit this dependant attitude. That would be, indeed, the climax and perfection of consolidation and corruption. No such scheme then, I trust, will ever be admitted by the south. It is idle, and worse than idle—it would be perfect madness and fatuity to think of falling in with a system, by which (whilst it would destroy her sovereignty and degrade her character) this state alone would be made to pay more than all the New England states together, and from which she would receive in return scarcely more upon an average than the smallest of those states. And yet such are the alternatives to which we are reduced. What then shall we do? Shall we wait until the public debt is paid, in order to see which of these systems is to be fixed upon us? Suffering as we have done for six years past, shall we continue to suffer for six years more, in the vain hope that at the expiration of that time our evils will have redressed themselves? And then, when we find that so far from being redressed, they have actually become worse and worse, shall we begin again another six years war of lamentation, and petition and remonstrance? Sir, I trust not! and yet this must be the inevitable consequence of following the advice of those who tell us to wait the progress of events, and the enlightenment of public opinion. Wait the progress of events! Sir, have'nt we waited the progress of events for years already, and has not every year added to our calamities and burdens? Wait the enlightenment of public opinion!—Have'nt we waited this too for years, and have'nt we found it growing

regularly stronger and stronger in favor of *the system*? Do we not see that General Jackson's vetoes on the Maysville and Rockville bills have lost him the support of Maryland and Ohio, and probably of Kentucky? Can we hope to succeed where the hero of New Orleans has failed? Can we hope to change the feelings or opinions of those whose pockets are their politics, and who, even if they were accessible to southern argument or southern suffering, seldom or never see a southern print, or hear a southern voice? No sir! if this be our only hope, we had better abandon the contest at once. If this be our only hope, we had better send in our adhesion to the majority, and come in for a portion of the plunder which they have extorted from us. But, sir, I hope for better things. Money is not all that is involved in this question. It involves principle also—it involves the great question of liberty or slavery—and the decision of the Legislature upon this question will either go very far to protect the rights and properties of our citizens, to support and establish the sovereignty of the state, and to restore the federal constitution to its original simplicity and purity—or it will create an impression in other states either that we do not suffer or dare not resist, and thus lead to an extension of our burdens, and to additional outrages and impositions on our people. I do think, therefore, Mr. Chairman, that this *is the proper time* to call a convention. I think that if, after all that has been said and done—after all our legislative protests and memorials—after all our popular excitement and agitation—a convention be not now called, it never will be. Our people will give up the contest in despair. Those that can will quit this sinking state for more *protected* regions—those who cannot, will fold their arms in apathy—and thus the last hope of CONSTITUTIONAL LIBERTY will be suffered to expire!

The second objection, Mr. Chairman, is, that a convention would be useless except it be to nullify—and that nullification would lead to disunion and to civil war. I cannot concur in either of these opinions. I cannot agree that a convention would be useless except it nullifies the tariff. On the contrary I think that it may, and that it most probably will effect a vast deal of benefit even without proceeding to decisive measures. Representing the people, as it would, directly and in their highest sovereign capacity, it would show, at all events, that the people are in earnest —that the opposition to the American system is not factious, or confined only to a few—that the resentment and indignation which have been expressed are not confined to political leaders, but pervade the great mass of the community—and in short, that the people themselves have taken their rights and interests into their own keeping, and that they are determined to be heard. It may decide the tariff acts to be unconstitutional and oppressive. This, indeed, is one great object for which it is generally desired, and there can be no doubt, should such a decision be obtained from this great elementary assembly of the people, that the state possesses full power, through the operation of its courts of justice, to protect its citizens against the usurpations of the government. It may determine to remonstrate—and, should it do so, the remonstrance would certainly assume the most solemn and imposing form in which an application of that kind can possibly be presented to the federal authorities. It may draw up a manifesto, setting forth the construction given by South Carolina to the federal constitution, and explaining the principles

and terms upon which she entered into the confederacy, and upon which alone she is willing to continue in it. It may accompany this manifesto by an exhibition of the practical operation of the tariff, showing the nature and extent of the injuries it has inflicted on the south, and illustrating strongly the monstrous injustice and inequality of the system. It may send copies of these documents to Congress, by commissioners selected for their wisdom and experience, and especially instructed to enforce them; and it may also send copies to the other states, particularly of the south, for their consideration and concurrence. The convention may also propose amendments to the federal constitution, in connection with these subjects, and calculated to provide for the future security of the southern states. Such a proceeding is of the last importance. In vain should we succeed in obviating present grievances, if we provide no guard against their future repetition. In vain should we throw off our present burdens, if they may again be imposed at the arbitrary will of the majority. It is highly desirable, therefore, than an effort should be made to procure such amendments as will secure us in the enjoyment of our rights. And from what source could such propositions proceed, with a better prospect of success, than from a convention of the people? Can there be a doubt that all the other southern states agree with us in principle, and that they concur in the necessity both of obviating present evils, and of obtaining security for the future? Can there be a doubt that they are all anxiously looking at this moment to South Carolina, to see what she will do, and that they will cordially co-operate in any constitutional proceedings which she may adopt? No sir, there can be no doubt upon these points. The legislative memorials and resolutions of the other southern states prove conclusively that they are with us in principle, and we all know that they are identified in interest. Proceedings then, such as those I have mentioned—and emanating from so august a source as a convention of the people—could not fail to produce much good. They would arrest and command the attention of Congress, which has never yet been yielded to our protests or entreaties. They would elicit public discussion every where, and all that our principles want is general discussion. They would excite the interest, and perhaps enlist the sympathy and support of the Jeffersonian democracy in other states. They might, and most probably would, lead to similar conventions and similar proceedings in the other southern states. And who can say that we should not finally succeed in procuring a general convention, and the adoption of such amendments as would give permanent security to the south, and permanent repose and tranquility to the union? Sir, it is a great and most desirable object. It is an effort which ought to be made, even if it fail. But if it should succeed, how great would be the honor, to say nothing of the happiness, which would crown the patriotism and perseverence of our people. South Carolina would then take the honored and enviable station of Virginia; and she would justly be regarded as the saviour of the constitution and the union when they were literally at their last gasp. I cannot think, therefore, that a convention would be useless, except it nullify. On the contrary I am persuaded that, even without proceeding to extremity, it would result in valuable and lasting benefits.

Nor can I concur with those, Mr. Chairman, who either deny the power of convention to nullify, or who contend that nullification would pro-

duce disunion. Whether the convention should nullify or not, however, I would leave entirely to its own consideration and discretion. I would not trammel or restrict it on this subject. But at the same time I would not instruct the convention, one way or the other, in relation to this point. I cannot agree either with those who think that a convention cannot nullify, because it cannot legislate, or who apprehend that the exercise of this act of sovereignty would lead to anarchy and civil war. I cannot think with a distinguished fellow-citizen, (Mr. Cheves) that a convention can only act on the frame of the government itself—or in other words, that it can only be called to alter or amend the constitution. This does not seem to have been the idea or the doctrine of the framers of the constitution, or they certainly never would have given power to *the Legislature* to alter and amend it. But they have given such power to the Legislature. And why, I would ask—why should they have given power to the Legislature to alter the constitution, and also to call a convention, if a convention, when called, can only be called for that particular purpose? Why authorize the Legislature to call a convention to do, what the Legislature itself can do, and has repeatedly done? It really does seem to me that if a convention can only be called to act on the constitution, the clause authorizing the Legislature to call it is supererogatory and useless. The framers of the constitution, then, must have thought, and no doubt did think, that occasions might occur, independently of necessary alterations of that instrument and having no connection with it, on which resort should be had directly to the people; and they therefore provided for the call of a convention in reference to such great and extraordinary occasions. And such an occasion, Mr. Chairman, has now occurred. Powers, not granted to the federal government, have been wantonly usurped—dangerous infractions of the federal compact have taken place—the reserved rights of the states have been violated—and the state unquestionably has a right, in its sovereign capacity, to act upon these evils, and to arrest their progress. If it has not sir, then it is manifest that it has no sovereignty at all, and that our people lie abjectly at the mercy of their oppressors. But I believe, for one—call it *legislation* or what you please—that the state has a right, in convention, to act upon our differences with the federal government; and I not only believe that it has this right, but I believe moreover, that even if it should suspend or annul the unconstitutional acts complained of, it would not only not lead to disunion, but whilst it would preserve *our* rights and protect *our* properties, it would also re-establish and ensure the harmony and perpetuity of the union itself. And here permit me to observe, Mr. Chairman, that it has been but too common in the political discussions of the day—and unfortunately for our *state* it has been done with too much popular effect—to brand the advocates of convention as disunionists and anarchists. Sir, permit me, once for all, for myself and for my friends, to disclaim and to repel the appellation. If I know my own heart, no man can abhor or deprecate disunion more than I do. If I understand my own principles, they not only do not tend to disunion, but are eminently calculated to avert it. Sir, I was born an American citizen, and I claim the name, and I trust I am as sensible, as *any man* upon this floor, of its value and its dignity. Sir, I profess to be a republican, and I know that ours is the only republican constitution in the world. I love it, because it was bought by the

blood, and established by the wisdom of our ancestors. I love it, because it is identified with all that is pure in patriotism and sage in intellect—with all that is valuable in freedom and splendid in renown. I love it, because it has not only been the source of much happiness here, but because it is the great fountain of liberty throughout the earth. If this great experiment should fail, there would, indeed, be no altar of liberty left at which a benighted world could relume its hopes—no asylum to which the oppressed could flee for refuge. I deprecate disunion, therefore, because it would not only tear this fair fabric into atoms, but destroy the high raised hopes and fondest anticipations of philanthropy in every other portion of the globe. I deprecate it too, Mr. Chairman, because, whilst it would produce these great national calamities, it would extinguish some of the finest feelings and proudest associations of *my* heart. I could no longer claim kindred with Hancock and Adams, and other worthies of the revolution. I could no longer call the United States *my country*, nor boast of its naval and military glories as the achievements of *my* countrymen. The records of the old Congress—the records of the federal convention—would no longer be a portion of *our* history. Even the federal constitution itself—the happiness of this country—the admiration of the world—and which I have a peculiar and *filial* reason to respect and cherish—would be scattered to the winds. And can it be supposed sir, that I would, if I could, impair this union? Can it be supposed, that I would, if I could, destroy this constitution? He who supposes so, neither appreciates the feelings of my heart, nor is capable of comprehending the true nature of my principles. No sir! It is not of the union we complain; of it I say *esto perpetua*, provided it be administered upon the great principle of equal rights and equal burdens. It is not the constitution we oppose—but the gross and dangerous infractions of that instrument, by a selfish and interested majority in Congress. And can it be true, Mr. Chairman, that there is no remedy for these infractions short of a dissolution of the union? Can it be really true, that the majority may violate the constitution as they please, and impose any burdens and exactions they please upon the minority, and that there is no redress save what may be obtained from physical resistance? Is it really true that we live under a government "without limitation of powers"—and that the American government, professedly the freest, is the most tyrannical on earth—and that we hold our rights, and liberties, and properties, at the mercy of an irresponsible majority, whose will is law, and to whose enactments, however unconstitutional or oppressive, we must of necessity submit? If all this be true, then indeed had we better fold our arms in dignified submission, for then we have no alternative left but to incur the horrors of downright revolution. But most fortunately, Mr. Chairman, for the cause of liberty, it is not true. There *is* a remedy for our grievances short of actual resistance. There *is* a happy *constitutional* medium between passive submission and a dissolution of the union: and that medium is to be found in the suspension of an unconstitutional law by the sovereign authority of the state, until the majority shall call a general convention to settle the question of disputed power. This doctrine, I know, has been decried and derided as new fangled, and alarming, and as involving an act of state usurpation—but it is in reality neither new fangled, nor alarming, nor does it involve state usurpation. It is, indeed, almost as

old as the constitution itself—it is bottomed upon the celebrated Virginia and Kentucky resolutions of '98 and '99—it is sanctioned by the authority of Jefferson and Madison, than whom none better understood, or were more able to expound, the true theory of our government—and it has been recently sustained by the most able and philosophical statesmen of our country. Upon the great authority of these resolutions, and of the able expositions by which they have been illustrated and enforced, we claim the right of one fourth of the states to annul an unconstitutional act of Congress, and the right of an individual state to suspend its operation within its limits, until a federal convention shall have decided upon the respective rights and duties of the conflicting parties. Such is our doctrine—its origin Jefferson—its authority Madison's report. But Mr. Madison it seems—and the circumstance, naturally, has been eagerly caught at by the opposition—has recently undertaken to explain his report to the Legislature of Virginia. In that report the doctrine is expressly and unequivocally laid down, that in cases of dangerous and palpable infraction of the federal constitution, by the exercise, by Congress, of powers not granted, it is not only the right, but the duty of the states, to interpose for the purpose of arresting the progress of the evil: and this, of course, has always been understood by all parties, both by those who opposed and those who supported it, to convey the right of interposing the *sovereign authority* of the state, and in such a mode as may ensure efficient protection to its citizens. But Mr. Madison now explains his report to have asserted nothing more than the right to declare an act unconstitutional—nothing more in fact, than the mere right *to express an opinion, or to interpose by argument*—and he tells us, particularly, that if the Virginia resolutions had been understood at the time to assert any other or higher power in the states, they would have been assuredly denounced, by the states which opposed them, as leading to disunion and anarchy. Now it is evident from history, that they were so understood, and that they were so denounced, by the states which opposed them. Those states were Massachusetts and New Hampshire and Rhode Island and Vermont —and, in all their resolutions upon this subject, they expressly protested against the Virginia resolutions upon the grounds, that the Supreme Court of the United States is the only competent tribunal to decide upon controversies between the states and the federal government—that it is an unauthorized assumption of power in a state to pronounce an act of Congress unconstitutional or void—and that such assumption could only be sustained by force, which would necessarily endanger the peace and safety of the union. These protests gave rise to the celebrated report of Mr. Madison. And how does he answer the protesting states? Does he assure them that they had mistaken the purport of the Virginia resolutions, and that they really contemplated nothing more than argument or remonstrance? No sir, on the contrary he justifies those resolutions in their essence and spirit. He positively denies the exclusive jurisdiction of the federal court—he rejects the degrading doctrine which would exalt that court above the states which created it—he maintains that the constitution is a compact between the states as sovereigns and equals—that the states, having no common umpire, must necessarily decide for themselves whether the compact has been violated—and that in cases of dangerous violation, it is both their right and their duty to interpose for the purpose of ar-

resting the progress of usurpation, and of maintaining, within their respective limits, the rights, privileges, and immunities appertaining to them. He evidently attached no weight whatever to the objection of the protesting states founded on the fear of anarchy or disunion; for he merely glances at it in his report, and all that he says upon that point is, that it is a consequence which ought neither to be anticipated or feared, from the exercise, by a state of her sovereign and unquestionable rights. Now, sir, what does this language mean? Does it mean that a state has no other right than that of merely expressing an opinion? Is it possible that Mr. Madison composed his long and elaborate report, and that Mr. Jefferson drafted his celebrated Kentucky resolutions, and that the Legislatures of Kentucky and Virginia long debated and solemnly adopted political expositions, merely to assert the right *of expressing an opinion?* Is it possible that the Legislatures of Massachusetts and the other dissenting states protested against the right of Virginia *to express an opinion,* when they were themselves actually exercising that right in adopting their protests? All this is too absurd to be believed. And yet so Mr. Madison would have us now believe. The Virginia resolutions distinctly assert the right of a state to interpose, in cases of palpable and dangerous infraction, for the purpose of *protecting* its citizens, and of maintaining, *within its own limits,* the immunities and privileges appertaining to it. And yet, according to Mr. Madison now, this can only be done *by words.* Potent and magical, indeed, they would be to effect such objects. Sir, I would not willingly say any thing that could possibly be tortured into disrespect to such a man as Mr. Madison, whose whole life has been devoted to the welfare of his country, to whom the nation is deeply indebted for his many and important public services, and who has always been justly considered as one of the founders and fathers of the republican school. But the fact is not to be disguised that his report to the Virginia Legislature and his recent letter to the editor of the North American Review are utterly irreconcileable with each other. I prefer his report decidedly to his letter—and, putting him against himself, I prefer his original construction of the constitution, given when the government was newly formed, and when he himself was in the full radiance and vigor of his fame and faculties, to the doctrines he has recently promulged, and which are certainly at variance with his former principles and opinions. Sir, I consider the Kentucky and Virginia resolutions as the sheet anchor of the south—as the only true construction of the relative powers of the federal and state governments—and as the only rock upon which we can depend for safety against the torrent of consolidation which threatens to overwhelm us. And most fortunately, Mr. Chairman, the doctrines embraced in those resolutions do not depend merely upon abstract speculations, but have been repeatedly and triumphantly reduced to practice. Virginia nullified the alien and sedition laws, both by a resolution in which they were declared unconstitutional and void, and by a subsequent act, respecting the sedition law, by which the members of the Legislature were exempted from its operation. The state of Massachusetts, by an act of her Legislature, pronounced the embargo unconstitutional and void so far as it related to the coasting trade, and an act to the same effect was passed by the Legislature of Connecticut. The recent case of Georgia is still more powerful and striking. In that case, not merely an act of Congress, but a solemn

treaty of the United States was set aside and abrogated. That treaty had long protected the Indians in their peculiar usages and customs, and much to the annoyance and injury of Georgia. The state of Georgia, at length, unable to endure any longer the existing state of things, denied the right of the federal government to perpetuate usages and customs conflicting with her laws, and passed an act extending her own laws over the Indians within her limits, and incorporating them with the rest of her population, and thus effectually destroyed the treaty between the federal government and the Indians. Similar laws were passed by Mississippi and Alabama in relation to the Indians within their limits. And what was the effect of all these nullifying laws? Has the union been dissolved? Has the country been involved in civil war and anarchy? No sir! Mr. Jefferson (the author of the Kentucky resolutions) recognized the right of Massachusetts and Connecticut to annul a law which they deemed unconstitutional, and, instead of attempting to enforce the embargo, he caused it to be repealed. Mr. Adams did indeed talk about coercing Georgia, but public indignation withered the attempt, and the enlightened patriotism of Andrew Jackson has since recognized the rights and supported the sovereignty of the state, and the final result was the passage of the Indian bill, in which Georgia obtained a decisive and memorable triumph. Here then are instances in which nullification has been practiced, and practiced successfully. Here are conclusive precedents to prove that the doctrine is no vain theory or idle speculation. Those states were aggrieved by unconstitutional laws. They stood upon their reserved rights—they asserted their sovereignty—and they triumphed. Why should South Carolina be deterred from the exercise of the same power? Has she not equal and even greater cause? Is she not as much and even more injured and oppressed than they were? Why then should she hesitate to imitate their examples? Why, because, it is said, force may be employed to reduce her to submission. Those who think so have certainly neither properly considered the true structure of our government, nor the character or condition of our opponents. The president may, indeed, employ force to put down a *rebellion*. He may call out the militia to suppress such movements, by irregular and unauthorized mobs, as the whiskey insurrection in Pennsylvania, or what is commonly known by the name of Shay's rebellion. In such cases South Carolina would herself assist him, as Pennsylvania did, in the enforcement of the laws. But, sir, we are not now speaking of the lawless tumults of a mob, but of the solemn and authoritative proceedings of a state. And can a state *rebel?* Can a state commit treason? The idea is as degrading to the dignity, as it is utterly incompatible with the sovereignty of the states. To suppose that a state can be *punished*, for refusing submission to an unconstitutional law, is to admit, in fact, that it is not *a state*. And what state in the union would agree to this? What state in the union by sanctioning coercion in the case of Carolina, would admit *the right* of the federal government, under similar circumstances, *to coerce herself?* No sir! the idea of coercion is entirely vain. No state would sanction, and popular indignation would crush it in a moment. I am perfectly satisfied, moreover, that our present president, so far from attempting force, would defer, as he ought to do, to the sovereign power of the state. A true disciple of the Jefferson school, he would not deny a power to a state, which

may be exercised by a Court, the creature of the states. He knows full well that if it is not given expressly by the constitution to the states, so neither is it given to the court, and that whilst it does not necessarily appertain to the functions of the Court, it is an inherent and essential attribute of sovereignty in the states (that of the right to protect themselves) which they never have, and never can surrender. His conduct in the case of Georgia furnishes abundant illustration of his principles upon this point; and it affords an ample guaranty, that in our case, as in hers, he would surely be found on the side of constitutional right and liberty. But, Mr. Chairman, I have a still stronger security than this, that nothing like coercion would be attempted against us. It is not that our oppressors would be afraid (they might be *ashamed*) to undertake it. I know them to be as gallant as any people upon earth, and our history is full of their military glory. No sir! it is not upon their fear, but upon their *interest* that I rely—upon that very same principle which originally induced them to enact the tariff, and which would assuredly induce them to prefer compromise and conciliation to the employment of force, in the event of any thing like serious or decisive measures upon our part. They know that the south is now divided upon the question of resistance—but they know, too, that the first attempt at military subjugation would indissolubly unite them in a moment. They know too well, that the first sword that should be drawn would cleave the union asunder—that the first gun that should be fired would sound the funeral knell of the republic. And they would pause long, and consider well, before they draw that sword or fire that gun. They would calculate, in their turn, the value of the union. They would weigh well the comparative loses and profits of coercion.—They would soon find the former infinitely greater than the latter. They would know too that the enterprize, whilst it would be immensely expensive to them, would be vain and furtile in itself, and inevitably end in disunion. And, above all, they would know that whilst disunion would open rivers of wealth upon the south, it would be ruinous to them in a pecuniary point of view. They know all this sir—and for these reasons, if for no others, they would not hazard a dissolution by having recourse to violence. I cannot, therefore, and do not believe that nullification, even if it should be resorted to by a convention, would at all endanger the safety of the union. I believe on the contrary that it would be a peaceful, regular and constitutional proceeding—that its regularity and constitutionality would be recognized and admitted by the other states—and that it would finally lead to the general emancipation of the south, and to another and very glorious triumph of constitutional liberty. But, as I have already said, I would leave this matter entirely to the discretion of the convention. I would in no way trammel it by a legislative opinion on the subject. If they think nullification requisite or expedient, they will adopt it. If not, they will confine themselves to the other modes of proceeding which I have already designated. In either case I have no doubt that their conduct will be such as to give entire satisfaction to the people.

