MINERS' & FARMERS' JOURNAL.

PRINTED AND PUBLISHED EVERY TUESDAY, BY THOMAS J. HOLTON....CHARLOTTE, MECKLENBURG COUNTY, NORTH-CAROLINA.

I WILL TEACH YOU TO PIERCE THE BOWELS OF THE EARTH AND BRING OUT FROM THE CAVERNS OF THE MOUNTAINS, METALS WHICH WILL GIVE STRENGTH TO OUR HANDS AND SUBJECT ALL NATURE TO OUR USE AND PLEASURE.—DR. JOHNSON.

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SCENE IN THE SENATE.

The following is the close of the discussion on the Veto Message, in the Senate, between Messrs. Benton and Clay.

FROM THE WASHINGTON CITY GLOBE.

BENTON AND CLAY.

After Mr. Benton had concluded his remarks,—

Mr. Clay rose and said:—The Senator from Missouri expresses dissatisfaction that the speeches of some Senators should fill the galleries. He has no good grounds for uneasiness on this score. For if it be the fortune of some senators to fill the galleries when they speak, it is the fortune of others to empty them, with whatever else they fill the chamber. The Senator from Missouri has every reason to be well satisfied with the effect of his performance to-day; for among his auditors is a lady of great literary eminence. [Pointing to Mrs. Royal.]—The Senator intimates, that in my remarks on the message of the President, I was deficient in a proper degree of courtesy towards that officer. Whether my deportment here be decorous or not, I should not choose to be decided upon by the gentleman from Missouri. I answered the President's arguments, and gave my own views of the facts and inferences introduced by him into his message. The President states that the Bank has an injurious operation on the interests of the West, and dwells upon its exhausting effects, its stripping the country of its currency, &c. and upon these views and statements I commented in a manner which the occasion called for. But, if I am to be indoctrinated in the rules of decorum, I shall not look to the gentleman for instruction. I shall not strip him of his Indian blankets to go to Boon's Lick for lessons in deportment, nor yet to the Court of Versailles, which he eulogizes. There are some peculiar reasons why I should not go to that Senator for my views of decorum, in regard to my bearing towards the Chief Magistrate, and why he is not a fit instructor. I never had any personal rencontre with the President of the United States. I never complained of any outrages on my person committed by him. I never published any bulletins respecting his private brawls. The gentleman will understand my allusion. [Mr. Benton said: He understands you, Sir, and so will you him.]—I never complained, that while a brother of mine was down on the ground, senseless or dead, he received another blow. I have never made any declaration like these relative to the individual who is President.—There is also a singular prophecy as to the consequences of the election of this individual, which far surpasses, in evil foreboding, whatever I may have ever said in regard to his election. I never made any prediction so sinister, nor made any declaration so harsh, as that which is contained in the prediction to which I allude. I never declared my apprehension and belief, that if he were elected, we should be obliged to legislate with pistols and dirks by our side. At this last stage of the session I do not rise to renew the discussion of this question.—I only rose to give the Senator from Missouri a full acquittance, and I trust there will be no further occasion for opening a new account with him.

Mr. Benton replied. It is true, Sir, that I had an affray with Gen. Jackson, and that I did complain of his conduct. We fought, Sir; and we fought, I hope, like men. When the explosion was over, there remained no ill will, on either side. No vituperation or system of petty persecution was kept up between us. Yes, Sir, it is true, that I had the personal difficulty, which the Senator from Kentucky has had the indelicacy to bring before the Senate. But let me tell the Senator from Kentucky there is no *adjourned question of veracity* between me and General Jackson. All difficulty between us ended with the conflict; and a few minutes after it, I believe that either party would cheerfully have relieved the other from any peril, and now we shake hands and are friendly when we meet. I repeat, Sir, that *there is no adjourned question of veracity between me and General Jackson, standing over for settlement.* If there had been, a gulf would have separated us as deep as Hell.

Mr. Benton then referred to the prediction alleged by Mr. Clay, to have been made by him. I have seen, he said, a placard, first issued in Missouri, and republished lately. It first appeared in 1825, and stated that I had said, in a public address, that if General Jackson should be elected, we must be guarded with pistols and dirks to defend ourselves while legislating here. This went the rounds of the papers at the time. A gentleman, well acquainted in the State of Missouri, (Col. Lawless.) published a handbill denying the truth of the statement, and calling upon any person in the State to name the time and place, when and where any such address had been heard from me, or any such declaration made. Col. Lawless was perfectly familiar with the campaign, but he could never meet with a single individual, man, woman, or child, in the State, who could recollect to have ever heard any such remarks from me. No one came forward to reply to the call. No one had ever heard me make the declaration which was charged upon me. The same thing has lately been printed here, and, in the night, stuck up in a placard upon the posts and walls of this city. While its author remained concealed, it was impossible for me to hold him to account, nor could I make him responsible who, in the dark, sticks it to the posts and walls, but since it is in open day introduced into this Chamber, I am enabled to meet it as it deserves to be met. I see who it is, that uses it, here, and to his face [pointing to Mr. Clay] I am enabled to pronounce it, as I now do, *an atrocious calumny.*

