N. CAROLINA FREE PRESS.

Whole No. 425. *Tarborough, (Edgecombe County, N. C.) Tuesday, October* 23, 1832. *Vol. IX—No* 9.

The "North Carolina Free Press,"
BY GEORGE HOWARD,

Is published weekly, at *Two Dollars and Fifty Cents* per year, if paid in advance—or, *Three Dollars*, at the expiration of the subscription year. For any period less than a year, *Twenty-five Cents* per month. Subscribers are at liberty to discontinue at any time, on giving notice thereof and paying arrears—those residing at a distance must invariably pay in advance, or give a responsible reference in this vicinity.

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DOMESTIC.

STATE RIGHTS.

We extract the following from the Correspondence between Gov. Hamilton and Vice President Calhoun, on the subject of State Rights. Mr. Calhoun contends that the Constitution of the United States was made by the people of the several States, forming separate and independent communities, and not the work of the American people collectively—that there is no direct and immediate connexion between the individual citizens of a State and the General Government; the relation between them is through the State; and the State has the right, as far as its citizens are concerned, to declare the extent of the obligation, and that such declaration is binding on them—that the General Government is the agent of the States, constituted to execute their joint will, as expressed in the Constitution—that not a provision can be found in the Constitution, authorising the General Government to exercise any control whatever over a State by force, by veto, by judicial process, or in any other form—that in the Convention which formed the Constitution, there was a powerful party intent on obtaining for the General Government a grant of the very power in question, and that they attempted to effect this object in all possible ways, but fortunately without success. Mr. Calhoun then proceeds as follows:

I have now, I trust, conclusively shown that a State has a right in her sovereign capacity in Convention, to declare an unconstitutional act of Congress to be null and void, and that such declarations would be obligatory on her citizens, as highly so as the Constitution itself, and conclusive against the General Government, which would have no right to enforce its construction of its powers against that of the State.

I next propose to consider the practical effect of the exercise of this high and important right, which as the great conservative principle of our system, is known under the various names of nullification, interposition, and State veto, in reference to its operation viewed under different aspects, nullification as annulling an unconstitutional act of the General Government as far as the State is concerned; interposition as throwing the shield of protection between the citizens of a State and the encroachments of the Government; and veto, as arresting or exhibiting its unauthorized acts within the limits of the State.

The practical effect, could the right be considered as one fully recognized, would be plain and simple, and has already in a great measure, been anticipated. If the State has a right, there must, of necessity, be a corresponding obligation on the part of the General Government to acquiesce in its exercise; and of course, it would be its duty to abandon its power, at least as far as the State is concerned, and to apply to the States themselves, according to the form prescribed in the Constitution, to obtain it by a grant. If granted, acquiescence, then, would be a duty on the part of the State; and, in that event, the contest would terminate in converting a doubtful constructive power into one positively granted; but, should it not be granted, no alternative would remain for the General Government, but its permanent abandonment. In either event, the controversy would be closed, and the Constitution fixed; a result of the utmost importance to the steady operation of the Government, and the stability of the system, and which can never be attained, under its present operation, without the recognition of the right as experience has shown.

From the adoption of the Constitution we have had but one continued agitation of constitutional questions, embracing some of the most important powers exercised by the Government; and yet, in spite of all the ability and force of argument displayed in the various discussions, backed by the high authority claimed for the Supreme Court, to adjust such controversies, not a single constitutional question of a political character, which has ever been agitated during this long period, has been settled in the public opinion, except that of the unconstitutionality of the Alien and Sedition law; and what is remarkable, that was settled *against the decisions of the Supreme Court.* The tendency is to increase, and not to diminish this conflict for power. New questions are yearly added, without diminishing the old, while the contest becomes more obstinate as the list increases; and, what is highly ominous, more sectional. It is impossible that the Government can last under this increasing diversity of opinion, and growing uncertainty as to its power, in relation to the most important subjects of legislation; and equally so, that this dangerous state can terminate, without a power somewhere to compel, in effect, the Government to abandon doubtful constructive powers, or to convert them into positive grants, by an amendment of the Constitution; in a word, to substitute the positive grants of the parties themselves, for the constructive powers interpolated by the agents. Nothing short of this, in a system constructed as ours is, with a double set of agents, one for local and the other for general purposes, can ever terminate the conflict for power, or give uniformity and stability to its action.

Such would be the practical and happy operation were *the right recognized;* but the case may be far otherwise, and as the right is not only denied, but violently opposed, the General Government, so far from acquiescing in its exercise, and abandoning the power, as it ought, may endeavor, by all the means within its command, to enforce its construction against that of the State. It is under this aspect of the question that I now propose to consider the practical effect of the exercise of the right, with the view to determine which of the two, the State or the General Government, must prevail in the conflict, which compels me to revert to some of the grounds already established.