I come now, Mr. Chairman, to the last objection to a convention, which is that a convention would be illimitable, and that, being so, it might alter our state constitution in a manner highly detrimental to the interests of the lower country. Sir, I regard these positions as utterly untenable, and as altogether got up for *ad captandum* purposes, and to defeat the call of

a convention. The argument is, that a convention resolves society into its original elements—that it is illimitable both as to the subjects of its action, and as to the manner and extent in which it may act upon them—or, in other words, that a convention is the people, and can do any thing which the people themselves might do, even to the entire abolition of the existing order of things, and the establishment of a new and different system. Such doctrines as these I conceive to be totally visionary and unsound. They are flatly contradicted, not only by common sense, but by the general history and experience of our country. Conventions almost without number have been held, some federal and others state, and they have invariably been restricted to particular subjects of deliberation. The federal convention, which formed the present federal constitution, was limited to a revision and amendment of the old articles of confederation: By the present federal constitution, (art. 5) federal conventions are expressly restricted to *proposing amendments* to that instrument. The words of the constitution are explicit. They shall have power merely to propose amendments, which amendments shall not be valid, as parts of the constitution, until they shall be ratified by three fourths of the states. And even this limited power of proposing amendments is again specially restricted by a provision which forbad any convention, which might have been held prior to the year 1808, from interfering in any way with the 1st and 4th clauses in the 9th section of the 1st article: And it is again still further restricted by another provision which prohibits a convention from depriving any state, without its consent, of its equal suffrage in the senate. Here then are special restrictions upon a federal convention: and surely if a federal convention can be limited, state conventions may be. And we find, accordingly, that they always have been. The objects, for which they have been desired, have always been discussed by the people and decided on beforehand, and when it has been determined to call them, they have always been specially instructed as to the objects or purposes for which they are required. Look at the recent instance of the Virginia convention. For what was that called? To amend and revise the constitution of Virginia! Had it any other power? No! Could it have formed an entirely different species of government—a monarchy for instance? No! Were its acts binding without the approval of the people? No! the people might have rejected them if they chose. Did it resolve society into its original elements? No! the old constitution remained of force, until the amendments proposed should be adopted by the people. All the branches of government, and all the affairs of society, went on with their usual regularity and harmony: and it is well known that the Legislature and convention were actually in session at the same time and in the same place, the one administering the government under the then existing constitution, whilst the other was engaged in amending the constitution. Look also at all the state conventions which were called in relation to the federal constitution. They were called expressly to consider the propriety of adopting or rejecting it. Had they any other power? Could they have meddled with state constitutions or any other matters? unquestionably not. These facts then, I apprehend, are sufficient to show that conventions have been, and that they can be limited. And, if all other conventions can be limited, why not ours? Why, because it is said, a convention is the people, and there can be no restriction

upon the sovereign authority of the people. Can it be necessary, sir, to refute this position. A convention the people? No sir! A convention, as well as the Legislature, is merely composed of delegates of the people, and the one can be as easily and as effectually restricted as the other. Does any one doubt that the people could instruct a convention as to the subjects to be mooted, or restrict them as to the course to be pursued?—He who doubts this, doubts the power of the people with a vengeance! Or does any one doubt the right of the people to delegate their power over a convention to a subordinate body? I apprehend not. What then is the true answer to this argument? Why, that the people originally possessed the power to call, and consequently to instruct and restrict a convention, but that, according to our constitution, they have delegated that power to the Legislature, and that the Legislature, consequently, now possesses all the powers in relation to a convention which the people themselves originally had. And this power of restricting a convention results, moreover, from the very nature of things, and from the obvious necessity of the case itself. To call a convention, without designating the purpose for which it is called, would be absurd, and would indeed throw society into chaos and confusion. To designate the purpose for which it is called, is to restrict it to that purpose. There can be no greater fallacy, in relation to this matter, than to suppose that the Legislature is inferior to a convention; and yet many, upon the strength of this supposition, ridicule the idea than an agent or inferior may control its principal or master. The Legislature, according to our constitution, is not only not inferior, but actually superior to a convention, at least as regard *its subjects* of deliberation. The Legislature, in relation to *those points*, represents the people in the most emphatic and comprehensive signification of the word. The people have delegated the power to the Legislature to call a convention, and the Legislature, of course, in calling a convention, represents the people—acts for the people—in the name of the people—with all the authority of the people—and has, necessarily, the same control over the proceedings of a convention, which the people themselves would have, if they acted directly for themselves, instead of mediately and indirectly through the agency of the Legislature. But I think it unnecessary, Mr. Chairman, to insist farther upon this topic; and yet, if authority be wanted, I am fully sustained by the authority (high with our opponents) of our distinguished senator, Smith. In his late address "to the good people" of this state, he says, distinctly, that he could have wished to have been a member of a convention, limited to remonstrance and limited in its duration to a single session. He, at least, then, entertains no doubt that a convention can be limited—limited as to its mode of action—and even as to time. And surely if a convention can be limited to a particular course of proceeding in relation to our federal concerns, it can be limited to the consideration of those concerns alone. It is evident, at all events, that even if a convention should so far forget its duty, or disobey its instructions, as to touch upon matters other than those committed to it, its acts would be totally invalid without the sanction of the Legislature. Even if it were to meddle with the constitution, all that it could do would be *to* propose alterations. No proposed alteration would be valid, as part of the constitution, except it should be ratified by two thirds of the whole

representation in the Legislature: and it is manifest, therefore, that no innovation, dangerous or inconvenient to the lower country, can be effected, as long as our state constitution remains as it is. But, Mr. Chairman, I have no fear upon this subject. I not only believe that a convention can and will be limited, but I am persuaded, even if it could not, that it would not, at a time like this, transcend the objects for which it is desired. I believe that it would be composed entirely of patriots and statesmen,—selected for their wisdom, integrity and experience—deeply affected at the alarming and degraded condition of our state—anxious only to recover the constitutional rights of our people—and who would disdain, at such a time, to do any thing which could possibly cripple the energy of the state, or disturb the popular concord so essential to success. I, for one, will implicitly trust my fellow citizens of the interior—trust them with my own, and with the destinies of the section of the state in which I live, and which I have the honor in part to represent. I regard them as friends, not as foes—not as men who would attempt to injure the lower country for the benefit of the upper, but as brothers and countrymen who would cordially co-operate with us in endeavors to rescue the whole state from the dangers and evils which surround it. And I entreat the members from the lower country to discard such apprehensions as equally unfounded in themselves, and injurious to the enlightened patriotism of the upper country. Let them be assured that there is not a man of the interior who would not repel the unjust imputation with disdain.

I have thus, Mr. Chairman, endeavoured to obviate the objections respecting a convention. I have endeavoured to prove that this *is the proper time* to call a convention—that a convention, even without nullifying might do much good—that nullification, should it adopt that measure, would be a peaceful and constitutional proceeding—and that the convention can and would be limited to the exclusive consideration of our federal relations. But there is one argument which I have not yet noticed, and which merits a reply. It is that the doctrine of nullification involves the absurdity of supposing that one state may control the operations of the remaining twenty three; that if South Carolina has a right to annul the tariff acts, Ohio would have an equal right to annul the land laws, Tennessee the bank act, and other states all such other laws as they may determine to be oppressive—and that this, of course, would reduce the federal government to a cypher—to a mere name without power or authority. But, Mr. Chairman, it does not follow that because one state, in a case of grievous oppression and under a most dangerous violation of the federal compact, should adopt this course, it would therefore be resorted to by others without equal right or similar necessity. It does not follow that because we resist an *unconstitutional* law, therefore other states should resist *constitutional* laws, even if they are partial and oppressive. The presumption on the contrary is, that no state would proceed to such an extremity, except in cases clearly *unconstitutional* as well as intolerably grievous. In fact, so far from states flying rashly or eagerly to this resource, it is with very great difficulty that they can be persuaded to resort to it at all. They are always disposed to bear, as long as evils can possibly be borne. They would rather continue to hope on, even against hope itself, than make a vigorous effort to redress their wrongs. Every thing in fact is against their acting, and nothing but the sense of injury in favor of

it. All the power of the federal government—the influence of official station—popular outcries of anarchy and bloodshed—the combined influence of party presses—the hope of returning justice or magnanimity in Congress—all these with many other causes of a similar kind, will always retard and embarrass the movements of a state, and prove the exceeding difficulty of placing her under any circumstances, in an actual position of resistance. You may rest assured then Mr. Chairman, that so far from states annulling acts of Congress capriciously or lightly, it will never be done until after long and intolerable suffering, and in cases of dangerous infraction of the compact, and after every other mode of redress shall have been used in vain. And who would deny this power to a state, after long and intolerable suffering, and after long and mortifying years of fruitless petition and remonstrance? Is it not much more reasonable—much more comformable to the true theory of the constitution—that a state should have a right to suspend an unconstitutional act which oppresses and enslaves it, than that it should have no remedy whatever, short of physical resistance, or secession from the union? Has the majority a right to oppress the minority at their pleasure, and has the majority, in truth, no means whatever of constitutional counteraction? Has an organized combination in Congress really a right to destroy all the great interests of the south, for the purpose of aggrandizing particular interests elsewhere, and have we no means of protection short of revolution? Did our southern ancestors agree to such a government as this? No sir. They did not. The constitution was formed, not for the majority who might abuse power, but for the protection of the minority against its abuse. And it has provided such protection: and Mr. Jefferson, who understood our constitution better than any other man, has expressly told us, that in cases of infraction and oppression, the states are themselves the sole and proper judges of the mode and measure of redress, and that the true remedy consists in the *nullification* of the obnoxious laws. I know no authority against this doctrine equal to that of Mr. Jefferson in support of it. And until such another expositor shall arise, I, for one, will be perfectly content to receive his as the true construction of the constitution.

And now, Mr. Chairman, the question before us is, shall we call a convention or not? Has the time arrived, when the people of this state should take the consideration of their affairs into their own hands, and themselves determine upon a remedy for their grievances? I think it has. I think they have no prospect of relief from procrastination or delay. I think that it is utterly delusive to indulge a hope in the returning justice of the majority, or in the effect of the presidential vetoes, or from the payment of the public debt. I think that there is no circumstance whatever to authorize us to believe that any favorable change will be effected in public opinion or in the policy of Congress. On the contrary, all the signs of the times are decidedly against us. The president himself supports the principle of the protective policy. Maryland, Ohio, and Kentucky have been deeply convulsed, if not actually turned against him, by his vetoes upon internal improvement bills. Boston has recently elected a manufacturer to Congress, and over a most distinguished champion of the free trade cause. The tariff states, in fact, so far from having undergone a change, are if possible more than ever devoted to the system. And it is natural that they should be. It involves every thing dear to their

pride, their ambition, and their avarice. Its profitable effects, too, and its real value, are now beginning to be realized. Hitherto the manufacturers have had to contend against the immense amount of foreign goods which were imported immediately prior to the passage of the tariff, and also against the difficulties arising from extensive smuggling. Notwithstanding the tariff, many of them were unable to bear up against these circumstances. All of them suffered, and many of them sunk. All those foreign goods, however, have now nearly, if not totally, disappeared. Foreign importation is now effectually checked by our enormous duties, and smuggling has also been sensibly diminished by the precautions taken to prevent it. The manufacturers, therefore, are now beginning to realize, in its fullest extent, the profits of the system, and to reimburse themselves, to their hearts content, for the losses they have sustained. And can it be expected that they will voluntarily relinquish the system now? Can we expect those who have suffered, to forego the prospect which they now have of ample remuneration for their losses? No sir. This is not human nature—and he who expects an abandonment of the protective policy from any cause less than that of necessity, will most assuredly be deceived. Why then should we hesitate to call a convention? The people wish it—the people demand it. Are you afraid to trust the people? I am not. I think they are the best judges of the course to be pursued, and that they have a right to determine for themselves. I am perfectly satisfied that all that we have yet gained has been entirely owing to the excitement and agitation at the south. I believe, that if we go on, we shall continue to gain more and more, until we finally succeed in the full restoration of our rights. I believe, on the contrary, that if we pause or hesitate now, we shall begin to retrograde. It will be regarded by our oppressors as an acknowledgement of their inability to do any thing, and as an evidence of division and distraction amongst ourselves. It will have a bad effect too, upon the state of public feeling here, and throughout the whole of the southern states. Refuse to call a convention now, and what will the tariff majority in Congress care about our complaints or reproaches? Refuse to call a convention now, and what will the other southern states think, or how can we hope to unite them effectually with us in the common cause? What good then can we expect from a postponement of this measure? None under heaven? What evils have we to apprehend from it? What evils, sir? Let those, who would estimate them properly, remember what this state once was—consider what it now is—and what it may yet become. There was a time, Mr. Chairman, and not many years since—when South Carolina possessed and exhibited every thing which was calculated to make her children proud and happy. They were then free, not in name only, but in reality also. They then lived under a government, administered with purity and justice, and known only by its blessings. They then lived under a system of equal laws, dispensing impartially the same advantages to all, and they loved their government with an attachment almost approaching to idolatry. No sectional differences had then separated the states by geographical division. No sectional interests had then arisen calculated to alienate affection, and engender discord. No restrictive system then shackled their commerce, destroyed their agriculture, and drained them of their wealth. No wretched fanaticism had then entered the halls of Congress, undermining at

once the value of their property, and the safety of society. They were free and happy in themselves—contented with the conduct of the government—contented with the conduct of their sister states. Their commerce ranged unbounded over every sea, and their planters were amply compensated for their labor. Industry was encouraged—mechanics and artisans had full employment—and improvements of all kinds were regularly carried on. Elegance and hospitality dwelt in the houses of the rich, and active and rewarded occupation gratified the wishes of the poor. In short it was a period which may well be denominated the epoch of Carolina happiness and freedom; for, look where it would, the eye of the observer could behold nothing but tranquility and contentment, and all the gratifying indications of steady improvement and prosperity. But those times have passed, and, I fear, never to return. Those scenes have changed, and, with them, all the affections of our people. No crowded commerce now fills our ports. No wealth now rolls in upon us with every breeze from Europe. No enterprize or profit now animates our people or rewards their toils. The government, once so beloved, is now dreaded and distrusted as an engine of oppression. A system of legislation, barbarous and artificial in itself, exploded by other nations, and not less disgraceful to our government than it is ruinous to us, has been fixed upon us by the selfish and interested combinations of other sections of the union. Under this system Carolina has sunk, from all her former opulence and dignity, to poverty and degradation. Our commerce has been swept from the ocean, and our agriculture paralyzed. Our property, almost valueless now, is daily depreciating more and more. Plantations, once immensely valuable, have been totally deserted and abandoned—and even the human voice is now scarcely heard in places, which were once alive with population, and animated equally by elegance and refinement, and active and profitable labor. Such is what Carolina *once was*, and what she *now is*. What she may *yet become*, I tremble to anticipate. The prospect is all dark, and desolate, and dreary. Clouds and thick darkness rest upon it. Look where we will, we see nothing but increasing danger, and difficuly and distress—a deep and universal gloom, without a single ray to cheer—a single star to guide us through the labyrinth. What then shall we do? Shall we submit forever? Shall we permit the clouds to gather, and the storm to burst, and make no effort to avert it? Shall we wait until the restrictive policy is carried out even to the extent of actual prohibition? Shall we wait until internal improvements are revived, or the new distributive project be adopted? Shall we wait until the colonization society shall be regularly incorporated as a branch of the American system, and until the majority, after having destroyed the value of our property by emancipation schemes and doctrines, shall begin to buy it up with our own money, forcibly extorted from us by iniquitous taxation? Shall we wait, in short, until Carolina, fallen as she is, shall fall still lower, even to the lowest depth of colonial vassalage, when she may be too weak, and perhaps even too servile to resist: or, shall we now make a peaceful and constitutional, but firm and decisive stand upon our rights, and endeavor, whilst something may yet be done, to procure reparation for the past, and security for the future? It is a most solemn and momentous question. I entreat the committee to pause before they vote upon it. It is no common subject of ordinary legislation, but one which involves the destinies of our belov-

ed state. It is the great question of LIBERTY OR SLAVERY: of future prosperity and freedom, or poverty and enslavement, for ourselves and our children. I conjure the committee to pause before they decide it. I conjure them, by their patriotism, not to give up the state, at this very crisis of her fate. I conjure them, as Carolinians, not to allow her to be bound an unresisting victim for the sacrifice. I conjure them, by their love of liberty and their hatred of injustice—by all their own rights and hopes, and the rights and hopes of their posterity—not to recede now. To go on, is peace, and honor, and safety, and success. To recede, is certain shame, certain additional danger, certain additional imposition. I go for the call of a convention. God grant that those who oppose it may never be compelled, by still more grievous and intolerable outrages, to resort to measures infinitely more to be deprecated and avoided.

THOMAS WILLIAMS' JUNR. SPEECH.

MR. WILLIAMS said, in considering the questions before the committee, he would steadily endeavor to remember, that the object of all discussion was elucidation: that this recollection would greatly aid in keeping him honestly to the main question; while he would only desire to afford such light as his observation and reflection would enable him to give: he said, he should also endeavor to remember, that we were all brethren—the people of one state, united by one interest, and affected alike in property, character and liberty. This recollection, he said, would aid in keeping out all unkind feeling and tart expression; and although he might differ in opinion with gentlemen, yet this difference should be expressed with that moderation and temper, becoming the consideration of the grave question submitted to the committee. Mr. W. said, he was also bound to remember, that much time had already been spent in debate; and as many other gentlemen more able than himself were yet in reserve, and desirous to be heard; he should consider the privilege now allowed him, more as a matter of courtesy and indulgence, than from any hope that he should enlighten the committee, or aid them in their deliberations; that this should induce him to be as concise as possible, and to urge none other arguments than such as he felt compelled to do, in discharging any thing like his duty. The proposition, said Mr. W. before the committee, manifestly is, shall the Legislature call a convention of the people? In the discussion of this question many others necessarily arise and must be considered—among the questions necessary to be considered is, first—what is the state of the public mind upon this subject? It has been truly said "that South Carolina can only be efficient by a cordial harmony among her sons." But sir, her sons are divided, and her councils distracted—party spirit rages to a height unknown before among us, winding its course through our towns and villages, entering into families, destroying the harmony of neighborhoods, violating the peace of society, and breaking the strongest cords of private friendship—dark suspicion lurks in every bosom, and hateful names are fixed upon the most pure and exalted characters—new parties are created, and old ones are broken up—those

who before used "to take sweet council together," are now thrown asunder, and others, who formerly stood high as patriots, are now charged as deserters from their country's glory. This commotion still continues, and rises higher and higher, until this government is shaken to its very centre. Sir, let it not be thought that this distraction is confined to this house, it runs through the whole state, and acts more or less every where. Mr. W. said the strength of this spirit could be seen strongly manifested in the general elections. Some districts making entire returns of members of one opinion, while the adjoining districts make entire returns of members of a different opinion; and other districts are found divided among themselves, and sending members, differing in sentiment, and when here arraying themselves with their respective parties, and preparing to move and act as the advancement of their side of the question may require. Mr. W. said he would now ask gentlemen, if in this high state of public excitement, both in this committee and among the people, there can be found any thing like that "cordial harmony" which should exist, to justify *present* action by the state. It is well known that a large and respectable portion of the good people of this state, are directly opposed to the call of a convention. In the populous city of Charleston, upon a late election where the question was made, only a majority of about 150 are found in favor of convention, and perhaps upon the next trial the majority will be found upon the other side.* Mr. W. said he would now ask the honorable members of this committee, who are from districts in favor of convention, if they are prepared to call a convention in opposition to the opinions and wishes of a large portion of the people of this state? Are the honorable members from Edgefield, Newberry and Pendleton ready and willing to force a convention upon the people of Laurens, Greenville, Spartanburgh and Chester, and all the districts in the eastern part of the state, contrary to their wishes, and in opposition to their express opinions? Do gentlemen expect their wishes to succeed against the wishes of the people? Do they expect the aid and support of the people against their own wills? Or can they hope for the success of their measures without the support of the people? But can gentlemen even hope to be sustained by a people divided? Under the highest excitement, and governed by the most angry feelings? No sir, said Mr. W. to ensure success, we must be united, "in thought, in word and in deed." Mr. W. said he did not intend to say, that there should be no dissenting voice, but he did intend to say that the majority should be so large and overwhelming as to effectually put down the weak opposition of an insignificant few. But sir, the honorable gentleman from Richland (Mr. Preston) has told us, that "this is a political experiment, and he prays God that it may succeed." For one, he (Mr. W.) was not willing to speculate upon the chances of fate in favor of, or against his country; he must have some *certain* evidence, at least satisfactory, that the proposed measure would succeed; he cannot doubt, if he does, he will not act; he must see before him to a reasonable certainty that all is right, and therefore will end well. But it is further said, "the call of a convention will cure every thing—public opinion will become settled—the people will act wisely in

*It is since known, that Mr. Pettigrue, an anti-convention candidate, succeeded over Mr. Lawrence, his opponent by a large majority.

choosing their delegates—the wisdom and power of the state will be concentrated, and that wisdom and power will devise the proper remedy, and that this will settle down the public mind either to submit or resist. Sir, all this seems very plausible, but one moments examination, and it will vanish into air—a convention must be made up of delegates chosen from among the people—those chosen must be of the same minds and opinions of the people making the choice. To suppose that the people would choose delegates, differing from them in opinions would be absurd. A convention then would be composed of as much opposition and cross opinions as now exists among the people. They would come here with the views and opinions of that portion of the people among whom they live, and by whom they were chosen. Party spirit raging among the people, would rage among the delegates, divisions and oppositions among the people would exist among the delegates, and of course all the rage of party, of commotion and excitement would be brought together, and thus your convention, instead of being a grave assembly of deliberative men, consulting and acting together for their country's glory, would be split up by sectional views, divided by party spirit, counteracting the efforts and paralizing the acts of each other, until sick of strife they would return home with having done nothing, but left the state in a tenfold worse situation than before. But how can a convention quiet the people, and settle public opinion? This depends upon the question, what has given rise to the excitement now prevailing? What has induced this great difference in the opinions of the people of our state? Upon examination, said Mr. W. it will be found that the simple question of convention or no convention has given rise to all the difference of opinion now existing. And how can the call of a convention settle that difference of opinion? Will the call of a convention, the very thing which a large portion of the people so much deprecate satisfy them? Will it quiet them? The very question which has divided friends, and torn asunder the most sacred ties, will it unite them? Impossible! this would be to contend that the effect destroys the cause—that the conquered should love the conquerers and become attached to them, not because they thought them right, but simply because they had conquered. Sir, said Mr. W. gentlemen would do well to consider correctly, upon the difference between *that which has divided the people*, and produced so much excitement; and that, which has *caused the complaints* of the people to be heard from one end of the state to the other. Mr. W. asked what had divided the honorable gentleman from Richland (Mr. Preston) and himself? The simple question of convention or no convention. If a convention should not be called, will the honorable gentleman be satisfied? Will it quiet him? If a convention should be called, could the honorable gentleman expect that he, Mr. W., would be satisfied? But sir, what has caused the complaint of that honorable gentlemen?—not whether we shall call a convention, that is not the ground of his complaint—but it is, that the laws of the United States, called the tariff laws, are "unconstitutional, unjust and oppressive." In this, Mr. W. said he agreed with the honorable gentlemen most perfectly, and complained as loudly as he could do; and with this do all our citizens to a certain extent. Mr. W. said he believed that although the honorable gentleman just alluded to, and himself, might not differ on the subject of our complaints, yet Mr. W. believed that when the people came to assign the causes of their complaints, there

would be found this ostensible difference. We, said Mr. W., complain of the unconstitutionality of those laws, while the people will be found complaining *of their oppression.* Sir, examine this matter—if Congress had the *undoubted* power to pass these laws, would gentlemen insist that a convention of the people could remedy the evil? Would they do more than say it was an unjust and oppressive exercise of a constitutional power? Would they not tell you that your only relief was either by an appeal to the justice of Congress, or by an amendment of the constitution of the United States, or by revolution? Mr. W. said he presumed no other voice or sentiment would be heard by this committee. Then sir, should not the true grounds of our complaint be, that, these laws are unconstitutional? And yet is this the ground? If so, will gentlemen be pleased to tell us, what is the reason that the act of Congress establishing a bank, and all other acts appropriating money for the purposes of internal improvement have not produced complaints? Such complains as the tariffs of '24 and '28. Sir, said Mr. W. is there any *southern man* at this day, *whose eyes are not blinded by pecuniary interest,* or whose judgment is not forestaled by hasty and inconsiderate opinions, *previously expressed,* and whose pride for consistency, now urges him on, will venture the opinion, that Congress has the power to charter a bank, and that the general government may become a stock holder? Would they not have the same power to enter into copartnership in the sale of merchandize, the traffic in slaves, or pursue any other *speculation* which might be deemed advantageous by Congress? If Congress has not the power to charter a bank, the act upon that subject is as much a violation of the constitution, as the laws on the subject of the tariff. And if the infringement of constitutional liberty be the ground of complaint, we should complain equally against the act of Congress charting a bank (and the acts of Congress for appropriating money for internal improvement now every where admitted to be unconstitutional,) that we do against the tariff laws so called. Yet, will any one venture the assertain, that, the act of Congress charting this bank, has produced any complaint among the people of this state? If the reply is, the bank has not oppressed us, the point is yielded for which Mr. W. said he was contending—namely, that it is not the unconstitutionality of the law against which the people complain, but its oppressions. Mr. W. said he believed the *supposed oppressions* under which the people believed they suffered, had produced much, if not all the dissatisfaction now prevailing through this state. This view, he said, would be greatly strengthened when we enquire into the prevailing opinion on the subject of our oppressions from the tariff laws: to which may well be added, the spirit in which these laws are fixed upon us. Let it be remembered Mr. Chairman, said Mr. W. that opinions, whether of individuals or communities, are formed upon facts stated or testified to; and the opinion when formed always influence, when formed upon *undoubted testimony.* Whether the testimony be true or false, does not alter the case, but whether believed or not. Now sir, what is the evidence on which the public mind is made up, upon the subject of our oppressions, under the tariff laws, and the spirit in which these laws are fixed upon us? One of our members in Congress, a gentleman of high and distinguished character, says, "I maintain that an impost duty upon these articles of foreign merchandise which are received in exchange for the domestic productions of the planting

states, is precisely equivalent in the existing state of our commercial relations to an *export duty* levied upon the productions of those states."—By this same gentlemen we are also told that this average duty is 45 per cent. In this information this gentleman is fully sustained by a printed pamphlet, entitled, an exposition of the tariff laws, and which has been laid before the people of South Carolina, and supposed generally, though not truly, to have had the sanction of the Legislature of this state. These facts as published and declared have spoken volumes to the people. They have been received as undoubted truths. And the universal understanding and belief is, that the producer of the export pays a tax of 45 per cent. upon the product of his labor. There is no difficulty sir in seeing at once, *if this statement be true*, that a system so onerous, must end in the "absolute annihilation of the rights and interest of the planting states." So much for the oppression. Upon the subject of the spirit with which these laws are fixed upon us, the evidence is equally high and satisfactory to the people of this state. The same gentleman upon this subjct tells us, that "no man who will reflect upon this system (the tariff) for the last twelve years can indulge the slightest hope that it will ever be abandoned by those who have imposed it upon us. From year to year the duties have been increased, and the system extended, and at each successive enlargement of the circle of monopoly the majority in Congress has uniformly increased. So far from perceiving any indication of a reaction here, (in Congress) it seems obvious to me, that the more odious and oppressive and intolerable the system is rendered to the people of that portion of the union, whose rights it grossly violates and whose interests it is calculated to destroy, the more determined and obstinate are the majority in adhering to it, and extending its operation." Now it is true, said Mr. W. not one word is said in all the above upon the unconstitutionality of the tariff laws; but stronger language cannot be well used, to shew the wicked and hostile spirit in which these laws are fixed upon us—every hope of redress from Congress is cut off—the duties are said to be increased from year to year; as the circle of monopoly enlarges, the majority in Congress increases; the more odious, oppressive, and intolerable the system becomes, the more determined are the majority to extend its operations; until, in the language of this same gentleman, there is an "absolute annihilation of our rights and interests."

Now sir, are we, said Mr. W. to be surprised at the clamor we hear from all parts of the state upon the subject of the tariff, when facts like these are laid before the public: coming as they do from such high authority, pronounced on the floor of Congress, and published and sent all over the state? What people sir, would not become indignant at such outrage? What people would not rise up in rebellion against such oppression? And sir, let it also be remembered, that these statements receive greater force, seeing that the gentleman making them, has brought all his powers into action to sustain them by arguments. It is but just to say, that his arguments are ingenious and plausible, and as they are upon a subject not well understood by the great body of the people, they must take for true those things which they cannot prove to be untrue; and thus a subject is forced home upon us, and we are compelled to act upon the mere dictum of other men. But sir, said Mr. W. no one could have heard the honorable gentleman from Charleston (Mr. Huger,) upon this subject,

whose mind has not settled down upon a clear conviction, that the producer pays no duty upon imports but that the whole duty is paid by the consumer. At the bottom then sir, of all the complaints of our people, *lies this error;* and so soon as they shall rightly understand the effect of the tariff, their objections will settle down upon the proper point, its unconstitutionality. The violent clamoring and discontent which now every where prevails, will then every where cease, and tranquility will be once more restored to the public mind, and then, and not till then, can the people of this state act efficiently.

Let us now sir, said Mr. W. approach a little nearer to the main question before us, and inquire if the call of a convention can give us the relief needed. This depends upon what a convention can or will do. What can a convention do? Mr. W. said he should not deny but that it is the right of the people of the state in convention, either in mass or by delegates, to separate from the union. This is certainly one of the powers incident to sovereignty, and as the sovereignty of the states is not denied at this day (although certain politicians have done so in days that are past and gone,) it will be unnecessary to discuss that questiou now. But gentlemen who are in favor of calling a convention, deny their object to be separation—they denyed it before the people, and they deny it here—it would be impious then to charge them with it now. Mr. W. said for his part he would do no such thing—he believed gentlemen when they said they did not wish or intend to seperate. But it is said a convention can and will declare the tariff laws of '24 and '28 to be unconstitutional. Suppose this to be done, what good can result therefrom? Has this not been done times and ways without number in this state? Has not the Legislature been doing so, since 1825, and that against the will and the vote of some gentlemen now of this committee, and who have strangely changed sides, (perhaps to go with the strongest party) and who are now wildly raving for convention? Have not the people by their public meetings, and by their petitions in numberless shapes and forms done so? In short has not the public opinion been long known and expressed upon this subject? Do we not now see the only few, the leaders of an opposite doctrine in 1825, turning entirely round, and going far ahead of the radicals of that day, and wishing now as they did then, to lead the van of the state, acknowledging their errors in the most public manner? Do you not see the real radicals, the name which was odious in 1825, maintaining their same ground at this day? And sir is not all this as high evidence of public opinion upon this subject as any decision made by a convention can be? If a convention is to be called for mere puff and blast, Mr. W. said, he for one would not agree to it—he said we had puffed long enough, it was now time to act more firmly—gentlemen have already told us, that "factionists had got the state into difficulties, and that patriots now had to get her out of them." But sir, suppose a convention declares the tariff laws to be unconstitutional, what then? Will Congress be compelled to repeal them? If Congress is to be governed by the states, unless the other states would *also* declare these laws unconstitutional, she would be bound not to repeal them—for will it be pretended, that if one state has the power to declare these laws unconstitutional, and thus compel Congress to repeal, that another state has not an equal power to declare them constitutional, and thus prevent their repeal? And upon this principle, does not the simple fact,

that the tariff remains unrepealed, produce conclusive evidence, that a majority of the states hold the tariff laws to be constitutional? Sir, said Mr. W. no good can result from a convention declaring the tariff laws to be unconstitutional, except that it be for the purpose as the gentleman from Richland (Mr. Preston) says, to send their decision to the Legislature, and then let that body "*nullify*," and sir, said Mr. W. their can no good reason be assigned for this course, because the Legislature of a state either has the power to nullify an act of Congress, or she has not the power. If the power to nullify does not exist, can a convention give that power? But here it is not pretended for the convention to do more than to decide the acts of Congress to be unconstitutional. If the Legislature has the power to nullify, why call a convention? Why not let the Legislature act at once? Why obstruct and impede the act or powers of the Legislature by calling a convention, and then getting the veto of that body? Mr. W. said, gentlemen must be hard pressed when they were driven to such evasions. Mr. W. said, he had heretofore thought, and should continue to think, until otherwise convinced, that to do an act which will not give relief, is doing nothing. He therefore proposed to enquire, whether or not the act of nullification could give the relief needed? And what sir, said Mr. W. do we need? Deliverance from an unconstitutional and oppressive law of Congress. Mr. W. said, he had already shewn, that the decision of a state cannot operate upon Congress, where a majority of the states are in favor of the law. The call of a convention then cannot relieve us, upon this principle, even through the act of nullification, because it is not more than the decision of a single state. But let us see how it will operate. Mr. W. said, he would here explain what he understood by "*nullification.*" Suppose a convention is called, delegates are elected, and they assemble, and after the necessary and preparatory steps to business, they declare in the most solemn manner, that the tariff laws of '24 and '28 are unconstitutional and void, and they recommend the governor of the state to call the Legislature together. Suppose all this to be done, and the Legislature being assembled, unanimously (if you choose) redeclare these laws of Congress to be a violation of the constitution of the United States—declare them null and void, and absolve all the people of South Carolina, and also all others trading to and with her, from the payment of the duties required to be paid by these acts of Congress. This, Mr. W. said, he thought was allowing every thing which gentlemen in favor of this doctrine would ask for. But sir, it is to be remembered said Mr. W. that laws unexecuted produce no good effect —they had as well not be passed. They are like threats unexecuted—they harm no one except he who makes them. This act of nullification then, to benefit the people of South Carolina, must be carried into execution; and this must either be done by peaceable means or by force, or it remains a dead letter on your statute book, to your shame and disgrace. All will see that unless the act is enforced some how or other, it cannot give relief—the people must be relieved from the payment of the duty or suffer under its oppressions—and now the question is, would relief be given through this act of the Legislature, and this by peaceable means—for gentlemen do not pretend that they will fight, they only contend for "*the right to fight.*" To our question then, how will you enforce your act of nullification, we are answered, that the importer of foreign merchandize, and

who is liable in the first instance to pay this duty, gives his bond to the collector of customs for the amount of duty, that when the bond becomes due, he is to refuse payment, and upon suit brought he is to plead, (it is supposed) this act of nullification in bar to the action, and the jury *will* find a verdict for the defendant. If a new trial is granted, another verdict *will* be found for the defendant, and thus it is to be continued until Congress shall be compelled to repeal the odious law. It does seem to me sir, said Mr. W. that there is not a man in the whole world, of common sense and reflection, and who has thought one minute upon this matter, could ever be reconciled to such a doctrine as this—In the first place sir, you require the merchant importing the goods to do an act disgraceful in itself—He is required to execute a bond and to give security that he will pay to the government of the United States a certain sum of money on a given day, when at the very time of its execution he secretly determines *not to pay it*, if by any means he can avoid it—In the second place, the state holds out to the general government that the duty will be paid by allowing the bond to be given, and then you lend your judicial powers as a state to prevent its recovery and payment—can any sovereign power escape disgrace by such a course of conduct? But sir, let us pass this by—and enquire how will this act of nullification, and this trial by jury operate upon the conduct to be pursued by the importing merchant?

Let us take a case—A. imports $100,000 worth of goods to Charleston—by Mr. M'Duffie's rule he pays an average duty of 40 per cent.: thus the amount of duty he would have to pay is $40,000, for this amount he gives his bond—this bond the merchant does not intend to pay if he can avoid it—but if the jury should find against him, *then he must pay it*—and that this might happen no one would be hardy enough to deny; now what are the chances for the jury to find for him?—Simply that the acts of Congress is unconstitutional—and of this opinion must be the jury—But is this not a question of law, who will say it is not? If it be a question of law, who must decide that question, the judge or the jury? If the judge is not to decide questions of law, what is he to decide? questions of fact? No sir, the facts are for the jury, and the law for the judge. Now even the most zealous gentlemen for this trial by jury, tell us that the judge, nay all judges sitting as such, must decide that the tariff laws are constitutional—because they say that the judges in construing the law cannot go beyond its letter—That they cannot enter into the motives and inducements of Congress for passing these laws, and that as the constitution gives the power to "Congress to lay and collect duties," &c. and the tariff laws are only for the laying and collection of duties upon their face, that therefore all judges as well our own as the judges of the federal court must decide them to be constitutional, and of course must so charge the jury. Here then the charge of the presiding judge upon the question of law, must be directly against the merchant—does this not at least render it doubtful whether the merchant would not have to pay his bond? But is not this uncertainty increased when we remember, that jury's may be found, and in fact many will be, who maintain also that these laws are constitutional, and of course would find against the merchant? Now the question is, what effect will this state of uncertainty with regard to the verdict have upon the merchant? Remember, his goods has cost him $100,000; his bond is out for $40,000—if he should have his bond to pay

that amount must be added to the first cost, or then he sustains a loss to the amount of his bond—will not the merchant to guard against this possible nay probable danger, add the duty to the first cost, and thus mark and sell his goods as costing $140,000? Surely a prudent merchant would. Now let it be remembered it is the addition of this duty to the first cost, which renders the tariff so oppressive upon the consumer. Thus, Mr. Chairman, the same burthens would be continued upon the people of the state as well after as before the act of nullification. Now if the object of nullification be to relieve us of these burdens but could not, it follows that an act of nullification would be an act of folly. But sir, said Mr. W. these are not our only objections to this system—I have, said Mr. W. as high a regard for the trial by jury as any citizen can have, and as much confidence in their verdicts, but still am unwilling to submit questions of this kind into the hands of twelve men chosen as our jury's are; by lot. If the fate of the country is to be decided by twelve men, we can fix upon a more prudent and safe mode of choosing them than by lot; by this course sir, twelve of the most ignorant and unworthy men in the community, might be drawn to fix and settle the fate of our country—To this Mr. W. said for one, he could not, and would not assent—But sir, this course is so uncertain, that it fixes nothing, and is therefore totally unbecoming the sovereignty of a state—Sir, it argues a want of moral courage on the part of the state, which is degrading. If the laws of Congress are unconstitutional and oppressive, and the Legislature have the right and the power to nullify them; and it is expedient and proper to do so; why not at once put ourselves upon our sovereign right; and if we perish, perish it will be in a noble and glorious cause—contending for our rights and liberties handed to us by our fathers, secured and sealed with their blood—why then should we submit them to a jury?—does the history of the world furnish such a case? Sir, it does not—but sir, the gentlemen themselves who are most zealous for this course can have no confidence in it. Mr. W. said he would now put a question to those gentlemen, and they could answer it to their consciences and their God. Would either of the gentlemen contending for this doctrine, sign a bond as security for the importing merhant, not knowing whether he was solvent or insolvent, but always, and solely resting upon the probability or rather certainty that the jury would *always* find for the defendant. If gentlemen would not, it proves clearly, with all their zeal, they have no confidence in the measure and therefore fitly call it "a political experiment." Sir, gentlemen are now asked, how they can consistently adopt a measure in which they have no assurance or confidence of success—do gentlemen pursue this course through life, even in ordinary transactions, and sir, would any of us dare pursue and recommend to others a course involving the peace and prosperity of our country, when we would not do so in our own private affairs?

But sir, said Mr. W. there are other objections to this system, if it may be called one. Already has public excitement been carried too high upon this matter—discussions unreasonably warm have divided the nearest and dearest friends—and how long would not this system continue the fued? Besides, the prodigious anxiety and excitement such a trial would produce in the community; no one could anticipate. The arguments of counsel pro and con, the charge of the judge, the comments and opinions of spectators, would all be well calculated to produce and keep up that rage of party spi-

rit, so destructive to the peace and prosperity of a community. And in this state of public commotion, could there be any thing like that stability and certainty necessary to an advantageous commerce. Mr. W. said there were so many and insurmountable objections to the doctrine of trial by jury, that it appeared to him no man of common sense, upon reflection, could be satisfied to try it even as an "*experiment.*"

Mr. W. said, he had other objections to this doctrine of nullification, and which he would beg leave briefly to lay before the committee.

It is said the government of the United States is one of limited powers: to this Mr. W. said he did most cordially agree, and that it was strange, that any one who had thought upon the subject should come to any other conclusion. He said, the very fact, that this body sits independent of the general government, is conclusive upon this subject. If the powers of the general government, said Mr. W. were illimitable, then she could control the organization and sittings of the Legislatures of the states, their courts of justice, and do and perform every other act regulating the internal polity of the states. There can no man be found sir, in these United States, who would pretend these powers could be exercised by the general government. It is said also, the general government has no powers, except those given in the constitution. This is a truism also, which no one will deny—for if all the states should agree to abolish the constitution, there would be an end to the general government. But that certain powers, although limited, are given to the general government, is equally a truism, which no one will deny—for how could a government exist without powers? As no government could exist without certain powers, we may ask what necessary powers must be granted to form a government? The answer is plain—the power to legislate, to adjudicate and to execute. These powers may be vested in one body, or they may be divided out—but these powers are absolutely necessary to every government—yet they may be limited—as by the constitution of the United States, the power to legislate, is vested in a Congress, composed of a senate and house of representatives, authorized to legislate only on particular subjects enumerated in the constitution—so the power to adjudicate, or the judicial power, is vested in a supreme court; but this judicial power is restricted to particular matters and things enumerated in the constitution, and of course becomes a limited jurisdiction—and the power to execute is vested in the President of the United States, also restricted and limited by the constitution. In these three bodys, the Congress, the Supreme Court, and the President, are vested all the powers appertaining and belonging to the general government—and in fact make up the government. It is true, there are a great variety of other officers exercising power, but they are all emenations of one or the other of the general powers above mentioned. Congress being one branch of the general government, has certain powers, so has the supreme court, and so has the President. These powers are given in, and by the constitution, which is the act of the states, as so many sovereign powers. One of the powers given to Congress, is the power "to lay and collect taxes, duties, imposts and excises," this power being clearly given, has any of the states *now* the power to lay and collect taxes, duties, imposts and excises, in the sense in which Congress has the power? Congress has the power to regulate commerce with foreign nations, this power being clearly given, has any one of the states *now* the power to regulate commerce

with foreign nations? Let it be remembered that each state is a sovereignty in itself; and that one of the powers incident to sovereignty, is to make treaties; by which of course commerce may be regulated. Yet no one will pretend that a state has a right to make a treaty with any foreign power upon the subject of commerce—and why? the answer is because that power has been given *away* by the states to Congress: viz—the states by compact have agreed to transfer and vest this part of their sovereignty in that body called Congress. If then one of the states should undertake to regulate foreign commerce, would not such state be violating that part of the compact or constitution by which this power was given to Congress? This doctrine said Mr. W. will hold good with regard to every power granted to each branch of the general government. If the powers which have been granted to the federal court, should be exercised by any one of the states, would not the exercise of such power by a state, be a violation of that part of the compact or constitution by which such power was given? The constitution says "the judicial power shall extend to all cases of law and equity arising under this constitution, the laws of the United States," &c. Suppose a state in her sovereign power, should exercise jurisdiction of a case arising in law or equity under the constitution and laws of the United States, would not that state violate that part of the compact or constitution giving this power to the sepreme court as one of the co-ordinate branches of the general government? Suppose any one state should undertake and exercise the power given in the constitution to the President of the United States, would not such act be a violation of that part of the constitution giving this power to the President. These cases, said Mr. W. are plain and palpable; and all we have now to do, is to apply them to the case before us, and if the analogy will bear us out, it will follow, that for this state to nullify the present tariff laws, such act will be a violation of the constitution of the U. States. Let us, Mr. Chairman, take a case arising under the present tariff laws. A merchant imports a $100,000 worth of goods—he is required to pay a duty of 40 per cent.—under what law is this duty demanded? Under a law of the United States. He refuses payment—the collector of customs seizes his goods. Under what law does the seizure take place? The law of the United States. The merchant complains of this law—what are his complaints? That this law is a violation of the constitution of the United States. Here then the whole case arises under the laws and constitution of the United States. The words of the constitution are, "the judicial power shall extend to all cases of law and equity *arising under* this constitution, the laws of the United States," &c. Will any man of common sense say the federal court has not full and ample jurisdiction over the case—and this jurisdiction under the express letter of the constitution, and which is the act of the states? If then the federal court has jurisdiction, and this by the states ceding that portion of their sovereign judicial power to this branch of the general government, how can a state undertake to do an act which will take from the federal court the legitimate power granted, without violating that part of the constitution granting the power? Is it ananswer to this argument to tell us, that the federal court is the creature of Congress and will decide against us? To say that the federal court is the creature of Congress is nonsense. The federal court is a co-ordinate branch of the general government, and is independant of Congress. The

judges are as independent as they should be, and are as much protected as they should be—they are not even appointed by Congress. They are appointed like all other officers of the general government except the president. Their powers are derived from the constitution. How it is, that they can be called the creatures of Congress, Mr. W. said, was what he could not understand. It is true, that upon a charge exhibited against them, the house of representatives votes the impeachment, and the senate forming itself into a court, tries the case. But if this makes them a mere creature of Congress, it would also subject the President to the same imputation; for upon charges prefered against him he is to pass the same tribunal. But sir, suppose all this to be true, it would not aid our opponents, for the question is one of constitutional power and not of mere virtue or integrity. Suppose it was known how the judges of our own state would decide, from what they had previously decided. Would this fact effect or take from them their judicial powers? And would it also transfer their powers given by the constitution, to another tribunal not known to the laws and constitution of the country?