I have already shown that the declaration of nullification would be obligatory on the citizens of the State, as much so in fact, as its declaration ratifying the Constitution, resting, as it does, on the same basis. It would *to them* be the highest possible evidence that the power contested was not granted, and, of course, that the act of the General Government was unconstitutional. They would be bound, in all the relations of life, private and political, to respect and obey it; and when called upon as jurymen, to render their verdict accordingly, or, as Judges, to pronounce judgment in conformity to it. The right of jury trial is secured by the Constitution (thanks to the jealous spirit of liberty doubly secured and fortified) and, with this inestimable right—inestimable, not only as an essential portion of the Judicial tribunals of the country, but infinitely more so, considered as a popular, and still more, a local representation, in that department of the Government which, without it, would be the farthest removed from the control of the people; and, a fit instrument to sap the foundation of the system; with, I repeat, this inestimable right, it would be impossible for the General Government, within the limits of the State, to execute *legally* the act nullified, or any other passed with a view to enforce it; while, on the other hand, the State would be able to enforce *legally* and *peaceably* its declaration of nullification. Sustained by its court and juries, it would calmly and quietly, but successfully, meet every effort of the General Government to enforce its claim of power. The result would be inevitable. Before the judicial tribunal of the country, the State must prevail, unless, indeed, jury trial could be eluded, by the refinement of the court, or by some other device, which, however, guarded as it is by the ramparts of the Constitution, would, I hold, be impossible. The attempt to elude, should it be made, would itself be unconstitutional; and, in turn, would be annulled by the sovereign voice of the State. Nor would the right of appeal to the Supreme Court, under the Judiciary act, avail the General Government. If taken, it would but end in a new trial, and that in another verdict, against the Government; but whether it may be taken, would be optional with the State. The Court itself has decided, that a copy of the record is requisite to review a judgment of a State court, and, if necessary, the State would take the precaution to prevent, by proper enactments, any means of obtaining a copy. But if obtained, what would it avail, against the execution of the penal enactments of the State, intended to enforce the declaration of nullification? The judgment of the State court would be pronounced and executed, before the possibility of a reversal; and executed, too, without responsibility incurred by any one.

Beaten before the courts, the General Government would be compelled to abandon its unconstitutional pretensions, or resort to force—a resort, the difficulty (I was about to say, the impossibility) of which, would very soon fully manifest itself, should folly or madness ever make the attempt.

In considering this aspect of the controversy, I pass over the fact, that the General Government has no right to resort to force against a State—to coerce a sovereign member of the Union—which, I trust, I have established beyond all possible doubt. Let it, however, be determined to use force, and the difficulty would be insurmountable, unless, indeed, it be also determined to set aside the Constitution, and to subvert the system to its foundations.

Against whom would it be applied? Congress has, it is true, the right to call forth the militia "to execute the laws, and suppress insurrections;" but there would be no law resisted, unless, indeed, it be called resistance for the juries to refuse to find, and the courts to render judgment, in conformity to the wishes of the General Government; no insurrection to suppress; no armed force to reduce; not a sword unsheathed; not a bayonet raised; none, absolutely none, on whom force could be used; except it be on the unarmed citizens, engaged peacefully and quietly in their daily occupations.

No one would be guilty of treason ("levying war against the United States, adhering to their enemies, giving them aid and comfort,") or any other crime, made penal by the Constitution or the laws of the United States.

To suppose that force could be called in, implies, indeed, a great mistake, both as to the nature of our Government and that of the controversy. It would be a legal and constitutional contest, a conflict of moral, and not physical force—a trial of constitutional, not military power, to be decided before the judicial tribunals of the country, and not on the field of battle. In such contest there would be no object for force, but those peaceful tribunals—nothing on which it could be employed, but in putting down courts and juries, and preventing the execution of judicial process. Leave these untouched, and all the militia that could be called forth, backed by a regular force of ten times the number of our small but gallant and patriotic army, could not have the slightest effect on the result of the controversy; but, subvert these by an armed body, and you subvert the very foundation of this, our free, constitutional, and legal system of government, and rear, in its place, a military despotism.

Feeling the force of these difficulties, it is proposed, with the view, I suppose, of disembarrassing the operation as much as possible of the troublesome interference of courts and juries, to change the scene of coercion from land to water; as if the Government could have one particle more right to coerce a State by water, than by land; but unless I am greatly deceived, the difficulty on that element will not be much less than the other. The jury trial, at least, the local jury, (the trial by the vicinage,) may indeed, be evaded there; but in its place other and not much less formidable obstacles must be encountered.

There can be but two modes of coercion resorted to by water; blockade, and abolition of the ports of entry of the State, accompanied by penal enactments, authorising seizures for entering the waters of the State. If the former be attempted, there will be other parties beside the General Government and the State. Blockade is a belligerent right. It presupposes a state of war, and, unless there be war, (war in due form as prescribed by the Constitution,) the order for blockade would not be respected by other nations or their subjects. Their vessels would proceed directly for the blockaded port, with certain prospects of gain; if seized under the order of blockade, thro' the claim of indemnity against the General Government; and, if not, by a profitable market without the exaction of duties.

The other mode, the abolition of the ports of entry of the State, would also have its difficulties. The Constitution provides that "no preference shall be given by any regulation of commerce, or revenue, to the ports of one State, over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another;" provisions too clear to be eluded even by the force of construction. There will be another difficulty. If seizures be made in port or within the distance assigned by the laws of the nations, as the limits of a State, the trial must be in the State, with all the embarrassments of its courts and juries, while beyond the ports and the distance to which I have referred, it would be difficult to point out any principle by which a foreign vessel at least, could be seized, except as an incident to the right of blockade, and, of course, with all the difficulties belonging to that mode of coercion.

But there yet remains another, and, I doubt not, insuperable barrier, to be found in the judicial tribunals of the Union, against all the schemes of introducing force, whether by land or water. Though I cannot concur in the opinion of those who regard the Supreme Court as the mediator, appointed by the Constitution, between the States and the General Government; and though I cannot doubt that there is a natural bias on its part towards the powers of the latter, yet I must greatly lower my opinion of that high and important tribunal, for intelligence, justice, and attachment to the Constitution, and particularly of that pure and upright magistrate, who has so long, and with such distinguished honor to himself and the Union, presided over its deliberations with all the weight that belongs to an intellect of the first order, united with the most spotless integrity, to believe, for a moment, that an attempt, so plainly and manifestly unconstitutional as a resort to force would be in such a contest, could be sustained by the sanction of its authority. In whatever form force may be used, it must present questions for legal adjudication. If, in the shape of blockade, the vessels seized under it must be condemned, and thus would be presented