But sir, said Mr. W. there are still other objections to this doctrine of nullification. The power is given to Congress "*to lay and collect duties.*" It is said this is only for the purpose of revenue, and that when Congress undertakes to lay and collect duties for any other purpose than necessary revenue, it is a violation of the constitution. To this, Mr. W. said, he gave his most cordial assent. But still, so far as the tariff laws requires a collection of duties for revenue, they are constitutional to that extent, for that power is expressly given under the constitution, and so far as the act requires a collection of duties for other purposes it is void. But to get relief by *nullification, and not violate the constitution on our part,* it is surely necessary that we should draw the line between necessary revenue and protection, or any other object which induced the law than revenue—for Congress herself only violates the constitution by crossing this line. Surely then if we cross this line, from protection *down through necessary duty,* we in turn violate the constitution on our part; for the power is given to Congress so far as revenue requires duties. Now by the act of nullification you put an end to all duties, *as well that which is necessary for revenue,* as that which Congress intended for any other purpose. Thus you cannot nullify this act said Mr. W. without violating or restraining the exercise of powers granted under the constitution; that of laying and collecting duties for revenue. If then a state by an act, takes from Congress a legitimate power, does that state not violate so much of the constitution as gives that power? Again sir: If one state has the right and the power to decide, that an act of Congress is unconstitutional, and to absolve the people from obedience, has not each of the other states the same power? Could they not in turn nullify any and every act of Congress? And thus the legitimate powers of Congress would be taken away by the states, and the union become a mere "rope of sand." Sir, this would make the powers of the *general government* to depend entirely upon the will of the states, and not upon the constitution; and thus this fair fabric, secured by the blood of our fathers, would be torn to atoms, and the states return back to their original situation—subject to be recolonized one by one, and made to bow to the power o fany one nation whose strength might surpass any single state. Can there be any man Mr. Chairman, who loves his country, and who does

not tremble for her fate, when he sees and hears such doctrines propogated and maintained in our public counsels. But sir, it is necessary here to answer some arguments used by the honorable gentlemen from Richland, (Mr. Preston.) Sir, they can be fairly met, and fully answered. That honorable gentlemen has said, suppose that South Carolina should grant letters of mark and reprisal, would not Congress nullify that act, by declaring all persons sailing under such powers guilty of piracy? Sir, we answer distinctly—No! Congress would do no such thing—it is entirely gratuitous in the gentleman to suppose that Congress would do so. The gentleman sir should remember, that the powers of Congress are only legislative, and not judicial. Congress therefore, could not decide that the act of any state was unconstitutional; this requires judicial powers, which Congress nor no other legislative body possess. Upon such a case the federal court would be the tribunal to decide; and thus the legislative and judicial powers would be kept separate and distinct, which is according to the principle and formation of our government. But sir, another argument has been used by the same gentleman, and from his apparant triumphant manner, one would suppose he thought unanswerable. It is that the federal court have the power to "nullify," as the gentleman is pleased to call it, an act of Congress, and that neither bloodshed nor carnage has followed such act of "nullification"—and then the gentleman asks, where are the powers of the federal court by which that tribunal can suspend the act of Congress, clog the wheels of a government; and yet a state in her sovereign might and power cannot do so? Sir, the cases are not parrallel, neither in point of fact, nor of consequence. First, by the constitution of the United States, the federal court has the right to adjudicate upon questions arising under the constitution and laws of the United States. This power is expressly given, and this express power carries with it the necessity of deciding whether an act of Congress passed under the constitution, is in conformity with the provision of the constitution or not. They must necessarily decide what the constitution is, and then what the statute is. To deny this power to the court, would be to take all judicial power from it—and as the constitution is superior to all law, any act passed by any Legislature, Congress or any other power, must give way through the judgment of this court to the constitution. To consider the supreme court as the creature of Congress, is what has given rise to all the objections to this tribunal. Sir, this is an error. The supreme court as before said, forms a separate branch of the general government—exercising one of the necessary powers of government; entirely distinct and apart from those powers exercised by Congress; not dependant on Congress, either for power or existence—but must necessarily lend its powers in aid of Congress; for what avails the power to legislate without the aid of legal process? A law not enforced would be the same as no law—a mere dead letter. The supreme court then should be considered as the judicial tribunal of the nation—created and fixed upon by the nation for national purposes, and empowered by the nation to decide questions in which the nation are concerned—and this effect, makes the great difference between the federal court deciding an act of Congress to be void as against the constitution, and a state's making the same decision. The nation has fixed upon the federal court for this purpose, and when the decision is made, the nation is effected by it—for the act cannot be enforced any where, it is void eve-

ry where, in every state—not so with an act of nullification by a state—there, only the people of that state are effected. If South Carolina nullify the tariff laws, the people of South Carolina are alone released from paying the duty—the other states would be still bound to pay. To say otherwise, would be, to make South Carolina a judicial tribunal for the other states; her veto would fix their fate; they would either stand or fall at her will and pleasure. It must be easy to see, that the other states would not consent to a union upon such terms. But if one state has this power, which state is it? Is it South Carolina in preference to all others? Is it the state which first acts? How are these positions to be established? Sir, said Mr. W. it will surely put the ingenuity of gentlemen to the rack to tell us? Again sir: If a state can nullify an act of Congress, it follows that the same state may nullify the judgment of the supreme court, or an act of the President—for let it be remembered, that Congress is not the general government, nor is the supreme court, nor is the president when taken separately—but when collectively. If then the act of one branch of the government may be nullified, so may another. Thus an act passed by Congress may be nullified, a decision made by the supreme court may be nullified, and an act done by the president may be nullified. Gentlemen must see to what enormous consequences such a doctrine would lead. The decision of the court by which A is made to respond to B in damages are rendered void, treaties made and ratified by which nations agree to act are destroyed, laws passed for the government and safety of the nation are made inoperative, and all this by the act of a single state. Sir, said Mr. W. would it not be mockery to talk of a government authorized to act, and yet liable to be so easily defeated at the will and pleasure of another power? Again sir: Our union is composed of twenty-four states besides territories. If any one state possess all this power, what becomes of the liberty of the other states? Must they submit to this act of nullification by one state? If they do not choose to submit, what are their rights and remedy? Are they to resist the state thus nullifying? If so, how? *With force?* Sir, it cannot be by judicial intervention, because so soon as the judicial decision is made, it may be nullified. Can it be by treaty with the nullifying state? This cannot be done, for by the constitution the states cannot enter into treaties. This sir, leaves the anti-nullifying states no other remedy but resistance by force, or submission—the consequence of resistance by force is horrible destruction—the consequence of submission is to make one state, the sovereign of the whole, or permit her to remain a member of the union, receiving all the benefits of protection from the union, and bearing none of its burthens; in fact she shakes off all allegiance, and yet claims and receives protection. But sir, as allegiance is only due where protection is given, so protection is only given where allegiance is paid.

It has been said before sir, that laws passed, and remaining unexecuted, are the same as if not passed at all—they are like idle threats. Suppose sir, the states maintain and settle their right to nullify the acts of any, and every part, of the various acts of each, and every branch of the general government. In virtue of the union a treaty is made, but one or more of the states nullify that treaty, and so of every treaty made. Congress pass laws, those laws are nullified—the supreme court makes decisions, and those decisions are nullified. Thus all the acts of the general government

are nullified—rendered inoperative. Does not the same consequence follow, as if the treaties had not been made, the laws not passed, and the judgment of the court not pronounced? And if we have no treaties, no laws, and no adjudications or judgments, what becomes of the union? Thus sir, said Mr. W. it seems clear, that the doctrine of nullification carried into operation, is at once a dissolution of the union.

Sir, it is no argument for gentlemen to tells us, the general government is one of limited powers, and that Congress being one of the branches of the government has transcended the powers given, and violates by its acts our constitutional liberty. All this may be true, but does it follow from thence, that the act of nullification by a state is a safe, constitutional and peaceable remedy? Mr. W. said, if he should be asked, what was our remedy? How are we to avoid the dangerous attack upon our liberties, from a consolidated government, to which we are rapidly approaching? The answer is, separation—this is our only *self-remedy*. If relief comes from another quarter it is well—but otherwise, if we remedy ourselves, it must be by revolution—and sir, here you only have to count the cost. And sir, whenever that day comes, Mr. W. said, he would go for his state right or wrong—with her he said, he would be willing to live or die—he said so far as he, as one of the citizens of the state was concerned, he would not consent to live under a government of unlimited powers. He should feel himself a slave, for what is liberty when it is only enjoyed by permission? As well might our slaves, said Mr. W. boast of liberty when indulgencies are granted by their masters.

But sir, there are still other objections to the call of a convention at this time—not only because the people as before said, are too much divided on the question, but also, because there are other matters and things besides that of the tariff, against which the people should complain, and which have not yet been fully considered and discussed among them—and which sir, will no doubt produce other and still greater divisions, not only on principle, but from other causes equally powerful:

1st. The power of Congress to appropriate money for the purposes of internal improvement.

2d. The power now claimed of appropriating money for the transportation of free persons of color beyond the limits of the United States.

3d. The power to establish a national bank.

These are questions Mr. Chairman of equal vitality to the southern states with that of the tariff—especially the two last. Sir, if Congress has the power to appropriate money for the removal of free persons of color; it follows, that money may be appropriated for the purchase of slaves, and then the power to manumit will also follow. If Congress has the power to purchase our slaves and then to manumit, this may be done, even without transporting—If Congress has the power to transport, the power to import follows—thus sir, a power is claimed, an impolitic exercise of which must forever blast the fairest prospects of our beloved country, deluge us in blood, and finally, strike us from among the nations of the earth. Mr. W. said this was only a hint of his own feelings upon this subject, having no information from his constituents he could not say what were their views.

Upon the subject of the bank, there must be necessarily great difference of opinion—even on principle—many contending for the necessary pow-

er from national advantages; others from pecuniary motives, being stockholders, and finding it profitable, the eyes of their understanding becomes darkened, and hearing of no complaints of peculiar oppression, they cling to it with an ardent zeal—but others who are contented with ordinary national advantages, and willing to be simple republications, jealous of liberty and of power, view this institution as a monied monopoly—knowing its power to crush all the banks of the states at pleasure, object distinctly to the establishment of any power capable of exercising such unbounded influence, unless the grant in the constitution is clear and unequivocal. Let this institution but once determine to exert her powers, and what man, community or state can successfully resist her—men form communities and states—they control and govern; and if under the influence of any power, of course that power dictates; and her will and pleasure guides and directs. Now sir, when a convention is called it should be, if it has power for the redress of all and every grievance; to settle every difference. To call a convention to settle only one matter of difference, when there exists four or five others, is only doing things by halves; which is neither prudent nor safe: and as these matters have not as yet been discussed before the people, no public expression of their opinions can be known; and to act now would be acting unadvisedly.—Mr. W. said he was one of those who thought in matters of this kind, the voice of the people should be heard, and then to govern. Again sir, it is important that peace and tranquility should be restored? this never can be, while these disputed matters remain unsettled; and if this ferment is to be gotten up on four or five different occasions, and to be kept up as long as the fire of party and ill-will can, at each such successive attempt at relief; Mr. W. said, he for one should loose all hope of ever seeing his country at peace—for sir, if rage and fury must come upon us, it can be no worse to divide on four than on one point; and until all these matters of difference could be submitted for consideration he was unwilling to act at all. Mr. W. said he would now take a general view of the subject submitted to the committee and close his remarks. The avowed object of calling a convention being to obtain their decision of the unconstitutionality of an act of Congress, and then for the Legislature to nullify, is not only liable to the objections in particular before mentioned, but leaves us in this dilemma. The act of nullification cannot be enforced by judicial process. How then will it be enforced? If not enforced, no good can result from it—It surely then can only be enforced, if at all, by the physical power of the state.

The collector of customs in acting will be governed by the act of Congress—upon refusal by the importing merchant to pay the duty, his goods will be seized—this act as has been shewn will be sustained by the courts; as well the judges of our own state as of the federal court. This decision must either be submitted to or resisted. If submitted to, then all is gone; if resisted, how? only by the physical power of the state. Thus the first assault must be made by the state, and if we resort to force, is there any one who will say, that the force offered by the state, will not be resisted by the general government? Is it not manifest therefore, that the course proposed must either terminate in submission, or actual hostility? And thus a system onerous and oppressive is either firmly fixed upon us by our submission, or we are rashly driven to forceable resistance; and are

thus found fighting our own countrymen, and drenching our happy and favored land with the blood of her own citizens. But, Mr. Chairman, we are told by the honorable speaker, that no danger need be apprehended —that he apprehends none—that he fears none, and says, if he errs, he errs by the sides of Mr. Calhoun, Mr. Hamilton and M'Duffie, and his honorable friend from Richland, Mr. Preston; and triumphantly asks, who would fear to act in concert with such patriots? Sir, the honorable gentleman said Mr. W. may boast of his associates—upon this point he gains nothing—for although the honorable gentleman is pleased to name honorable and distinguished individuals, yet is the boast not triumphant, for no confidence can be placed in politicians who are constantly upon the move,—tossed and driven by every wind of doctrine,—but, said Mr. W., we can boast a triumphant boast—we can boast of Smith, Huger, Richardson, Drayton and many others; who, although they may differ on other points, yet upon this agree;—men who at all times, and under all circumstances have continued *firmly and consistently* adhering to the opinions and sentiments long ago expressed. And upon the main question now before this committee, of how far a state has the power to resist the general government; the honorable speaker himself might be considered as among our ranks; for in the good old year of 1825, when all was calm and still, and which were among the better days of that gentleman, in an oration delivered by him to the Clariosophic Society incorporate, in speaking at page 22 of the dangers of dismemberment of the union he says "The danger of dismemberment is still further obviated by that very extension of our empire which has been supposed to carry in its bosom the seeds of ruin. If the increase of our territory engenders sectional jealousies, it also renders them entirely harmless. In a small confederacy consisting of a few states only the anger or disaffection of a single state might be productive of serious injury to the whole. But in a confederacy as extended as ours, the attempts of individuals, or even the discontent and irritation of one or more states *would pass unheeded as the idle wind.* Heated to desperation by the cavils of demagogues or governed by unreasonable views of their own dignity and interest, they might possibly be seduced for a moment from their loyaly to the union, but the pernicious example would extend no farther. All the other members of the union having no sympathy or participation in their misguided views, would either frown them into propriety or ridicule them into shame. If in the course of our history we have occasionally been mortified by observing a momentary disposition in some of our states, to array themselves against the government, we have also been consoled by the universal opposition to their conduct, which has always been manifested by all the other states, and by the certainty and facility with which they have been induced to retrace their steps and relinquish their pretentions. Indeed the field of operation is entirely too large to admit the smallest hope of successful combination—the errors or malversations of one or of a few, will be surely resisted and corrected by the impartial judgment and patriotism of the others. There may be occasional deviations and eccentricities; but as in the planetary system they will not derange the order and harmony of the whole; and thus in that very multiplicity of the states, and consequent diversity of local interest and feeling which have been so fearfully apprehended to be fraught with evil; we discern abundant and

convincing proof, that *no state or states will ever be permitted* to obtain an ascendency or pursue a conduct involving in hazard the general security of the nation."

Here Mr. Chairman, we have the deliberate opinions of the honorable speaker expressed upon the rights and powers of the state for *self relief* in 1825. And let it be remembered there was no rage of party then, no immediate offers of promotion, nor any thing like that combination now existing to build up, and break down those in opposition to us—but while in his closet, abstracted from the world, preparing an address for the youth of our college; answering a call highly honorable to the gentleman, and no doubt gratifying to his feelings, with full time for deliberation all his powers would surely be brought into action. Opinions thus made up, and thus expressed, if entitled to any respect, must be considered as the serious and honest conviction of the author.—And if gentlemen express and publish their opinions to the world they must not take it amiss when we shew them their deviations and tergiversations—for being called upon to follow them, we fear least so soon as we drop into their *new wake*, they suddenly turn about, and retreating to their old notions, leave us to get out of our new difficulties the best way we can. Sir, there are many other gentlemen in this state, from the publications of their pamphlets and orations, are in like difficulties with the honorable speaker, and if they choose to repent and confess, let them do so publicly, and then devote to the fire the unhallowed productions, only doing as the judge of all the earth did, when he destroyed the idolatrous cities of Sodom and Gomorah. If there should be any righteous, destroy them not with the wicked—and to this course we would advise the honorable speaker. Sir, arguments have been used by gentlemen insisting on the right of the state to judge in *all cases* of abuse by Congress—to this Mr. W. said he could not assent. Many questions of the constitutional or unconstitutional acts of Congress must necessarily be submitted to the federal court—but if Congress should pass a law affecting the sovereignty of a state, the case would be altered. Mr. W. said no one had ever heard him say in such case, the federal court had jurisdiction—for no such power was given to the federal court. But what kind of laws must Congress pass to effect the sovereignty of a state? This matter seems to be in the mouth of every one, and while all are expressing their opinions Mr. W. said he would take the liberty of expressing his. He said he conceived that no law passed by Congress could effect the sovereignty of a state, except the act be not only unauthorized by the constitution, but also at the same time, *takes from the state its sovereign power*. Take an instance, Congress has power to declare war. How could a declaration of war under any circumstances effect the sovereign power of a state? No state has the right to declare war, this portion of sovereignty has been given by each state to Congress. Congress for this purpose may be said to be the agent of each state; and although the power may be imprudently exercised, yet its being a constitutional right, the exercise of it can never be said to effect the sovereignty of the state. The truth is, the states upon this subject have no sovereign power—they have yielded it up to Congress, and to say that sovereignty could be effected where none existed would be nonsense. Apply this doctrine to the case before us, and it will be easy to see that Congress by passing the present tariff laws have not touched the sovereign power of the states.

Congress has power "to lay and collect taxes, duties, imposts and excises" if the words had been added for the purposes of necessary revenue and none other, we should, said Mr. W. have had expressed in words what is certainly the plain and common sense meaning of the constitution. It is certainly clear, that no state has the power to lay and collect taxes, duties, imposts and excises, in the sense that Congress has since the grant of this power—By this grant of power then, each state has yielded up to Congress this portion of its sovereign power, and although Congress may not only make an imprudent collection, but may also violate the constitution in exceeding the powers given under the constitution, yet as the state has no sovereign power upon this subject, of course there can be no affecting this power. If it should be said, that the powers of Congress to lay and collect duties only for a particular purpose, gives only a particular power, and therefore the power to lay and collect taxes, duties, &c. for any other purpose not being granted is reserved to the states, the answer is, "unless prohibited by the constitution to the states." If then the power is prohibited by the constitution to the states, it is not *reserved* either to the states or to the people. The words of this part of the constitution are, "The powers not delegated to the United States by the constitution, *nor prohibited by it to the states* are reserved to the states respectively, or to the people." Now it is true, that the power to lay and collect duties &c. is not delegated to the Congress of the United States, for any other purpose, but simply for revenue. But is this power prohibited by the constitution from the states? the constitution says "no state shall without the consent of Congress lay any imposts or duties on imports or exports *except what may be absolutely necessary for the execution of its inspection laws;* and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of Congress." By this section said Mr. W. it is clear, that the exercise of a power is prohibited by the constitution to the states, and whether Congress has and exercises the power or not, does not effect the sovereignty of the states. The only sovereignty left the states upon this subject, is the right to lay and collect duties or imposts to such an extent or amount as may be absolutely necessary to enable a state to execute its inspection laws, and even the exercise of this power is subject to the revision and control of Congress. Mr. W. said it followed, that Congress could only effect the sovereignty of the states upon this subject, by passing a law taking from the states the power to lay and collect such duties as were absolutely necessary for executing their inspection laws; this he said had not been done—and therefore, the sovereignty of the states were not effected by the tariff laws, but being a mere question of constitutional law, between the importing merchant and the general government, arising under the constitution and laws of the United States, the federal court had full and ample jurisdiction over the matter.

Mr. W. said he would now only make one suggestion to the committee and which, if it should succeed would give ample relief. This was by an amendment to the constitution of the United States—That no bill for revenue, or appropriation of money *in times of peace,* should have the force of a law, until agreed to by two thirds of both houses of Congress—and that all laws now of force should stand repealed, until agreed to by

two thirds of both houses, &c. If relief could be obtained by amending the constitution; it would not require the call of a convention, for the proposal to amend could only constitutionally be made by the Legislatures or by Congress as directed in the constitution.

Now sir, if this or a similar proposition was made, and rejected by a majority of the states, and Virginia, North Carolina, Georgia and Alabama would go with us; I for one said Mr. W. would not long hesitate between a seperation and submitting to a government of unlimited powers.

B. F. DUNKIN'S SPEECH.

Mr. DUNKIN said, no one could fail to have observed the dissatisfaction, which had, for some years, pervaded the south, in relation to the proceedings of the general government. It might promote the object of the committee, to advert for a moment, to the causes of those discontents. Our forefathers wisely regarded all government as an evil; as an encroachment on the natural liberty of man. For many years they submitted to the defects of the articles of confederation, rather than consent to the establishment of a stronger authority. Perhaps their posterity may yet regret the hour when their jealousy slumbered; when, instead of gradually supplying the deficiencies of that plain, but secure frame, they attempted to establish a more magnificent, but less simple, and, it may be, a less durable, system of government.

The payment of the national debt, and the regulation of our intercourse with foreign nations, were the principal causes of the adoption of the constitution. From the terms of that instrument, as well as from cotemporaneous discussions, it was manifestly the intention of the convention, jealously to exclude the general government from any interference with the internal regulations of the states, or to invest it with any other powers than such as were palpably necessary to the great objects of its creation. Fully aware of the views of our ancestors, and impressed with the conviction of the salutary apprehensions, which they entertained as to encroaching tendency of all government, those who first administered the affairs of the union, generally restricted their operations within the peculiar and appropriate sphere of national legislation. On these principles were conducted the adminstrations of Gen. Washington, the elder Mr. Adams, and emphatically that of Mr. Jefferson, than whom no man ever better understood the true theory of the federal compact. The obnoxious acts of 1798 were perhaps exceptions to this cautious exercise of power. The authorities which attempted to enforce them, were removed from their places by an indignant people, and the reformation of 1800 was a signal triumph of the principles of the constitution, over those who had forgotten the republican simplicity of its character, and the limited extent of its action. Our external relations afforded abundant employment to the wise and successful administration of Mr. Madison. During the period we have traced, all internal legislation was left to the states respectively. Individual enterprize was neither prematurely fostered by governmental aid, nor trammelled by exactions and prohibitions, except so far as its advancement or

decline were *incidentally* affected in the discharge of the other and appropriate duties prescribed by the constitution. If the unexampled prosperity of the country suffered occasional interruption, the attachment to the union was uniform and devoted. Indeed it was only known from the high character it had secured for the republic abroad, and was only felt in the blessings which it dispensed at home.

The successful termination of hostilities with Great Britain in 1815, secured our country for a long time from foreign aggression, and confirmed the government in the consciousness of their own strength. The period of rejoicing and of triumph is not always the most favorable for prudent legislation. The era of good feelings is sometimes that in which the spirit of liberty slumbers, and encroachments of power are unperceived. For the last fourteen years the character of the government, or rather the mode of its administration, had undergone a gradual, but regular, and very apparent change. Unconfined in its operations to the few and legitimate purposes of its establishment, the general government threatened to monopolize the whole theatre of internal as well as external legislation. The several revisions of the tariff, together with the indiscriminate and profuse expenditure of the public treasure on schemes of internal improvement, while they extended the powers of Congress to objects never contemplated by the constitution, had augmented the patronage of the government far beyond the worst apprehensions of its earliest and most zealous opponents—monopolists do not risk their capital until success is guaranteed to their enterprize by the protection of law; and crowds of hungry expectants annually beset the doors of Congress, in order to obtain the cooperation of government in the promotion of their visionary projects. The encouragement of particular interests to the neglect or disparagement of others equally entitled to favor, naturally creates discontent. The inequality of a tax is always its most oppressive character. The burthens of government, impartially imposed, are cheerfully borne. The complaint too, is not that we are condemned to severe labor and staightened economy, while our neighbor is clothed in purple and fine linen, and fares sumptuously every day. All this, and worse, may be in the natural dispensations of Providence—but murmurs cannot be suppressed when a territory, on which Heaven has showered its blessings, and where the industry of man is unremitted, is rendered tributary by partial legislation, to less favored regions, and palsied in its energies by a system of restrictions "alike unwarranted by the constitution, and inconsistent with the true policy of the country." However pure may have been the intentions of the government, the regulation of industry in a region so wide in extent and so diversified in its interests as these United States, could not be undertaken without the certainty of giving rise to deep and interminable dissatisfaction. The wisdom of our forefathers would not readily have entrusted to Congress a power so liable to abuse, and so fruitful in causes of jealousy and discontent. They well knew that harmony could only be secured by forbearance; that the popularity of the general government, and the preservation of the union, depended principally on leaving to the states the exercise of all the rights which were not indispensibly necessary in the discharge of the duties confided to the federal administration. But the usurpations of Congress now proceed with rapid strides: the majority first determine that a measure of policy is expedient, and then

the astuteness of professional ingenuity tortures some clause of the constitution in order to furnish an apology for the exercise of the power. Not content with taxing the many for the benefit of the few, they have recently exhibited dispositions still more ominous to the posterity, or even the political existence of a large portion of the confederacy. The bill, introduced by Mr. Mercer, is one of the signs of the times. An appropriation of money for the purposes contemplated by that bill, would evince a recklessness on the part of Congress as well in the assumption, as in the exercise of power, a disregard of the feelings and interests of the south, as well as of the principles of the constitution, which would necessarily jeopardize the existence of the union.

These are some of the causes of the wide spread dissatisfaction, which prevails in the southern states. This is the unwise course of legislation, which, if it has not alienated the affections of the south from that union, at once the object of their pride and devotion, has gradually cooled the ardor of their attachment. For three years at least our own state has been agitated from the seaboard to the mountains. Instead of the ordinary purposes of legislation, the representatives of the people assemble in these halls to speak the complaints of their constituents. Convulsed as our community has been, the ties of connexion and friendship all sundered, there is yet no difference of opinion—there is, on the contrary, an almost unbroken unanimity on the subject of our wrongs. We have all been instructed to adopt every means, not inconsistent with the constitution, to check a career, which threatens to destroy not only us, but the government. Our purpose is to save the union, to learn from an examination of the true nature of the federal compact, whether no effectual obstacle can be interposed to the rapid march of a numerical majority, in levelling the barriers of the constitution, absorbing and consolidating all the powers of the states, and thus precipitating a dissolution of the confederacy.

But the committee have been told that the tariff laws are not unconstitutional; or rather that they are warranted by the *letter* of the instrument —that the supreme court is the proper tribunal to determine the character of those laws, and that they would necessarily decide in favor of their constitutionality, and that the states have no remedy but revolution; in the language of one of the gentlemen, "the inalienable right to alter or abolish, old, and constitute new governments."

So far as reiterated resolutions, adopted on various occasions, with unexampled unanimity, may be regarded as indicating the real sentiments of a deliberative assembly, the unconstitutionality of what is mistermed the American system, is the settled doctrine of the Legislature of South Carolina—it has never been asserted that Congress could not, constitutionally, afford protection to manufactures. She may do so, and must necessarily do so, in executing other powers specifically conferred. In raising revenue for the ordinary exigencies of government, domestic manufactures will be, and are, *incidentally* protected. The fact that manufactures are protected by a *bona fide revenue* law, is no objection to such law; but it is objectionable that *under color* of passing a revenue law (clearly warranted by the constitution,) Congress enacts a law exclusively to protect manufacturers, (a power not warranted by the constitution.) It is urged by one of the gentlemen, that Congress have the power to regulate commerce; and that he would presume our tariff was intended as a measure of

retaliation to the corn laws of Great Britain. But the same answer presents itself to this suggestion. It has never been seriously pretended, in or out of Congress, that the British corn laws were the origin of our tariff of protection. Suppose her ports were thrown open to-morrow to all our productions, is it believed or surmised that our tariff would be reduced to a measure of revenue? The avowed, unquestionable, object of the tariff is to exclude foreign commodities in order to coerce the people to purchase domestic manufacturers. It is therefore "a perversion of certain specified grants of power to purposes never contemplated by the authors of the constitution, or the states when they adopted it." The complaint has always been that it is a fraud upon the constitution. That the infraction is not palpable, only renders the blow more insidious, and the wound more dangerous. No act of Congress will ever be *palpably* unconstitutional, if by that it be meant that no process of reasoning is necessary to demonstrate its true character. The tariff of protection is one of the "*cases in which all the forms of the constitution fail to reach the real character of the law;*" but which is not therefore the less a violation of the constitution, an usurpation of power; and, as will be shewn, may be so declared by any of the original parties to the compact.

But the committee had been told, that the practice of the government from its infancy, had authorized the exercise of this power; and extracts had been read from the messages of those, who had filled the executive chair. But it will be soon perceived that this encroachment derives in truth, as little sanction from the practice of the government as from the terms of the constitution. Prior to 1816, revenue laws were always passed for the purpose of revenue. In the adjustment of duties for this primary object, domestic manufactures were incidentally encouraged. This discrimination was recommended to Congress, and by them honestly exercised. In the early period of our government, the payment of the national debt and other exigencies, required a duty of five per cent. on coarse goods. Subsequently the Mediterranean fund and other demands on the treasury, caused an increase of this duty to 15 per cent; at which it remained until the war with Great Britain. At the session of Congress in 1816 the secretary of the treasury reported that the exigencies of the government, could be met by a reduction of the duties to the standard fixed prior to the commencement of hostilities. The first inroad on the constitution, in this respect, was then made, when the situation of the manufacturing interest induced Congress to *leave* the duties at 25 per cent. What was then solicited as a boon, was soon demanded as a right; and when the Harrisburgh convention, and Congress, in pursuance of their recommendation, recently raised those duties to range from 60 to 150 per cent. they confidently appeal to the *practice of the government* to authorize a measure which receives no countenance from the constitution.

The recent message of the President, places the constitutionality of the tariff on the ground that the states have parted with the power to protect manufactures, and if Congress have it not, then the singular anomaly is presented of a government without the power to protect its own domestic industry. Perhaps it is not the most satisfactory argument that Congress possesses a power because the want of it would render our government anomalous. But have the states parted with this power? Alexander Hamilton enumerates in his celebrated report no less than eleven

modes of protecting domestic industry; and among them he indicates his own preference for "bounties." This mode, and almost every other, is still open to the states. If, too, the view presented by a recent writer be correct, the states may still protect domestic manufactures by duties on imports, levied with the consent of Congress. Thus the states have now all the powers in this respect, which they possessed prior to the adoption of the constitution; and no new anomaly has been introduced by the omission to rest these powers in the general government.

Without detaining the committee by an inquiry into the expediency of the American system, or the extent of its partial and unjust operation, it was sufficient for them, it ought to be sufficient for others, to know, that the establishment of such a system was not within the powers granted to the Congress of the United States. The great inquiry was, have the several states any remedy but revolution? This was the true issue presented by the respective resolutions, which had been proposed to the committee. Is this a government whose operations can only be controlled by the supreme court; and, where the question is such as cannot be submitted to that tribunal, is the government uncontrollable save by its own judgment, and not amenable to any tribunal? Or is the federal compact of such character that the government created by it is not the exclusive judge of its own powers, nor can any tribunal, organised under it, determine definitively on the original and reserved rights of the parties to that compact. In the language of gentlemen this question was of infinite magnitude not only to ourselves, but to ages yet unborn. If the former be the true character of the government, it would probably not be urged by the advocates of convention that the crisis had yet arrived when the state should assume the attitude of *revolution*, should exercise "the unalienable right to abolish old, and constitute a new government." But if it can be shewn that, by the true theory of the compact, each state may judge for itself whether the act of the general government be a violation of the constitution, then, when it has so judged, it will readily be conceded that such a state is not *bound by the compact* to submit. If it does submit it must be because the infraction is not of sufficient magnitude, or because it is unwise to oppose *power;* and not because of any obligation arising out of the agreement. *In our country*, this distinction should always be borne in mind. If the general government be authorized by the constitution to enforce an act, which any one of the sovereign parties to the compact should solemnly adjudge to be a violation of that compact, then, as we are emphatically a law-abiding people, nothing but extreme oppression would, or should, drive to opposition. If, on the contrary, each state may judge for itself, then, as we are also a right-maintaining people, the same spirit would induce the state to sustain that right—the consciousness of rectitude would add strength to their energies and the same conviction, impressed on the general government, would unnerve the arm of power. If it can be made apparent that such right exists in the states, respectively, and if, as we believe, under our institutions right must ultimately succeed, there is an original presumption that some practicable mode must exist of giving effect to that right. In such an inquiry the relative *physical* power of the general government and of an individual state is a consideration alike unworthy of them and of us.

In the course of his remarks it would be his effort to shew, first, the ex-

istence of the right—secondly, that if the right exist, and the occasion should justify the assertion of it, then we have strong ground to hope from the character of our country and its institutions, that opposition to many will terminate successfully—third, that it is a crisis peculiarly favorable for making the political experiment, if such it should be termed; and that, in any view, the chances of success were worth all the hazards of the struggle.

Has any state the right to determine for itself on the constitutionality of an act of Congress?

Has the state the right to oppose, within its own limits, the exercise of a power on the part of the general government, which such state shall pronounce unconstitutional.

The affirmative of both these propositions, it is believed, are clearly deducible from the theory of our government.

Prior to the adoption of the constitution it is admitted that the states were sovereign and independent communities. It will be conceded, too, that, from the declaration of independence till the adoption of the constitution they were sufficiently jealous of their sovereignty. The constitution itself was a reluctant concession made by sovereigns of certain powers for the benefit of the confederacy. No act of theirs gives countenance to the suspicion that in yielding up certain rights they intended to impair their character, or change their relative situation, as sovereign states. All their conduct repels any such presumption. The states, that is, the people of the states, had formed the articles of confederation. Unless they received the assent, express or implied, of those, who constituted the sovereignty of the states, those articles were not obligatory. The constitution was not originally framed by the people, but by delegates chosen by the states to amend the articles of confederation. They determined that it was expedient for the several states, whom they represented to grant certain powers to a new government, which they proposed to establish in order to promote the prosperity, and perpetuate the union of the states.—This compact was formally submitted to the several states in their sovereign capacity, that is, to the people of those states; and they, by ratifying the instrument, agreed that the state should depute, or surrender to the general government the powers therein specified—As to the powers not granted their character was not changed, their exclusive right to exercise those powers was unimpaired, their sovereign control in respect to them unrestricted. In the terms of the resolutions adopted by the republican party in '98 "to this compact each state acceded as a state, and is an integral party, its co-states forming, as to itself, the other party." "The constitution of the United States was formed by the sanction of the states, given by each in its sovereign capacity. The states then being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated. The government created by this compact was not made the exclusive or final *judge* of the extent of the powers delegated to itself; since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions, as of the mode and measure of redress."

It is said that the omission to provide a tribunal to determine questions affecting the sovereign rights of the states would argue a deficiency of wisdom and foresight on the part of the framers of the constitution altogether inconsistent with their character. This is the favorite argument adduced by modern *latitudinarians* for the exercise of all implied powers. But, if driven to this a priori mode of reasoning, is not this omission far more probable than that our keen-sighted ancestors, fully aware of the proverbial tendency of all governments to usurp authority, and of all courts to sustain the usurpations of government, that they should have committed to a judiciary, established by the general government, the power of finally deciding whether that government had transcended its powers, whether the reserved rights of the original parties to the compact had been invaded by the authorities of their own creation? Leaving, however, the field of speculation, and turning to the history of the instrument it is manifest that this difficulty was foreseen; but that no satisfactory project could be devised for adjusting differences of a character, once so important and so delicate, between parties having all the attributes of sovereignty. Perhaps their posterity, enjoying all the lights of experience, and all the improvements of the age, would find their efforts for the establishment of such a tribunal not more successful. The celebrated case of Chisolm and the state of Georgia, and the amendment of the constitution soon after adopted, affords an instructive lesson both as to the early disposition of the federal judiciary, and the prompt resistance, which was made to any encroachment on the dignity of a sovereign state.

But it has been said, with some appearance of triumph, that this supposed right of a state, if it be not revolutionary, must be *constitutional*; and if constitutional then it must be determined by the supreme court, as by 3 art. 2 sec. "the judicial power shall extend to all cases in law and equity, arising under this constitution."

The right of the state is not *revolutionary*, the right to abolish old, and constitute new governments. It is the right to preserve the old government in its pristine purity. It is a right not arising under the constitution, or indebted to any provision of the constitution for its existence. But it is a right growing out of the original character of the compact, and deducible from the relative situation of the contracting parties.

The question as to the reserved rights of a state is neither a case, in law or equity. The supreme court was established for the adjudication of *civil* rights, not the adjustment of great *political* disputes. Differences arising between individuals are properly submitted to their decision, and are usually determined with distinguished wisdom—But, by what form of pleading could the question, which has divided a large portion of this confederacy, the right of Congress to establish a central system of internal improvement, be fairly submitted to the supreme court? All the apparatus of the court would fail. If a case could be made up, it would be decided on narrow, technical principles, in which the true question would never be considered. The machinery was never intended for such purposes.

But the gentleman from York (Mr. Williams) had urged that the judicial power extended to all controversies to which the United States shall be a party.—A candid review of this provision of the constitution will satisfy the mind that controversies included no more than cases in law and

equity as used in the preceding part of the section, and so it has been regarded by the most zealous advocates of the authority of the supreme court. It has been shewn that the constitution is a compact between sovereign states, by which they agreed to form a government for certain specified purposes; and with that view, each surrendered certain portions of its sovereignty; reserving, of course, all rights not expressly surrendered. In the language of Judge Nott (Cameron vs. Wurtz, 4 M'Cord 279) "it must be admitted that the states are independent sovereignties, except so far as they have surrendered their sovereignty by the federal constitution. In all other respects they must still stand in relation to each other as foreign states. If the controversy be a case in law or equity arising under the constitution the supreme court has jurisdiction. If, on the contrary, the controversy regards certain reserved rights of the states, certain powers not embraced by the constitution, then the supreme court have no more jurisdiction than in a dispute between two European sovereigns as to the property of a mine in Saxony—In order to give the court cognizance of the matter the preliminary question must first be determined—Their decision can be of no authority unless *it be assumed* that it is a case in law or equity arising under the constitution. In other words *unless the state concedes* that this right formed part of the subject matter for the regulation of which the compact was made—and this concession would, of course, be an abandonment of the controversy. Suppose the territory called the United States had belonged to thirteen European potentates—that they agreed upon a plan of government for their territory, and sent out commissioners with authority to make laws, and establish courts to decide all cases arising under the compact of the lords proprietors, by which compact all powers not specifically delegated were expressly reserved to the high contracting parties. In a controversy between one, or the whole of the lords proprietors and the commissioners, as to an alleged usurpation on the part of the commissioners, of powers not granted by the compact, could the court, organized by the commissioners, determine the controversy. If the tribunal be competent does it require any skill in prophecy to anticipate the decision.

Suppose the thirteen proprietors should all agree as to the interpretation of the instrument, and that the act of the commissioners was an usurpation of their reserved rights, would the contrary decision of the commissioners court be paramount? If so, are not the proprietors deprived of every attribute of sovereignty? Are not their reserved rights a mere name? But does not reason, on the contrary, clearly indicate that, under such circumstances, the question *as to the original grant of the power* must be settled, not by the commissioners, or their tribunal, but by the parties to the compact? And if the question be made by a single sovereign must he not necessarily judge for himself? In the absence of any tribunal of paramount authority each must judge for itself both as to the violation of its rights, the expediency of submission or resistance, and, if the latter be determined, what shall be the mode and degree of opposition.

The country has been alarmed with the assurance that the exercise of any portion of this right on the part of a state would amount to *treason* or *rebellion;* and even the committee have been warned that the mildest construction would make it *secession* from the *union*, a withdrawal from the pale of the confederacy. No one in the course of the debate had contended

that a state could be guilty of rebellion, or had suggested that there was any disposition "to levy war against the United States."

But will the exercise of this right amount to *secession*? The states are sovereign and independent parties to a compact or treaty, under which a government is formed. Each state judges for itself, whether that government keeps within the bounds prescribed by the compact. An act is done by the government, which one state regards as a transgression of those limits—may not that state assemble, debate on the obnoxious act, and *declare* that this act is not warranted by the compact? Would this *declaration* amount to *secession?* Has not South Carolina, through her Legislature, made this declaration as to the tariff and internal improvements? Do not many believe the sovereign authority to belong to the Legislature? And has any one supposed that South Carolina has *seceded* from the union.

May not two sovereigns differ as to the interpretation of a treaty—one pronounce an act of the other to be an infraction, and the treaty still continue? May they not expostulate, remonstrate, the courts of justice within their respective dominions proceed in deciding under the treaty, and ultimately a compromise be effected? All this happened under the treaty of 1783 with Great Britain. Her refusal to surrender the western ports, and the embarrassments thrown in the way of British creditors, were the fruitful source of crimination and recrimination. The countries were brought to the verge of a second war, yet the treaty was in other respects observed, rights were adjudicated under it, and the political differences between the governments were amicably terminated by the treaty of 1794. An infraction in a material part may warrant the withdrawal from a compact; but attempts to heal the infraction, to accommodate the disagreement, evince no disposition to withdraw, and cannot be so regarded.

But suppose the worst—that the state should determine that it was inexpedient to submit to this usurpation on the part of the general government, and should proceed to the adoption of measures to impede the operation of the government, *as to that act*, within the limits of the state, *would this be secession?* It is submitted that it would not—that it *may*, in the course of human events, *lead* to this result, no one will venture to deny; and so may any indignant remonstrance against the usurpations of Congress, which has ever been uttered in our legislative halls. If complaint only induces an accumulation of oppression, complaint *may* lead to resistance, and resistance terminate in secession. But neither complaint, nor legitimate opposition to unconstitutional oppression, are secession, nor do they, necessarily, or naturally, lead to secession. May not the parties to a compact, composed of several parts, continue that compact, though one of the members may refuse to allow a particular power to be exercised, which that party supposes not to be granted by the agreement? Is there no case in which a state may interpose to arrest an act of Congress without abandoning the union? Suppose the supreme court pronounce an act unconstitutional—nevertheless the President and Congress persist in enforcing its provisions—may not a state interpose in such a case? and would such interposition amount to secession? Suppose the contemplated proceedings of the general government against the state of Georgia, during the late administration, had been prosecuted by Gen. Gaines, under the sanction of an act of Congress after a decision of the supreme court

against their constitutionality, may not the Hancock troop of horse have been fairly put in requisition to resist such aggression? Would the integrity of the union have been violated by this act of a sovereign state? Would Georgia have been regarded as withdrawn from the pale of the confederacy? If a state possesses the *right* to determine for itself as to the unconstitutionality of an act of Congress, the *right* to resist, after such determination, is just as perfect as if the supreme court had pronounced a similar judgment. Resistance in one case is no more secession than resistance in the other. It is true, that in both cases, the interposition of the state may lead to secession. The general government may persist right or wrong; and the state be driven out of the union, or coerced into submission. In either case, the general government could only be effectually restrained by *moral* opposition—*physical* resistance alone would be equally fruitless whatever tribunal may have pronounced on the nullity of the act. It is said that the judgment of the supreme court renders the act a nullity, or rather pronounces that it is not law, and that any proceeding of the executive under such act would be wholly without authority and might be resisted by any individual. This argument though correct, is founded on the position that the supreme court have the power to pronounce on the constitutionality of the law, and that the co-ordinate branches of the government are bound by their decision. The state has an equal right to pronounce for itself; and as to itself after such judgment, the act of Congress is equally a nullity. But the object was to show that resistance was not secession; as in every other case of treaty the question is one of expediency. On the one hand, how long will the state submit to encroachment, and to what degree; on the other, will the general government coerce obedience to an act (so pronounced to be unconstitutional by one, or by many states,) and thus hazard the loss of a portion of the confederacy, or forego the partial advantages of the act, and secure the integrity of the union.

According to the view which has been presented to the committee, each state assembled in its sovereign capacity, has the right to judge of the powers granted by the constitution, to determine whether other powers, not granted, have been usurped—whether it is expedient to interpose in order to arrest that usurpation—and what will be the mode and measure of such interposition. Such was the doctrine of the republican party in 1798. Some of the states then regarded this doctrine as of a dangerous tendency, and urged then, as it is contended now, that "the supreme court of the United States possessed the authority, ultimately, and exclusively, of deciding on the constitutionality of an act of Congress." In 1799, the Virginia legislature, who had been most zealous in maintaining the true principles of the constitution, revised with a critical eye their resolutions, which had thus met the disapprobation of some of their sister states; they "examined fully the objections and arguments which had appeared against them"—they re-affirmed the sovereignty of each of the states; and in reply to the prominent position so strenuously urged upon them, that the supreme court was authorized to decide controversies involving the political rights of the states, the language of the report is too plain to be misapprehended, and too powerful to be resisted. "However true, therefore, "it may be that the judicial department is, in all questions submitted to it "by the forms of the constitution, to decide in the last resort, this resort "must necessarily be deemed the last in relation to the authorities of the

"other departments of the government; *not in relation to the rights of the "parties to the constitutional compact,* from which the judicial as well as "the other departments hold their delegated trusts. On any other hy- "pothesis, the delegation of judicial power would annul the authority "delegating it; and the concurrence of this department with the others in "usurped powers, might subvert forever, and beyond the possible reach of "any rightful remedy, the very constitution, which all were instituted to "preserve." The resolutions of Virginia and Kentucky maintain then the doctrine that *in relation to the rights of the parties to the constitutional compact,* the decision of the supreme court would be without authority. But a new version has been given to these resolutions. It seems to be conceded, that they deny the authority of the supreme court; but it is said according to the principles of 1798, the states must decide in the last resort, and that this means not each state to decide for itself, but a majority, or two-thirds, or three-fourths, or the unanimous voice of all the states, can alone decide. It is believed that this construction was never suggested until within the last twelve months. It would be not a little remarkable that the Legislature of Virginia and Kentucky, representing the rights of a minority, and contending vigorously for the means of vindicating those rights, should have expended all their efforts in maintaining the principle that a controversy as to the rights of a state, must be settled by the judgment of all, or a majority of the states. It would be, too, not less remarkable that the promulgation of a principle, paying such defference to the will of a majority, should have given such umbrage to any portion of the confederacy. But without suggesting all the objections which might be offered to this modern theory, it is perhaps enough to say that *by the compact* no *judicial* power whatever is given to the states. The right of each state to judge for itself, arises not only from any clause in the agreement, but from the character of this treaty between sovereign powers, in which treaties, the right of the majority is never recognized.

This right of a state is sovereign, and therefore unqualified. The doctrine of nullification as recently expounded was not a part of this theory. It was difficult to understand precisely the meaning which was attached to the term; but some of its advocates contended, that by the construction of the constitution itself, each state had the right to nullify an act of Congress, and that Congress were thenceforth bound to desist from enforcing this act, until three-fourths of the states had pronounced the power exercised to be among those granted, or until three-fourths of the states had granted the power, and in either event, the resisting state would be bound to acquiesce. For his own part, he was not prepared to say that the absolute veto of a Roman tribune, would not have been a power wisely conferred on each state of the confederacy by the very terms of the compact. *Over-legislation* was the besetting sin of the age—it was the bane of our republican governments. Experience had satisfied him that much more danger was to be apprehended from the rapid and headlong progress of the machine, than from any impediments which might obstruct the career: but he was willing to take the constitution as he found it. Two years since, he had stated in the debate on this doctrine of nullification, that it was not contained in any apparent provision of the constitution, and that our warfare was against implications. Subsequent reflection had caused no change in his opinion. The right of a state is an absolute, sovereign

right, depending on no clause in the constitution, and on no construction of it. Three-fourths of the states have no authority whatever, *by the constitution, to determine* what powers have been granted by that instrument, and what withheld. Three-fourths have the power *to amend*, and no more. They have no power to change the form of government, no power of creation, but simply of amendment; and an act of Congress, changing the vital principles of our institutions, would not be obligatory on a state, although it may have received the sanction of three-fourths of the confederacy. To such act, the state ought not, and would not submit. And yet if three-fourths can decide, or can confer the power, we are bound hand and foot. The tribunal of our own appointment has decided against us—our cause is gone. We have lost the great energy, the strong moral influence with which the advocates of the law and the constitution always contend for victory, and we have indeed no remedy left, but the right of revolution.

The state having the right to judge, and to exercise all powers incident to that right, is the condition of our affairs such as renders it expedient to submit to the people of the state whether there has been a violation of the compact, and whether the encroachments are of such a character as to require the notice of the state in her sovereign capacity, and if so, to leave to their wisdom the adoption of such measures as may remove, or prevent the progress of the evil.

The cause in which the state is embarked is of the last importance to the union. In the contest of principle against power, South Carolina has hitherto been foremost in the van. Her march has been onward. The violent excitement among the people, our intestine commotions, the debates in our legislative halls, have compelled inquiry into the doctrines she advocates. Truth requires only to be heard. We are told that Congress has exhibited evidences of a disposition to relax the restrictive system; and that the veto of the president has checked the progress of internal improvement—that we should desist from our exertions and wait the course of events. If the signs of the times be auspicious, if any gleam of hope appears in the horison, all is attributable to the efforts which have been here and elsewhere made, and all will be lost if those efforts abate. It is not a time to abandon opposition, or to *seem* to abandon it—our opponents have been influenced—not by *fear* of our acts, but by the sense of truth and justice, which our struggles have brought home to their understandings. Intelligence is disseminated through the country, and the cause of correct principles gains converts. Maine is arrayed against the tariff—a recent state convention in Vermont have protested against it—in New Hampshire a large portion, if not the majority, are opposed to it—in Massachusetts all parties have united in pronouncing a tariff for protection equally inconsistent with the principles of the constitution and the policy of the country. Some, it is true, have forsaken the faith; but a talented and powerful minority still sustain the cause of free trade, and will never consent to regard as hopeless, legitimate opposition to unconstitution legislation. New-York is against the system, and the principle of encouraging one class of citizens at the expense of their neighbors has been pressed to such an extent in the American policy now so zealously recommended by a portion of their citizens, that the true character of the plan is likely to be fully developed. Virginia, North Carolina, Georgia,

Alabama and Mississippi (if Tennessee may not be included) have always been with us in *principle*, however they may differ in the *mode* and *measure* of opposition—the conflict, it is true, is a strong one. We contend with states deeply interested, as they believe, in the maintenance of a system, which we regard as unconstitutional. Any falling back, any faltering on our part, would be seized as an evidence of acquiescence, and would be hailed as a triumph. It is already done—The result of a recent election, in which both parties were opposed to the system, caused the intelligencer complacently to predict that in a few years South Carolina would become a tariff state. In order to succeed, the state must maintain her ground. No act, and no want of movement on her part, should afford countenance to such prophecies, or such taunts.

The last resolution submitted to the committee proposes the call of a convention to take into consideration our differences with the general government—whenever the state moves in its sovereign capacity it should be by convention. "In that mode the constitution was submitted to the states; and in that mode the states ratified it." A declaration of the infraction of the compact should be made by the people of the state with the same solemnity, and according to the same forms. It is believed by many that the Legislature have no authority to supervise the proceedings of the general government, or to express any opinion as to their character. When it is considered with what facility resolutions are sometimes adopted, few will ascribe to such expressions the same respect, which would be accorded to the deliberate act of the delegates of the people assembled for that special purpose. Experience too must have satisfied us that the Legislature is not the most appropriate theatre for such discussions. The subject demands a calm and undivided attention. Yet charged as we are with the whole business of legislation, and our minds harrassed by a variety of important and unimportant elections, who can say that he approaches the consideration of this matter with the feelings and the temper, best calculated to ensure a wise determination. If the subject is worthy of our deliberations the arena should be changed.

But in order to allay the ferment, to remove doubt, the proper tribunal should determine the preliminary question. If the constitution has not been violated the people will then wait quietly until oppression becomes intolerable. If it has been violated all will turn with a single eye to the means of redress. It is said convention will keep up the agitation of the public mind, and therefore should be deprecated? Perhaps so. Repose, though pleasant, is not always safe. If opiates are administered, which lull the public mind into security it will not be the tranquility, which indicates convalescence, but the stupor which precedes death. Agitation will not however subside—The people daily learn more of their rights, and are more indignant at their violation. Nothing can restore peace but a return to constitutional government.

A convention would determine on the constitutionality of the act with all the promptness consistent with due deliberation. The people may always be safely trusted when the means of information, and time for reflection have been afforded to them. In 1823 he had expressed the opinion that this was the only proper mode in which the state could proceed with authority. He then deemed the call premature. At no period of our political existence had information been so rapidly diffused among the

people as during the last two years. He would hazard the assertion that in no state of the union were the principles of our government more freely discussed or more diligently examined. A convention would be composed of delegates selected by the people from every class of society, charged with the consideration of this subject alone, and most intimately acquainted with the rights, as well as the wishes of their constituents. It may well be presumed that this body would be distinguished for intelligence, virtue, experience and patriotism. A convention cannot be limited by the Legislature; but they may be restricted by the people who appoint them, when the people are assembled hastily, on the spur of the occasion, and without an opportunity of weighing maturely the important matters, which have rendered this appeal necessary, every mischief is to be apprehended from their proceedings. But a well informed people, conscious of the common interests, which they have at stake, and of the dangers in which those interests are involved, may be securely trusted by every member of the community.

The meeting thus constituted would deliberate on our relations with the general government. If they deemed the proceedings of Congress within the powers of the constitution; or, if they thought them infractions, yet not of such importance as to require the formal notice of a sovereign state, they would so determine—the people would acquiesce in their decision, and tranquility be restored. If they think otherwise they would pronounce their judgment—and here perhaps they would stop—or they would communicate the result of their deliberations to other states, and then adjourn. All this might have the desired effect—time for reflection would be given—and our object might be accomplished. If not, the convention would re-assemble, and adopt such further measures as the exigency may require, or their wisdom may deem expedient. When the disposition of man is considered, his natural unwillingness to act against those, who wear the garb of authority, the strong, devoted attachment of our countrymen to the union, and the certainty that the convention will be imbued with all the feelings of the people; it is not to be apprehended that they will proceed too rapidly, or too vigorously in their measures of opposition—This is not the quarter in which danger can be descried.

But convention is a question of expediency. The advocates of convention appeal to their opponents to reflect on what the state has done, on the condition in which she now stands, and the rights which she professes to maintain. Their disposition is only to move *forward;* with all the deliberation which may ensure unanimity, but *forward.* They are not tenacious for the adoption of their own project—others profess the same disposition, but, objecting to the plan proposed, they tender nothing in its place—they tell us that they act *on the defensive;* and in their zeal to defeat the proposition for convention they seem to forget that the state too is *on the defensive,* and that their duty is only half performed in successfully baffling, even the misguided efforts of their fellow citizens to sustain that defence—whatever may be the dissentions of party, the great cause should never be forgotten.—To this all eyes should be directed—in this all hearts should be united.

One gentleman, it is true, has suggested a remedy—he would propose an amendment to the constitution, that no money bill should become a law without the assent of two-thirds of both houses of Congress; and in the

event of the failure of this plan, he indicated a readiness to secede from the confederacy. A very little reflection must satisfy the gentleman that he is nearer to disunion than any of those whom he opposes. Under existing circumstances, the defeat of his project is certain, and his determination is made. With us secession is a cold and cheerless remedy—we may be driven to it—we will never seek it. Wedded to the union by every tie of sentiment and principle, we are ready "to believe all things, hope all things, endure (almost) all things," rather than sunder the cord which unites our confederacy.

But if the measure of convention be not adopted, much may yet be done. Right principles may be established—by an interchange of opinion, prejudices may be removed, and union in our ranks promoted. Without unanimity and harmony in her councils or in her acts, the state is powerless—with it, her energies will be triumphant. The advocates of strong measures sincerely desire perpetuity to the union—to maintain it they would sacrifice every thing but liberty. But if they dissemble their real object, if they "think one thing, and another tell," the friends of the union should not allow them to be the exclusive advocates of right principles, differ with them on these, and leave to those, whose acts they dread, this advantage with the people—they should accompany them, aid them, co-operate with them, while they are right, and only restrain their efforts when they would lead the country into error.

On the other hand, we hear (without these walls,) those who oppose convention, stigmatized as submission men. Who compose this band? One of them near me, bears the bullet mark in his forehead, which he received forty years ago at the battle of the Hanging Rock. Three of his brothers were in the battle of Fort Moultrie, and one was buried before the lines of Savannah—He has never yet learned the lesson of submission—He comes here to discuss his rights, to confer with his fellow citizens, and returning home to his constituents, he will inspire them with the same zeal for the maintenance of right which animated his own bosom in the days of '76. There are others, who, in the late war, were the first to take up arms in defence of their country—They cannot readily believe that their rights have been wilfully invaded by those, with whom, and for whom, they have so cheerfully suffered. But an evil spirit is abroad in the land—power, and avarice and fanaticism have beguiled our rulers—the march is steady, and desolating—all will soon learn that the struggle must be made on the battlements, if we would not meet it in the citadel.

Again he would repeat, conciliation, and unanimity, is the true course—our only safeguard—The session has been one of much heat—much excitement, perhaps some asperity. Let us all subdue our animosities, forget our mortifications—forgive our injuries. Let us bring them all to the altar of our country, and who will say that the sacrifice shall not be accepted? Who will say that the united voice of a free and suffering people may not yet reach the ears, and penetrate the hearts and convince the understandings of our opponents? The constitution may then be restored to its purity, and that union, which our fathers gave, and their children venerate, be rendered perpetual.

W. R. HILL'S SPEECH.

Mr. HILL said, it was not his purpose to detain the committee with an elaborate argument on the unconstitutionality and oppression of the present tariff laws. Until this debate, he had supposed that there was on these points an almost entire unanimity of opinion in this state. Three several times had this Legislature and at each time by an overwhelming majority, declared these laws to be unconstitutional and oppressive; the people in their primary assemblies, in every district and parish in the state, have expressed the same opinion, and although there may be much difference of opinion as to the extent of their oppression, yet that they are oppressive and to a most grievous extent, was, he believed, the opinion of a vast majority of the people of this state. But as the gentleman from Charleston, who opened this debate, (Mr. Huger) has thought proper to become in some sort the apologist of this system, and to urge many arguments in favor of its constitutionality, I must be permitted to recur to a few of the most prominent.

The gentleman contended that the power to protect and encourage domestic manufactures, is conferred in that clause of the constitution which gives to Congress the right to "regulate commerce." If sir, the tariffs of '24 and '28 were bona fide regulations of commerce, and had been enacted with the view to promote the commerce of the country, by counteracting the legislation of other nations, their constitutionality would not be denied; but it has never yet been pretended by the warmest advocates of the American system, that this was their object, and I apprehend that it will not be contended that under the power to *regulate*, Congress has the right to *destroy* our commerce. The gentleman (as I understood him) infers that the power to promote domestic manufactures, is included in that to regulate commerce, from the fact that a proposition to give a distinct and substantive power to Congress for this purpose, was made in the convention which formed the constitution and was negatived. With all the respect which I feel for the inferences of that gentleman, I must be permitted to say, that nine men out of ten would draw a different conclusion from this fact—this proposition contained an important grant of power, one not known to the existing government, certainly too important to depend on implication. If then the convention intended to confer this power, it is difficult, if not impossible, to perceive why the proposition to grant this power in express terms, was rejected, especially when it is remembered that a majority of that body were enemies to construction, and excessively jealous of even the feeble powers of the confederacy. We learn from the published journals of the convention, that several distinct propositions on this subject were submitted for their consideration and referred to a committee. After several days deliberation the committee reported that clause of the constitution as it now stands, which gives to Congress the power "to promote the progress of science and *the useful arts*, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Here is a refusal to give this power according to either of the various modes proposed, and an actual grant of power on the same subject but in a different mode. The conclusion is irresistible, that the convention intended to confer no other substantive power for this purpose than that contained in this clause.

Congress however, has the power "to lay and collect taxes, duties, and imposts, to pay the debts," &c. and that domestic manufactures may to some extent be constitutionally encouraged, provided such encouragement be merely *incidental* to a tariff for revenue, has always been admitted. But the complaint on our part is, that the *incident* is converted into the *principal*—that the means which may be rightfully and constitutionally exercised to raise a revenue for the government have been employed to injure the revenue, and to effect objects not known nor contemplated by the constitution, and that a legislative fraud has been practiced by an interested majority in Congress, acting it is true under the forms and according to the letter, but contrary to the spirit and intent of the constitution. It is conceded that the government has no other powers than those expressly delegated, and such as may be "necessary and proper," to carry the enumerated powers into effect. The rule by which we are to test the constitutionality of any measure of the general government, a rule which obviously results from the very nature of the government, and which has been adopted by the ablest expounders of constitutional law, is first to enquire whether the authority to execute the measure in question, be derived from any express power in the constitution, and if not, then to enquire whether it be necessary and proper as the means to carry any express power into effect. We look in vain for that clause of the constitution which expressly authorises Congress to protect and encourage domestic manufactures by a tariff of protecting duties: nor is a tariff for this purpose "necessary and proper," to carry into effect any power expressly delegated. According to this sound rule of interpretation, a tariff, the prime object of which is to encourage domestic manufactures by high protecting duties, is unconstitutional.

But it has been suggested that this system has political advantages in rendering us independent of foreign nations—and the gentleman in the course of his remarks, dwelt somewhat on the fact, that goods are now cheaper than before the passage of these laws. It was sir, with some surprise, that I heard these remarks. I had not expected to hear arguments like these, addressed to this committee, from a quarter so highly intelligent and respectable. That a nation which receives the manufactures of another country in exchange for its own agricultural products is not therefore dependant on, or under any political subjection to that other, need not surely at this day, and before this committee be seriously argued. As for the suggestion that goods are now cheaper than before the tariff of 1824, I did not understand the gentleman himself to draw any distinct inference from this fact. If from hence, the committee are to infer, that a tariff of protecting duties dispenses blessings on the country, by reducing the price of the necessaries of life—that this system does not operate injuriously to the interests of the south—it will be sufficient to answer that the manufacturers themselves, they who built up this system for the protection and advancement of their peculiar interests, are the best judges of its operation. If then the effect of the prohibitory system be to reduce the price of the protected article, if goods can be manufactured as cheap here as in England and we can successfully compete with her in foreign markets—if goods could not be purchased still cheaper under a moderate revenue tariff, why the necessity of any protection? Why should they who represent the protected interests, obstinately refuse to listen to any proposition

to repeal or modify the system? It is impossible to believe that a people, proverbial for a knowledge of their interest, should be so silly as to ask for tariff after tariff, for the purpose of cheapening the price of their own commodities, and adhere so tenaciously to a system from which they derive no advantage.

I shall not Mr. Chairman, stop to enquire into the probable extent of oppression under which we labor—the contrivers of this scheme have so arranged it, that it is difficult, if not impossible, to ascertain this with any certainty. It is sufficient for me to believe, that under the operations of this system, our commerce is seriously impaired, the price of our staple commodities depressed, and the wealth of one section of the union is transferring to another, no matter whether the progress by which it is effected be slow or rapid—but above all, that there is a most dangerous violation of that constitution, on the integrity of which depends the liberties of the people, and which we have sworn to "protect and defend." South Carolina has remonstrated and protested against the injustice and unconstitutionality of these measures for the last seven years, we have been answered only by additional burthens of taxation—we have acted on the advice of the venerated Jefferson, and had "patience and longer endurance with our brethren while under delusion; we have given them time for reflection and experience of consequences," and all reasonable hopes of relief from them failing, the anxious inquiry now is, whether there be no remedy for these evils short of a dissolution of the union. That these laws are unconstitutional, oppressive, and ought to be resisted, is almost the unanimous voice of this state—the mode of resistance is the difficulty—on this question parties have formed. This is the exciting cause which has convulsed our state from the mountains to the seaboard. It is contended on the one hand that there is no other mode of resisting an unconstitutional act of Congress than by petition or remonstrance to that body, or secession from the union. While it is maintained on the other that the federal government being created by compact between sovereign states, and having only certain specific powers, whenever it exceeds its prescribed limits its acts are "unauthoritative, void and of no force," that in case of a dangerous and deliberate violation of the compact, either of the parties has the right to "interpose for arresting the progress of the evil," that this right is constitutional, resulting from the nature of the government; and that the exercise of this right is compatible with the union.

It is now, Mr. Chairman, as it was in the beginning, there is now as there was when the government was organized, a party who advocate the supreme authority of the general government. History attests the fact that there was a party in the convention which framed the constitution in favor of a national consolidated government, in which the rights of the states should be merged—a government of a strong, high toned and aristocratic character. The efforts of the party failed, and the government remained in character what it then was, but with the addition of other important powers a confederacy of sovereign states for specific and limited purposes. Immediately after the government went into operation, under the present constitution, and from that time onward, the same party has endeavored to acquire for the government by implication, all those powers which had been denied by the convention. Their motives I shall not question—possibly they believed the government to be too weak and

inefficient, that "there was more danger of anarchy among the members than tyranny in the head," perhaps they doubted the capacity of the people for self government—doubtless they were for the most part, actuated by principles of the purest and most exalted patriotism. Individuals of this party, and holding these principles, ever have been and ever will be, advocates for power in the general government. That resistance by a state to an act of Congress, however unconstitutional, should be characterized by them as treasonable and rebellious, is in perfect accordance with their principles. I have not made this allusion to the history of the parties of federalists and republicans, with a view to excite feelings which are long since extinct—but for the purpose of identifying the principles for which we now contend, with those of the republican party. I would offend the feelings of none, nor impeach the motives of any, but I would have the committee to remember, that although party names may change, party principles remain the same—that although the national republicans of the present day may have thought proper to drop their old title and assume another and perhaps a more popular name, their principles are the same now that they were in '87 and '98.

The resolutions reported by the committee on federal relations contain the doctrines of the republican party expressed in the language of the Legislatures of Virginia and Kentucky of '98 and '99. Although it can scarcely be expected that the last resolution which proposes the call of a convention will be adopted at this time by a constitutional majority, yet as the foregoing resolutions assert the right of a state to interpose for arresting the usurpations of Congress, and maintain principles on which the state may hereafter act—the committee will indulge me whilst I consider them. They embrace these propositions, that the federal government derives its powers from a compact between sovereign states—that each of the parties to the compact have the right to judge of its infractions, and as a consequence, the right to interpose in a sovereign capacity to protect her citizens from usurped power. These propositions cover the whole ground of controversy as to the right of state interposition, and are connected with, and dependant on each other; for if the constitution be a compact between several sovereignties having no common arbiter, each has the right to judge of its infractions, and the right to judge implies the corresponding right to enforce that judgment.

By adverting to the history of the constitution and the state of things prior to its adoption, the character of the government and the relation in which the states stand to it will be best understood. Under the articles of confederation which continued in force until the adoption of the constitution, each state retained "its sovereignty, freedom and independence, and every other power, jurisdiction and right, which was not expressly delegated." The third article declared that "the said states hereby severally enter into a firm league of friendship with each other for their common defence—the security of their liberties, and their mutual and general welfare." Each state had then with some restrictives the right to regulate its own commerce, and to lay imposts. The consequence was, that different commercial regulations were made, and different rates of duties imposed. Foreign nations refused to treat with them separately, and the commerce of the nation suffered distressing embarrassment for the want of some common power to regulate it, and to establish uniform

duties throughout the confederacy. It was principally to remedy this evil by conferring the powers on the federal government to regulate commerce and to lay imposts, that delegates from the several states met in convention. But having once convened they took other subjects into consideration, and after several months deliberation produced the present constitution. The character of the government was not changed by the new constitution; but new powers were added, the Legislature divided into two branches, and executive and judicial departments established. The delegates to that convention were chosen and sent by the several states acting as sovereigns; they voted by states on every clause of the constitution. It was ratified by each state acting as a separate sovereignty—and then, and not until then was it obligatory upon the people of each state. Some of the states did not adopt the constitution for two or three years after it went into effect; and the instrument itself declared that it should only be obligatory on the states which ratified it. I have not recurred to these facts because I supposed they were new to the committee, but because they are to my mind conclusive that the federal government is created by a compact entered into by the several states as sovereign parties; and that these states are now what they were before the adoption of the constitution, or even the articles of confederation—Sovereign and independent in all matters—not delegated nor prohibited; and that the character of the government is now what it was before, a confederacy of sovereign states for specific and limited purposes, deriving all its powers from a written compact—the constitution.

The gentleman from Charleston foresaw that the consequence of admitting that the government is a confederacy of states, would be admitting the right of each state to judge of the violations of the constitution, and therefore contends that the government is of a mixed character, partaking of both the popular and federative principlet—he senate of the United States representing the state authorities, and the house of representatives the people. It is true, the house of representatives does represent the people—but not the people of the United States aggregately and collectively, but the people of the several states, as citizens of separate political communities and parties to the confederacy.

Have the states severally the right to judge of the infractions of the constitution? independent of all authority, and from the very nature of the government each state has this right. Among sovereigns then can be no superior, each state must therefore judge for itself, unless by the terms of the confederacy an arbiter is created to adjust their disputes. If the supreme court be not that arbiter there is none, the gentleman from Charleston whilst he denies the right of a state to construe the compact for itself, does not refer to this court as the constitutional tribunal to decide questions of disputed power between the states and the government; and we are therefore left to conclude, that Congress has the sole right to judge of the constitutionality of their own acts,—this would be to allow our agents acting under a special letter of attorney the right to judge of the extent of their own powers, and in the language of Mr. Jefferson, would "make the discretion of the government and not the constitution the measure of its powers." The supreme court has jurisdiction of certain subjects confided to it by the constitution—"cases in law and equity" questions of individual rights, but in no part of that instrument is to be found

any power given to that tribunal to decide controversies between the sovereign parties to the government. Can it be believed that the framers of the constitution who were excessively jealous of the powers of the government ever intended to confer this vast prerogative on one of the departments of that government? To whom then would this high power have been confided? to impartial men? No sir! whatever regard we may have for the members of that august tribunal individually, it cannot be denied that all their feelings and prejudices lead them to sustain the powers of the government that appoints them, and the government that pays them. A recent occurrence in this state is proof sufficient, that that tribunal is totally unfit to decide on questions of disputed rights between the states and the government. Almost invariably from the adoption of the constitution down to the present time, the decisions of that court have sustained the legislation, and even enlarged the powers of Congress. The doctrines of the court in the case of M'Culloch and Maryland, recognizing the right of Congress to use an unlimited discretion in the choice of means to effect any constitutional object, confers as much power as could be desired by any government on earth.

So far as the acts and declarations of other states may be entitled to respect as authority, the resolutions of the republican Legislatures of Virginia and Kentucky of '98 and '99, are conclusive on this subject; whatever different construction the ingenuity of gentlemen may devise, let them be tortured as they may, their plain reading will not admit of a doubt as to their meaning. They distinctly assert the right of a state to judge of violations of the constitution by the government, and the right to apply a remedy for such violations. The Virginia resolutions drawn by Mr. Madison, declare that the powers of the federal government result from the compact to which the states are parties "and in case of a deliberate, and palpable, and dangerous exercise of other powers not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound to interpose for arresting the progress of the evil." But we are told that the interposition here referred to is explained by Mr. Madison, in the Report, to mean remonstrance, or to ask the co-operation of other states, or to apply to Congress for an amendment of the constitution. It is true that the Report does refer to these various modes by which the states might interpose, but it does not therefore negative other and more effectual modes of interposition. If these kinds of interposition should arrest the progress of the evil, as they did in the cases referred to in the report, the alien and sedition laws, it is well. But let the committee mark the purpose for which the resolution declares a state should interpose "for arresting the progress of the evil and for maintaining within its limits the authorities, rights and liberties appertaining to it," the right to interpose for this purpose necessarily infers the right to use all the means necessary to make such interposition effectual; and if the modes of interposing enumerated in the report prove ineffectual, a state clearly has the right according to the Virginia doctrine, to employ all the means which may be necessary to "maintain within its limits, the authorities, rights and liberties appertaining to it."

The Kentucky resolutions of the same period, drawn by Mr. Jefferson, are still more explicit; they declare "that to this compact (the constitution) each state acceded as a state and is an integral party: that the go-

vernment created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discertion and not the constitution the measure of its powers; but that as in all other cases of compact between parties having no common judge each party has an equal right to judge for itself as well of infractions as of the mode and measure of redress." According to this resolution each state is considered an 'integral party' and each state has the right to judge of the unconstitutionality of an act of Congress, and each state has the right to judge of the 'mode' of redress. The 'mode' of redress is explained by another passage from these resolutions, which declares that "a nullification by those sovereignties of all unauthorized acts done under colour of that instrument (the constitution) is the rightful remedy." These resolutions of Virginia and Kentucky, and the report founded on the first, although at that time they received no countenance or support from the other states, powerfully and gradually operating on the public mind, produced a change in public opinion, hurled the elder Adams from office, and brought Mr. Jefferson into power; and from that time to the present they have been considered as the political creed of the republican party.

This state sir, has recognized the principles of these resolutions. For some time prior to the year 1825, and especially during the administration of Mr. Monroe, when the doctrine of constructive powers was pushed to an alarming extent, the federal government instead of being regarded what it really is, a copartner of the state authorities, was here considered paramount to the states. It was the popular doctrine here that a state had no right to review or condemn the acts of the general government, "that the representatives of the people were under God responsible to the people themselves, and for the Legislature of a state to impugn any of the acts of the federal government or the decisions of the supreme court would be an act of usurpation."* The resolutions adopted by the Legislature in 1825 maintained different doctrines, and from the discussions which then took place and the investigation which followed, a change in public opinion was wrought, and from that time forward the true character of the government and the rights of the states, have been well understood. These resolutions recognize the right of the state to judge of infractions of the constitution, and actually exercise this right by pronouncing all tariffs for the protection of domestic industry, and all measures of internal improvement by Congress unconstitutional; and in '27 and '28 the same right was asserted and exercised in relation to these same subjects. The resolutions of the Legislature of Georgia, in 1828, speak in language so plain, and so clearly maintain the much reprobated doctrine of nullification that I must beg leave to refer to them. In relation to the subjects now under consideration, they declare that "the states respectively have the unquestionable right in case of any infraction of the general compact to complain, remonstrate, and even to refuse obedience to any measure of the general government manifestly against and in violation of the constitution, and in short to seek redress of their wrongs by all the means rightfully exercised by a sovereign and independent government." In 1829, Virginia, ever true to her principles, reasserted the principles of '98, and declared that "the constitution of the United States being a federative compact between sovereign

* Mr. Pinkney's Report in 1824.

states, in construing which no common arbiter is known, each state has the right to construe the compact for itself." I have referred to these authorities in support of the right for which we are now contending, because this doctrine has been denounced as a modern discovery "of but a summer's growth" and totally destitute of any just foundation.

I hope sir, that it is now evident to the committee, that the federal government is created by compact between the states, as separate and sovereign parties, and that both on principle and authority, each state has the right to judge of the infractions of that compact. The right to judge? What kind of right is this? Is it barely the right of the oppressed to ponder over his wretchedness—the right of a Turk to judge whether he deserves the bow-string? The right of one of our own slaves to judge whether he deserves chastisement? Or, rather is it not the right, and the constitutional right of a sovereign member of this confederacy, to judge whether its federal agents, acting under specific powers, have transcended their limits—and the right to interpose and protect its citizens from unauthorized oppression? The right to judge of the violations of the compact, necessarily and directly involves the corresponding right to enforce that judgment. They who admit the one must concede the other: and e converso, they who deny the one must deny the other. For if a state has not the right to resist an unconstitutional act of Congress, neither has a state the right to pronounce on theunconstitutionality of federal legislation, and this brings us back at once to the doctrines of Mr. Prioleau's report of '24, which were so severely rebuked by the subsequent resolutions of '25. How it is that they who admit the right of a separate state to judge of the unconstitutionality of an act of Congress, and claim this right as constitutional, can deny the constitutionality of interposing and acting on that judgment, I cannot, although perhaps they may, understand. But we are told that if the resolutions referred to, and which are relied on as authority, mean any thing more than merely advisory measures, it is the right of revolution, by dissolving the union and breaking up the government. By referring to the resolutions, it will be seen that no such measure was contemplated, but on the contrary they declare "a warm attachment to the union of the states, to maintain which, they pledge all the powers" of those states, and "a firm resolution to maintain and defend the constitution of the United States against every aggression either foreign or domestic." But this right of revolution is an inherent and unalienable right, one, of which we cannot be divested, and need not be contended for. That the Legislatures of Virginia and Kentucky in '98 and '99 should have contended so strenuously for state rights, that this subject should have been so elaborately discussed in our own state and the state of Georgia for the last five years, and at last to find that "state rights" are mere abstractions, the rights of remonstrance and rebellion, is to my mind, stange and utterly inexplicable. Sir, if it be true that the constitution imposes restraints on the government, and yet that practically it is a government without limitation of power, having no other check than the consciences of those who administer it, it is high time that the minority who look to that instrument for protection, should understand precisely the ground they occupy, and the kind of security on which they rely.

But we are told that for a state to interpose and prevent the operations of an act of Congress, however unconstitutional, and (eo instanti says the

gentleman from Charleston) the union is dissolved. If sir, they who administer the government should assume to themselves the right to judge "ultimately and conclusively" of the extent of their own powers according to the doctrine of Mr. Webster, and should attempt to enforce their own construction of the constitution at the point of the bayonet, this would be the result. But this consequence would follow from the act of the government. The position contended for, is that the interposition of a state against the usurped authority of the government, is perfectly compatible with the union. For the sake of illustration allow me to put one or two cases. Suppose Congress should pass another sedition law, subjecting certain individuals in this state to fine and imprisonment, for exciting the people to treason and rebellion—this would be plainly unconstitutional. Would South Carolina permit the operations of this act? Would not this Legislature have the right and exercise the right, to pass countervailing laws for the protection of her citizens, and would the state therefore be severed from the union? Again: Suppose Congress should by act emancipate all the slaves of this state at a fixed price, and direct them to be transported to Liberia. Government agents are sent here to carry the law into effect—would not this Legislature then define and declare what shall be treason against the state? Would South Carolina submit to this legislation, or refusing obedience, is she therefore out of the pale of this union? In these cases, this state by the passage of contravening statutes, would be as well protecting and defending the constitution as the persons and property of her citizens—she would be exercising her reserved and constitutional rights. As a member of the confederacy, the state would adjudge these laws unconstitutional, and then in the language of the Virginia resolutions, "interpose for maintaining within its limits, the authorities, rights and liberties appertaining to it." Meanwhile, her members of Congress are on the floor of the capitol, peaceably discharging their duties—the post office department would be in operation in this state—the federal judges administering the laws of the government here—and the custom house officer collecting the revenue at the port of Charleston—in a word, South Carolina is still one of the states of this union, and it must depend wholly on the course of the government afterwards, whether she would maintain that position or not. Would the government attempt to enforce by military power the execution of a law which a state had declared to be unconstitutional and should not be enforced in its limits? Even if they who administer the government were so disposed, (which I am far from believing) they have not the power to do so without the aid of the militia, and I have not the slighest belief that they would imbrue their hands in the blood of their brethren. As for the eulogies which the gentleman from Charleston has pronounced on the union, there is now as there ever was in this state but one opinion. In a proper attachment to the union of these states, I will not admit that even that gentleman exceeds me. But sir, if I could believe as he does, that the government of our choice could act so iniquitously as not only to refuse to listen to the repeated complaints of a state of this union, but would dragoon its citizens into submission to laws which they believed were unconstitutional and oppressive, it I believed this, that attachment would be changed to the bitterest hate—instead of regarding the government of this union with that veneration which I have been taught to feel for it, I should

abhor it as a detestable despotism. Sir, ours is a government founded on the affections of the people, and sustained by the force of public opinion. Whenever it shall want these legitimate supports and shall require military aid to enforce the execution of its acts, so far from being entitled to our respect, it would justly deserve our execration. But would the government permit the refractory state peaceably to withdraw from the union, or withdraw from it protection, and thus virtually leave it out of the union. Sir, they who are interested in the continuance of this system, understand too well their own interests and our value to consent to this course—they know full well that with a free and unshackled commerce in the south, the utter prostration and ruin of their interests would follow—All fears then from the employment of force by the government, or a dissolution of the union may be regarded as idle and unfounded, for we may rely on the virtue and patriotism of the mass of the people who are not so deeply interested in the system, to prevent the one catastrophe, and safely calculate on the interests of the monopolists to prevent the other. The government then would be driven to this alternative, either to abandon the system at once, or to call a convention of the states for the purpose of settling the disputed powers by an amendment to the constitution, affirming this power to belong to Congress. Should this last course be adopted, we need not fear the result. But should a convention be called, and contrary to our expectations, an amendment to this effect should be obtained by three-fourths of the states, we have still left that glorious right of revolution which gentlemen now consider to be our only ultimate resort.

Arguments have been urged against this right on the part of a state from its inconvenience to the government. These are arguments against the expediency of exercising the measure, and not against the right itself. All that is now insisted on, is that the right be recognized, reserving it to a convention to determine on the time and mode of exercising it. It may often be inexpedient to exercise an acknowledged constitutional right. It would be highly inexpedient for the president to put his veto on the annual appropriation bills for the common and necessary expenditures of the government, and yet he has the right to do so. But sir, this right of interposing never would be exercised but in extreme and urgent cases—cases which are believed to be flagrant violations of the constitution and oppressive to the people, and it were infinitely better that the exercise of this right by a state should subject the government to inconvenience in the exercise of doubtful powers, than that the right itself should not exist. Nay sir, perhaps the belief by those who administer the government, that this right may be lawfully exercised, would be the most effectual security against usurpation.

I have thus, Mr. Chairman, endeavoured to shew that this state has the constitutional right to interpose and arrest the evils of which we complain, and that the exercise of this right, would not be attended with the frightful consequences which gentlemen predict. But sir, although I have no fears myself of the result, I should not be acting with that candor which is due to the occasion, not to declare that there is no course of effectual opposition which can be adopted by this state entirely free from danger—for the consequences whatever they may be, they are responsible who have so perseveringly held on in this unrighteous and unconstitutional course of legislation. The dangers I apprehend are of a different kind and from an op

posite cause. I believe there is more danger to be apprehended to the liberties of the people from an overweening confidence in the federal government, passive obedience to all its measures, and an opinion of its omnipotence—more from the corrupting patronage and growing influence of the government, than from any other cause.

Sir, if it be true that we are subject to unconstitutional taxation, however we may differ as to the time and mode of resistance, it is perfectly certain that on principle these laws ought to be resisted. If they are in truth, unconstitutional and oppressive, the *quantum* of oppression should form but a small item in the consideration of this question. Let gentlemen disguise the fact as they may, we pay a most disgraceful tribute; the exact amount of that tribute need not, and cannot be, calculated by arithmetical rule, whether it be one million or one dollar the principle is the same. An insignificant duty of three pence a pound on tea, not perhaps five pounds of which were then to be found in the whole range of the back country, produced the American revolution. It was for principle our ancestors contended. They declared that they had "counted the cost and found nothing so dreadful as voluntary slavery." We sir, shall prove recreant to the spirit of other days and forget the lessons of the revolutionary school, when we learn to submit to unconstitutional taxation, whether imposed by a British parliament or an American Congress. However, it may be beset with dangers and difficulties, the path of honor and of duty lies straight ahead. Sir, if the injustice of this system was made plain and palpable, the spirit of the south would scorn to chaffer about terms of compromise. Let this system of taxation be stripped of all the disguises which have been thrown around it and exposed in its naked deformity. Let the general government send their tax gatherers to collect the amount from the people directly which they now pay indirectly for the support of the American system, for the purpose of being distributed among the manufacturers in the shape of bounties, and there would be found more than ten thousand Hampdens in South Carolina to dispute the payment of this tax. The gentleman from Charleston has said that some of our distinguished statesmen who assisted to build up this system are now urging the people on to resistance. Following no lead myself, not even "a Carolina lead," whatever others may think I have too much confidence in the virtue and intelligence of my fellow citizens to believe that they would blindly follow the lead of any individuals however distinguished they may be.

I know, Mr. Chairman, that the party in this state who recommend measures of effectual and decided opposition to the encroachments of the government, have been denounced as traitors and disorganizers;—men whose honor and patriotism until now were never questioned, have been accused, and from high authority of seeking to elevate themselves on the ruins of their country. I would make no invidious comparisons but it may be asked, who are the best friends of this union and of the constitution, they who (in the language of Madison) would "watch over and oppose every infraction of these principles which constitute the only basis of that union: because a faithful observance of them can alone secure its existence and the public happiness" who expose the iniquity and unconstitutionality of these laws, and recommend the means to rid themselves of the evils; or they, who whilst they admit the existence of the evil, recommend

no means of relief themselves, and reject that which is proposed by others, and who endeavor to allay the public excitement by glossing over its injustice, and tax their ingenuity in hunting up arguments in its favor.

But sir, whilst we complain of the oppressions under which we now labor, there are other and perhaps greater evils in prospect. The course of federal legislation for some years past shows that the government is fast verging to a single splendid consolidated government without limitation of power. For all practical purposes it has this character now. Yes sir, a government restricted by the constitution to a few simple and specific objects—A government created principally for external purposes according to the popular doctrines at Washington, has the power to accomplish any object which a majority of Congress may deem expedient, and a measure becomes constitutional or not, precisely in a ratio with the number of its supporters. If sir, the government is not arrested in its course, I fear that the only rational hope of liberty for man will ere long be extinguished, and that after all the blood and treasure which been have expended, we shall furnish another example of the utter inefficacy of all the forms of government which have yet been devised to prevent the encroachments of power. By taking our stand firmly on the constitution and boldly breasting the current of usurpation, the government may, and I confidently believe will be brought back to its proper limits, the constitution saved and the union preserved. 'Tis in vain we look for relief from Congress. Whatever slight modifications may have been made, the principle will not be voluntarily abandoned. The President is against us on principle. The majority in favor of the American system will be strengthened by the investment of more capital, and the numercial strength of its supporters increased by the apportionment under the present census.

It is proposed that these important subjects should be committed to a Convention of the people of the state, in order to deliberate thereon and to devise the means of redress. The mere call of a convention would be calculated to produce effect. It would prove what seems not now to be believed, that the excitement in this state exists among the people, and is not the mere rant of politicians. And if they who profess such devotion to the union, and who denounce the course of South Carolina as tending to endanger it, are really sincere in their professions they will retrace their steps. To the keeping of such a body composed of the talent and wisdom of the state, solemnly convened for the single purpose of deliberating on these subjects, we need not fear to commit the destinies of the state. To their decisions all would agree—whatever difference of opinion exists amongst us, the honor and welfare of our state is the object of all. A convention would hush the angry workings of party spirit, and heal the unhappy political dissensions which now divide and distract the state. As there is now such diversity of opinion as to the course to be pursued, it would concentrate public opinion, and unite us in some course of determined resistance or as a measure of expediency determine on unconditional submission.

SKETCH OF MR. PRESTON'S SPEECH.

Mr. Preston said, that he concurred with the gentleman from Charleston, (Mr. Huger,) and the gentleman from Clarendon, (Mr. Richardson,) in thinking that the matter under discussion was of very high importance, and that a large portion of its importance was derived from the danger, involved in the decison which the House might come to. He did not think, however, that the danger attended a decision in favor of a prompt and efficient resistance to the tariff laws—for he believed that the state had a constitutional, and therefore a peaceable mode of redressing them. But the danger arose from a supine acquiescence, under measures of the general government, which all acknowledged to be unconstitutional and oppressive, though some might doubt whether they were palpably unconstitutional or intolerably oppressive. The danger was, that we should, from year to year, permit the Congress of the United States to arrogate and exercise powers beyond the constitution—making one usurpation a precedent for another—circumscribing the state powers as it extends its own, until the original form of government is totally destroyed, and by a silent revolution, one of unlimited, and uncontrolable sovereignty established in its stead. Neither the gentleman from Charleston nor the gentleman from Clarendon, (said Mr. Preston,) is able to express a stronger attachment to our form of government than he felt. He not only regarded it with the instinctive affection which all feel towards the institutions under which they were born, with that pride which is the loyalty of republicans, and with that veneration which all feel for the work of illustrious ancestors; but with that firmer, and cooler approbation which results from a deep and thorough conviction that it is wisely adapted to secure the great ends of government, the peace, security, and liberty of the governed. With this profound veneration for our political institutions, he felt alarmed at the danger to which they were manifestly exposed. The constitution had been broken into—all admitted it. Corruption and profligacy had rushed in—all admitted. No one denied that the form of government had already been changed, and that further and more dangerous changes were threatened. This was the subject of his alarm—this was the danger he wished to avoid—this was the revolution he wished to avert. Gentlemen say, we should not wantonly endanger a government achieved with so much blood, and established with so much wisdom. Certainly not—but is the government which oppresses us, that which was established by the blood and wisdom of our ancestors? And shall we permit *that* to be superceded by one of more power, and more oppressive than that against which they revolted, and founded on no principle but the sordid and slfish purposes of our usurping rulers? It is not now for the first time ascertained, that the forms of a free government are compatible with the ends of an arbitrary one. Gentlemen say, that the world looks to our experiment as the only remaining hope of freedom. But if these tyrannical laws can be fastened upon us without remedy, the experiment has failed, and the sooner we proclaim the failure the better. It cannot console us for the loss of liberty, that others think we are enjoying it; and if our institutions establish an incurable tyranny, it is neither candid or honest to hold them up for imitation. The business of the true patriot is to make them what they seem to be—to restore them to and preserve them in

their original purity, and then hold them up as the proudest achievement of patriotic wisdom, and a fit example for the world to follow.—Such unquestionably was our government as it came from the hands of the great men who formed it. A plain, simple and useful machine, intended to effect a few, designated objects, and admirably contrived for that purpose—but what is it now? If it had been revealed to Patrick Henry that in less than forty years, that government, which as it appeared to him then, was dangerous to liberty and the rights of the states would claim and exercise powers, which even his imagination did not dare to conjecture, the power of controling the labor, directing the capital, and seizing upon the territory of the states—in what terms of indignation and horror would he have denounced the treacherous device. No one state would have borne even the discussion of such a project of government. Simple and guarded as it purported to be—it was adopted cautiously—reluctantly, and with amendments; but if it was offered to those republican conventions, in its present shape, endowed as those who have the practical power to determine say it is, with these awful attributes,—will any man venture to say, that any one state would have adopted it, or that any one state at that period would have permitted such a government to be imposed upon it, but at the point of the bayonet. The constitution, as now construed, is not the constitution of '89. It is not the work of those on whom our praise is habitually, and certainly most properly bestowed. It is the work of other times, of different, very different men,—and the question which we are called upon to decide, is, whether we shall permit by our acquiesence the constitutional government of '89 to be superseded, by a substitute, having nothing in common with its predecessor but the forms of its administration. This is the important question presented to the house by the report of the committee on federal relations.

He was glad to observe the courtesy and coolness with which the debate was conducted. The violence which out of doors had impelled the parties to mutual exaggeration of each others principles had not manifested itself here, and thus far the house had heard nothing of that cry of pretended alarm—that hysterical exclamation of fearful words—bloodshed, civil war, treason, conflagration and murder! that horrid din which during the summer

Tore our ears asunder
With gun, drum, trumpet, blunderbus and thunder.

He was glad that nothing of this trash and cant—intended to delude the ignorant and frighten the weak—had been heard in the course of the manly and fair discussion of which the gentleman from Charleston had set the example and which thus far had been adhered to.

The discussions before the people during the last summer had of course produced a great deal of excitement, and in the violence of opposing parties which had, as it usually happened in such contests, been occasionally thrown into a position which it would not originally have selected, and occasionally motives and principles have been charged upon each, which neither would be willing to recognise. For the purpose of ascertaining our true position, and marking out distinctly the ground on which we stand, the committee of federal relations have announced their principles in a series of resolutions. Of the five first of these four are in the lan-

guage of Mr. Madison, and one in the language of Mr. Jefferson. It was thought best to use the words of these great apostles of the republican party as well on account of the high authority which they bear, as for the purpose of avoiding the imputation of novelty. There fundamental canons of the republican party, rendered almost sacred by the circumstances under which they were announced by the men who proclaimed them, and the triumph which attended them it was supposed would not be controverted in a Legislature known to be republican. They have not escaped however, for although the gentlemen from Charleston and Clarendon have directed their attack mainly against the sixth resolution, yet it was impossible to reach it, but by trampling on those of which it is a corolary. However painful or dangerous it may be to attack the principles of '89, gentlemen must attack and overthrow them before the sixth resolution can be approached. The first five resolutions are a declaration of rights, which from their nature can have no remedy but that indicated in the sixth.

Although the words of the sixth resolution are not those of Mr. Madidison, the committee intended to express their conception of his meaning, in that most celebrated resolution of the Virginia assembly in '99, which declares the remedy for the violated rights of the states. Mr. Madison's words are "in case of a deliberate, palpable and dangerous exercise of other powers not granted by the said compact, the states who are parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, &c." That the power here declared, was, that *any state* aggrieved by an unconstitutional law, might redress itself, was never questioned until upon some recent occasion, Mr. Clay, with his accustomed boldness, undertook to give it a meaning, unheard of for thirty years; not warranted by the grammatical construction—opposed to the whole context and purpose of Mr. Madison's report, and in direct contradiction to its cotemporaneous exposition. Mr. Clay, and after him the gentleman from Charleston, contends, that the words "the states," in Mr. Madison's resolution, do not mean "any one state," but such a number as may, by the mode expressly pointed out in the constitution, remedy the evil. Now the expression "the states," must either mean all the states or any state: there is no qualification or limitation as to number, but the subsequent words, maintaining within *their respective limits*, clearly contemplate the exercise of the individual, not collective power of the states.

The whole object and exigency of the Virginia resolutions, were to establish a principle of action in the states not expressly pointed out by the constitution, but latent and resulting from the nature of the confederacy; and this principle was developed and defended by Mr. Madison, in a course of elegant and elaborate argumentation. Argument was certainly unnecessary to prove that the states might exercise a power *expressly* conferred upon them by the constitution—the power in two-thirds to call a convention. If nothing more than this was intended, the Virginia resolutions were a solemn mockery, and the argumentative report a most useless trouble. Mr. Madison might as well have argued, and the Virginia Legislature have resolved, that Congress have the right to declare war. it would have been labor as wisely appropriated. Instead of this ridiculous and futile object, the labored exposition of those resolutions show clearly that the writer was drawing from the mass of residuary and undefined powers belonging to the states, one which had not been previously recog-

nized, and the existence of which might be disputed by the advocates of the usurpations of the general government.

And accordingly they were disputed, and on the very grounds now assumed against us by the gentleman from Charleston. The federalists and federal states in '98, urged the danger of the power claimed by Virginia for the states—that the power to arrest an unconstitutional law (the power of nullification) would lead to anarchy and revolution—that the progress of the general government would be continually checked by the interference of the states—that the union would be made a rope of sand, and that the supreme court was the ultimate resort for the decision of constitutional questions. These were the arguments with which the Virginia resolutions were assailed by the federal states, and by the minority in her own Legislature. Mr. Madison and his friends in the Legislature, replied to these arguments, denied that the supreme court was the only tribunal, and asserted the right of each state to vindicate its authority, and protect its citizens within its own jurisdiction. One party denounced the principles of Virginia as dangerous. Where was the danger, if the case was expressly provided for in the constitution? Where the danger, if two-thirds of the states were expected to concur before any action would take place? Or was it the mere right of remonstrance that was so warmly contended for on the one hand, and so violently opposed on the other? No one yet has been slave enough to deny or doubt the right of remonstrance and protest. Mr. Madison's language in explanation of the resolution is most explicit. "The states," he said, "being parties to the constitutional compact, and in their sovereign capacity, it follows of necessity that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated, and conseqently, that as the parties to it, they must themselves decide in the last resort such questions as may be of sufficient magnitude to require their interposition. Such was the emphatic language in which Mr. Madison avowed his opinions in 1799: establishing beyond question that the committee have not altered the sense in altering the terms of the resolution, and that we have the authority of Mr. Madison for the preamble.

Mr. Jefferson—a still more illustrious and venerable name, avowed the same principle in equally emphatic terms. The general government, he says, is not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion and not the constitution the measure of its powers—but that as in all other cases of compact among parties, having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress. This was the doctrine avowed by him in the resolutions prepared for the Kentucky Legislature in 1788.

After a year of deliberation and discussion, he still more explicitly reiterated the same principles, in these words—"That the general states who formed that instrument (the constitution) being sovereign and independent, have the unquestionable right to judge of its infraction, and that a *nullification* by those sovereignties of all unauthorised acts done under color of that instrument is the rightful remedy." This language, if any can be, is beyond mistake or cavil—it establishes the origin of the doctrine of nullification in '99, and its author to be Mr. Jefferson. Neither the odium or glory of it belongs to the illustrious living person to whom the

gentleman from Charleston attributed it. With all due respect to the high office and higher merits of that individual, the doctrine of nullification claims a more distinguished origin than even his name could give to it.

The Legislature of Kentucky adopted the resolution prepared by Mr. Jefferson, and Virginia not only adopted those prepared by Mr. Madison, but passed a law upon the principles of those resolutions, nullifying the sedition law, as far as it applied to the members of the Legislature. There were no exceptions to the provisions of that law. It was universal in its application, and made seditious words penal, wherever and by whomsoever uttered. The Legislature *nullified* it in its application to its own members, and thus not only proclaimed the doctrine, but performed the act of nullification.

Georgia too has acted upon the same principle. In 1802, in the case of Chisolm, that state passed an express act of nullification. In 1814, Connecticut and Massachusetts each nullified an act of the general government; and in 1830, Georgia has again acted on the same principle. These declarations of the wise and decisions of the Legislatures, are the authority for the constitutional power in a state to arrest an unconstitutional and oppressive law.

There could be no difference of opinion in regard to the power of a state to protect itself, as a *state*, against unconstitutional laws of the general government, but for a fundamental falacy in regard to the nature and origin of the latter. Upon these subjects a difference of opinion arose immediately after its organization, and divided the country, as every country will be divided where freedom of opinion is allowed, into parties, one advocating the power of government, and the other the liberty of the people. These parties assumed the names of federalists and republicans. The aim of one was to invigorate and enlarge the powers of the general government, while the object of the other was to circumscribe and control them within their strict constitutional limitations. As long as our institutions exist, these divisions will continue, under whatever name may be assumed for the time. The federalists early assumed, for the purpose of promoting their views, what the gentleman from Charleston advocates, that the general government was created by the *people* of the United States as a whole, while the other party contended that it was created by *the states*. Important consequences result from either of these positions. No one disputes the fact that the constitution was formed by a convention composed of delegates sent to it, by the states and not by the people. In that convention, the vote was taken on each separate clause of the constitution, by states, and the final vote upon the instrument was also taken by states. It was then submitted to a convention in each state—not to a convention of the whole people—and was to go into operation when a certain majority of states, not of the people approved of it. By this last arrangement, it might have happened that a majority of the people were opposed to the new constitution, at the moment it was adopted by the requisite number of states. Each state elects two senators and each state sends members to the house of representatives according to its population, but each state must have one member—each state votes for the president and vice president. In its whole origin and organization, therefore, the government is federal—the people never act upon it but as people of the states. In that department which has been supposed to be most peculiar-

ly marked with the popular character, in the house of representatives, the members even there, are sent by the people of each state—not by the people of all the states. North and South Carolina cannot join in sending a member, although the districts may be separated but by an imaginary line, and although it may happen that the surplus population in these two contiguous districts would be sufficient to send a third member. A majority of the people of the United States is in no instance made requisite. The constitution, in no instance obliterates a state line, not even in those words so much discussed and so much relied upon, "we the people of the United States." The expression "United States," however, is not intended to designate a certain territorial extent with the population upon it, but to point out the various political communities which were confederating. The people of South Carolina, the people of Virginia, the people of Massachusetts, &c. each people retains its sovereignty, and acts and agrees in the character of separate sovereignties, and does not permit the individuals of another to any participation of political privileges within its territory. A citizen of one state cannot vote for a member of Congress in another state—a citizen of one state cannot represent another state in Congress.

Assuming then both upon authority and reason, that the states are parties to the compact, and that they have entered into it as free, sovereign and independent states, it results necessarily, that each must decide for itself all questions as to the nature of the compact, unless there is a tribunal established for this purpose by the parties themselves. When South Carolina gave her assent to the establishment of the general government, it was with the understanding, that its action should be circumscribed by the instrument creating it. She said to that government, I consent that you go thus far, but no farther, beyond this I am not bound—and who shall say that she is bound beyond this? It is as yet admitted (in theory at least) that the government of the United States is one of limited and defined powers—it is restrained from doing any thing not expressly permitted to it. Now it results from the nature of things, that that authority imposing a restriction, has the right to enforce it. The express grants of power to the general government are restrictions upon the power of the states—if the states break through these restrictions, they are guilty of usurpation, and the general government will maintain its authority by nullifying an unconstitutional law. On the other hand, the reserved powers are restrictions on the general government, and if it disregard these restrictions, why should not the states assert their rights in the same way. The reserved powers belong to the states as much as the delegated powers do to the general government. A state possesses as distinct and unequivocal a right to grant the lands within its territory as the general government has to grant letters of mark and reprisal on the high seas. Now if South Carolina should grant letters of mark and reprisal would it not be competent for the general government to protect itself from this invasion of its rights, by passing a law that all vessels making captures by virtue of such authority should be deemed piratical—and if on the other hand, the general government should grant the lands of South Carolina, is it not equally competent to the latter to declare, that all persons taking possession of lands by virtue of such pretended grants, should be deemed guilty of misdemeanour? The right of nullification is as clear and palpable in

the one case as the other. Human ingenuity cannot devise a distinction between them—each by its act of nullification is protecting its own jurisdiction from encroachment, each preserving its own existence from destruction, each arresting in its beginning a dangerous revolution. The right of *nullification* is in fact the right of self preservation—a right which the states in forming the constitution neither intended to or did surrender. If the right of resistance be destroyed, the right of tyranny is established. If there is no ultimate guaranty beyond its own decision, that the general government will not violate the constitution, it is a government without limitation—the constitution is a nullity—state rights are a farce. This Legislature has but a permissive existence, is a tenant at will of its power.

The power of arresting an unconstitutional law of Congress is not expressly given to the states, and it is said, if the constitution intended the states to exercise a power of so much magnitude, it would have conferred it in explicit terms. To this it may be answered, that if it had been intended to withhold this great conservative power, its negation to the states should have been in the most express terms. The writers of the Federalist regarded the states as conservitors of the public liberty against the encroachments of the general government, and urged this as a reason for the adoption of the constitution. To them belongs all power which is not expressly denied. To warrant their deeds, they cannot be called upon to shew whence they derived their power, those who question it must shew where it is taken away. We cannot properly be asked whence we derive the right of *nullification?* The true and only question is, where is it prohibited to us? Has any one answered this question? The only argument against it is that such a check upon the general government would be very inconvenient. All checks upon power are inconvenient to those who wield that power. Anarchy is the cry with which despotism frightens the timid into its toils. No government can be kept free but by strong and multiplied checks. They may be unwisely resorted to—they may produce inconvenience or confusion, but liberty cannot exist without them—strong cases may be supposed or put from history, but extremes answer extremes—and who would not prefer the ancient government of Poland, checked by a single voice, to the quiet and unchecked despotism which has succeeded it.

The notion that the check by nullification does not exist, because it is not expressly provided for, is clearly proved to be erroneous by the fact, that the judiciary have assumed and exercised it without any such express delegation, and with the general consent. Indeed all who are oppossed to us erect the supreme court into a grand tribunal of nullification, and upon what authority? upon the authority of an implication and an inference. Where is the grant to the five judges to nullify a law passed by both houses of Congress and approved by the President? Is it possible that such a power can exist without the most unequivocal and distinct grant? It does exist and there is no grant. It is deduced from the nature of a constitutional government, from the judges oath to support a fundamental law. The same oath is taken by every member of this Legisture, and the same power therefore belongs to it. Mr. Jefferson declared that an unconstitutional law should be nullified by every department within whose sphere of action it came, and when he assumed the presi-

dency, he annulled as far as was within the reach of the executive, all the proceedings under the sedition law. Do we according to our solemn obligations, support, maintain, and defend the constitution of the United States, while we permit a law in violation of it to be enforced within the territory of South Carolina? The danger which will threaten us if we interpose our check has been much spoken of—no one has ever dreamt of the danger to which the judges are exposed by using the same power? The militia has not been ordered out against them—the sergeant at arms has not seized upon chief justice Marshall. These judicial nullifiers seem to have encountered no danger in their career of nullification—nor on the other hand have the wheels of government been stopped by them. They have the power of arresting every law of Congress as it comes before them, and yet the government goes on. The express checks upon legislation provided by the constitution are those of each house upon the other, and the president upon both. The judiciary is a check (but not one expressly designated) upon the other three, and the states in their sovereign capacity are a check upon the whole. All these checks have at one time or other been brought to operate upon the government, and no confusion or injury has resulted.

To assert that a state is bound by an unconstitutional law of Congress, is to confound all ideas of the nature of a constitutional government, and to give up all claim of limitation upon power. There can be no graduation of unconstitutionality—it is not a quality which can be diluted or strengthened. A law is either constitutional and obligatory, or unconstitutional and not obligatory—in other words it is law, or not law. Now it is difficult to assert without being ridiculous, the state right of declaring that it will not submit to a law which is not a law. If the two houses of Congress should think proper to dispense with the approbation of the President to their enactments, and promulgate them as laws, it is clear that this state might and would nullify such enactments, and yet they would not be more unconstitutional than any other enactment not authorized by the constitution. The proposition which is denied is, "that a state has the right to arrest an unconstitutional law"—on the other side of course, the proposition is "that a state has no right to arrest an unconstitutional law." It is obvious that if a state has no right to arrest such a law, it is bound to submit to it. The proposition therefore resolves itself into this, that the constitution compels a state to submit to a law which the constitution forbids to be enacted, a solicism which confounds the understanding. Upon the assumption (on which the whole argument proceeds) that the law is unconstitutional, it is not only competent to a state, but to every private individual, to deny its validity and resist it. The power enacting such a law is guilty of usurpation, and the person enforcing it commits a tresspass. The state whose rights are usurped, or the citizen whose rights are invaded, may constitutionally and legally resist. The only question then is, who shall decide whether the law is constitutional or not—whether its enactment is a usurpation—whether its enforcement is a tresspass? In ordinary cases of individual contests, the courts are the tribunals appointed to settle the matter. Our adversaries insist, that in all cases the supreme court is the tribunal to settle disputes between a state and the general government. The issue made up between a sovereign state and the general government, is whether the latter has usurp-

ed the power of the former—and it is asserted that one of the departments of the general government shall decide—in other words, that the dispute shall be referred to one of the parties disputant. This of course precludes the idea of a dispute further than petition and remonstance. It is idle and absurd to refer a matter to arbitration when the arbitrators are appointed by one of the litigants. But why has the judiciary been selected? Why not the President? He is not of the legislative department—he has no power to make laws—he can only arrest them—his veto is a check upon unwise and unconstitutional legislation—he is elected by the people of all of the states, and would therefore seem more properly than any other department of that government, endowed with the power of arbitrating between it and the states. Nothing can be urged in favor of the constitutional competency of the judiciary to try a question between a state and the general government, that will not apply with greater force to the executive.

Besides all questions as to the extent of the granted powers, are questions as to the extent of the powers of each department. When a state denies the grant of the power, it of course denies that the judiciary has cognizance of it. As far as concerns the matter in dispute, the two governments stand in the attitude of sovereigns. In the construction of a treaty between England and the United States, the former would not be bound by the decision of the judiciary of the latter. The individuals of the two nations, litigating their rights under the treaty might be bound, but surely the government of England would retain and act upon, and enforce its own construction.

It is obvious that this power claimed for the judiciary is not a judicial, but a political power. Questions between individuals as to personal rights are of a judicial character, and fit to be decided by courts. Questions between states are of a political character, and as such, beyond the reach of judicial cognizance. Wo betide the state which trusts its sovereignty to special pleas, or gives up the liberty of its citizens to the keeping of judges.

These positions have at once the authority and the argument of Mr. Madison to sustain them. He says "that there may be instances of usurped power, which the forms of the constitution would never draw within the control of the judicial department: *secondly*, that if the decision of the judiciary be raised above the authority of the sovereign parties to the constitution, the decisions of the other departments, not carried by the forms of the constitution before the judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objection is, that the resolution of the general assembly relates to those great and extraordinary cases, in which all the forms of the constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the judicial department also, may exercise or sanction dangerous powers beyond the grant of the constitution; and consequently, that the ultimate right of the parties to the constitution, to judge whether the compact had been dangerously violated, must extend to violations by one delegated authority, as well as by another; by the judiciary, as well as by the executive, or the legislature.

"However true, therefore, it may be that the judicial department, is, in all questions submitted to it by the forms of the constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very constitution, which all were instituted to preserve."

Whether the laws for the protection of domestic manufactures are a violation of the constitution, can hardly be considered a question open for discussion in this Legislature. Since 1824, every Legislature has with the most perfect unanimity, decided that they are so—the whole people of the state, without enough dissentients to make a party or even a faction, have decided in the same way, and neither Mr. Huger or Mr. Richardson have denied. The gentleman from Charleston indeed contended, that up to a certain point of their operation, these laws might be considered constitutional, beyond that they were not. Puting their defence upon the power of Congress to regulate commerce, he contended that the laws did not become unconstitutional until they injured commerce, which he conceded had been the case. A law of this anomalous character, oscilitating between constitutionality and unconstitutionality, and shifting from one to the other, as it operates upon a pair of shoes or a yard of broad cloth, may be a dexterous device to cheat us of our liberties, and puzzle us in our polemics. But it is not for us to trace the varying and uncertain line. Congress is entitled to its pound of flesh, but it must at its own hazard spill one drop of blood.

But it is a mistake to suppose that the tariff laws have any thing of this equivocal character—they are unconstitutional in their whole conception and object. The variety of defences to which their advocates resort, prove that there is no settled notion of the mode in which they can be proved to be constitutional. The laws purport on the face of them to be tax laws—but they were not reported to Congress by the committee of ways and means—that committee opposed them. The gentleman from Charleston says, they are intended to regulate commerce. The committee on commerce did not report them, but opposed them. They were reported by the committee on manufactures—supported upon the ground that Congress had the right to regulate the industry of the country, passed with a view to the encouragement of manufactures, and effect this object by the diminution of the revenue and destruction of commerce.

Considering himself, said Mr. Preston, relieved from an elaborate discussion of this question by the former proceedings of the Legislature, and the admission of both the gentlemen who have opposed the resolutions, he would dismiss it with one remark. It is two years since a very vigorous and elegant writer under the signature of Brutus, drew an argument against the power of Congress to pass laws for the protection of manufactures, from the 2d clause of the 10th section of the 1st article of the constitution, which Mr. Preston said believed to be unanswerable, as it certainly is unanswered. That clause purports to be a restriction upon the rights

of the states. The restraint is upon the power of the state to lay imposts or duties on imports or exports, and it consists in requiring the consent of Congress to the imposition of such duty or impost. It also provides that the proceeds of such duty shall go into the treasury of the United States. From this clause two inferences are drawn—1st. That the states with the consent of Congress may impose duties for the protection of manufactures, or any other purpose except that of revenue; and 2dly. that the power being thus reserved to the state, it does not belong to Congress, which has the power of imposing duties only for revenue.

There has never been any matter of public excitement in this state upon which there was so great unanimity as exists in regard to the unconstitutionality of the tariff laws. The most open advocates of unlimited submission concede it. No one will deny that their character is less equivocal than that of the sedition law, which is the subject of the Virginia report and resolutions, and no one will pretend that there is any comparison between them in point of oppression and peril. The tariff laws claim for Congress the power "of organizing the labor of the country." This is the power of controling the mind and the muscles of every citizen—of employing his time, his strength, his ability and his capital, according to the wisdom, the caprice, or the folly of the government—of confiscating the ships of the merchant for the benefit of the wool grower—of driving the farmer from his fields into a manufactory—of starving one class of society that another may become oppulent.

There is a point of view in which this power may be contemplated, that makes it appalling to this Legislature. If Congress can regulate the labour of the country, according to the character of the labour, may it not do so according to the character of the *labourer*—may it not distinguish between the labour of a slave and a freeman! In fact it has already done so. The tariff laws are and were intended to be a tax upon slave labour for the benefit of free labor. Although these laws are general in their terms, yet their opperation is partial and sectional. All the manufactories are in one section—all the staple products which ultimately bear the burthen of the protecting system, are in another. The law as to the generality of its terms and the partiality of its operation, is much the same, as if Congress intending to support the government by a direct tax should levy it upon all slaves within the United States. The tariff laws may not be so decisively exclusive, but they approximate it. They separate the southern states from the rest of the union. They mark out the slave holder as their victim. The sedition law did not apply to circumstances in the ordinary course of life. The tariff laws operate upon every man woman and child in the south. Look around upon the decay and poverty which in spite of ten millions of exports annually, cover the land. This immense income is not expended in luxurious living, for every man in the state feels himself straigthened in his circumstances. It is not expended in magnificent buildings, in large investments of capital, in gigantic improvements with a view to future profits—where does it go? With the cheapest labour, the finest climate, the most fertile lands, and the only staples, the south is the poorest portion of the United States. Why is this? When did this downward course commence? Land, which in 1824 was worth ten dollars an acre, is now worth two. The decline of property has been year by year and day by day, in proportion to the increase of the

tariff. The gentleman from Charleston, Mr. Huger, softened his objection to the tariff by stating that it made some articles of consumption cheaper. There is no ground for the assertion except a coincidence in point of time. If that be sufficient to establish the relation of cause and effect, who can calculate the mischief which the tariff has inflicted upon this state in the last seven years. There is no instance in the history of the world of any political community, without some disastrous phenomenon of nature, or overwhelming convulsion of society, being so suddenly, universally, and thoroughly hurled from oppulence to poverty.

The specification which the gentleman (Mr. Huger,) has made of the beneficent influence of this abominable system, is illustrative of its character. He says that the duty on woollens immediately reduced the price of that article—but this reduction was the cause of an immediate increase of duty upon the raw article, and brought the distinguished members of Massachusetts, Messrs. Everett and Webster, into the confederacy of plunder.

The gentleman (Mr. Huger,) regards the power of internal improvement as the most dangerous part of the system. The gentleman, said Mr. Preston, cannot object to that usurpation more than he did, and the committee would have adverted to it in their report, but that they could not, since the veto of the President on the Maysville road, venture to say that the state doth no longer perceive any ground of hope of redress from the wisdom and justice of the federal government on this subject. The course recommended by the committee, is in despair of redress—which the decided measure of the President removes for the present. Had we been cheered by any such measure in regard to the tariff, we might with blessings and thanksgivings have entrusted the cause of our property and liberty to the vigor and firmness of the President—but there are no hopes from that quarter—none—there are no hopes any where, but in our own energy. The hopes which the gentlemen hold out to us are vain and treacherous. All which were held out to us two years ago have been falsified by the event. The system *will* go on.

"Rusticus expectat dum defluat amnis,
"At ille labitur et labetur."

It will go on widening and deepening, until it is arrested by the vigor or exhaustion of the south. The system will embrace us until we are devoured by it, or strangle it. Cotton will fall to six and a quarter cents a pound—your land will become valueless—your slaves will be liberated. These events will occur unless we arrest them. The chairman of the committee of manufactures, declared in his place in Congress, that no President dared oppose the American system.—A resolution of Mr. M'Duffie intended to produce a discussion of the tariff, was contemptuously refused to be taken up. The bill for the Buffalo road being rejected, a southern member dared to express his joy at the preservation of the constitution, whereupon to chastise his insolence and to read a lesson to the south, the bill was called up for reconsideration, and now lies upon the speaker's table, a monument of the strength of the American system, and a terror to the south. Is it from circumstances like these that gentlemen tell us to *hope?* Hopeless of redress—bound down by oppression—the constitution having ceased to protect us—what are we to do Shall we permit the constitution which

we venerate, and have sworn to protect, to be trampled under foot? Shall we with slavish acquiescence permit our property to be seized upon? Shall we sit down in hopeless, helpless submission? What do gentlemen propose? What is their remedy? When will the time come when they will permit us to say, we will be slaves no longer? Do they fix upon a time—do they suggest a contingency—or immagine a possibility upon which they would be willing to act? While they admit that the constitution does not protect us, they will not agree that we shall protect ourselves. While they admit that we are oppressed, they will not agree that we shall assert our liberties. While they agree that we are plundered, they will not consent that we shall arrest the arm of the plunderer. Gentlemen will not even consent that the people in convention shall consider their situation.

The committee it will be perceived, do not propose to the Legislature direct and immediate action, but only a reference of these most important matters to another tribunal, in regard to whose competency there can be no question. Mr. Preston said, that for himself, he believed the Legislature fully competent to an act of nullification, but he was willing in compliance with those who acted with him and for the greater solemnity and deliberation, to refer the question to a *convention*. In such a body all would have unbounded confidence, and its decision would go forth with irresistable authority.

But gentlemen say, if it should decide upon arresting the law, the general government would endeavour to enforce it, and thus lay a scene of blood. The danger is imaginary. Nothwithstanding our experience of the recklessness of the majority in Congress, they dare not push wrong to that extremity. The first tap of a drum upon the borders of South Carolina would proclaim the dissolution of that government—but if utterly disregarding the constitution, and determined to enforce their unhallowed purposes by violence, why let them come—we will not take council of fear. Ours is the cause of liberty and the constitution—if we are crushed, they perish with us. But we cannot be crushed—the holy cause will protect us. The southern states will not see us overrun. Our ancestors encountered greater odds. Gallant and brave and wise as they were, it was not to them—no, not them—but to their cause that victory came. The sustaining hand of the Almighty supported them, as it will support us, when we struggle for our liberty.

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ERRATA.

In Thos. T. Williams's Speech, first page, 9th line, for *expressure*, read *expression*.
5th page, 8th line from bottom, for *marking*, read *making*.
8th page, 24th line from bottom, for *acts*, read *act*.
18th page, 20th line, expunge *are*.
20th line, same page, for *the*, read *their*.