Mr. Clay. The assertion that there is "an adjourned question of veracity" between me and Gen. Jackson is, whether made by man or master, absolutely false. The President made a certain charge against me, and he referred to witnesses to prove it. I denied the truth of the charge. He called upon his witness to prove it. I leave it to the country to say whether that witness sustained the truth of the President's allegation. That witness is now on his passage to St. Petersburgh, with a commission in his pocket. [Mr. Benton here said aloud, in his place, the Mississippi and the fisheries—every body understands it.] Mr. C. said I do not yet understand the Senator. He then remarked upon the "prediction" which the Senator from Missouri had disclaimed—Can he, said Mr. C. look to *me* and say that he never used the language attributed to him in the placard which he refers to? He says, Col. Lawless denies that he used the words in the State of Missouri. Can you look me in the face, Sir, [addressing Mr. Benton,] and say that you never used that language out of the State of Missouri?

Mr. Benton. I look, Sir, and repeat that it is an atrocious calumny, and I will pin it to him who repeats it here.

Mr. C. Then I declare before the Senate that you said to me the very words—

[Mr. Benton in his place, while Mr. C. was yet speaking, several times loudly repeated the word "false, false, false."]

Mr. Clay said, I flung back *the charge of atrocious calumny, upon the Senator from Missouri*—

A call to order was, here heard from several Senators.

The President, *pro. tem.* said, the Senator from Kentucky is not in order and must take his seat.

Mr. Clay. Will the Chair state the point of order?

The Chair, said Mr. Tazewell, (the President *pro. tem.*) can enter into no explanations with the Senator.

Mr. Clay. I shall be heard. I demand to know what point of order can be taken against me, which was not equally applicable to the Senator from Missouri.

The President, *pro. tem.* stated that he considered the whole discussion as out of order. He would not have permitted it, had he been in the Chair at its commencement.

Mr. Poindexter said, he was in the Chair at the commencement of the discussion, and did not then see fit to check it.—But he was now of the opinion that it was not in order.

Mr. Benton. I apologise to the Senate for the manner in which I have spoken; but not to the Senator from Kentucky.

Mr. C. To the Senate I also offer an apology. To the Senator from Missouri none.

The question was here called for, by several Senators, and it was taken, as heretofore reported.

Yankee Enterprise vs. Cholera.—Nothing can scare the tin pedlars of Connecticut, provided there is a prospect of gain. Soon after the Cholera made its appearance in Montreal, one of their pedlars was found trudging into the city, with a fresh cargo of camphor and cajeput oil. He sold the camphor in small parcels and made $300 by the speculation, the oil remained on hand. Another ingenious fellow was laden with a cargo of fashionable white paper hats. He heard of the Cholera in Canada—he scratched his head—"I guess," said he, "there is no market here for hats, so here goes for another spec." He dismounted, put his hats into a mortar, ground them down, made them into very pretty pills—labelled them "Cholera Pills"—sold them rapidly, made money, and what is more—made many cures.

Courier.

Alliteration.—"To keep clear of the Cholera, be contented, cool, calm, and cleanly."

POLITICAL.

From the Georgia Constitutionalist.

THE DOCTRINE OF NULLIFICATION EXAMINED.

The maintenance of constitutional freedom, is the first interest of civil society, and a jealous vigilance over those who are entrusted with authority, one of the highest duties of the citizen. In such a cause, even some excesses of zeal are not without apology. But it occasionally happens, that those who are engaged in repelling the encroachments of power, themselves advance exorbitant pretensions, which endanger social order, and bring discredit on the very cause of liberty itself. To analyze and expose such pretensions, therefore, becomes also a duty, of no inconsiderable importance.

The Federal Constitution is a compact, by which the thirteen sovereign states that adopted it, renounced a certain portion of their powers; and also delegated a certain portion, to be jointly held by all the parties, under the form of a general government. The additional members of the confederacy, which now embraces twenty-four states, are all on the same political footing with the original thirteen. According to this constitution, the legislative power is exercised by majorities of both houses of Congress, with the concurrence of the President, or by two thirds of both houses, without his concurrence. The Supreme Court of the U. States is the ultimate depository of the judicial power of the general government; and when the question is duly brought before that tribunal, it has a right to decide, whether an act of Congress is constitutional or not. Such is a brief summary of our legislative system, in its regular course. But it is contended, that an extraordinary case has occurred—that the majority, abusing the advantage of numbers, has enacted an unconstitutional law, oppressive to the minority—that the judicial department promises no adequate redress—and that some corrective, more efficacious, must consequently be employed. The remedy, which has been hitherto most zealously recommended, is that denominated Nullification, the merits of which, it is our present purpose to examine. The following, we believe, are substantially the doctrines comprehended under that term. "In all 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. The Federal Constitution is a case of such a compact. When a state considers an act of Congress unconstitutional, it has a right to nullify that act, within its own limits. The other states have no right to enforce the nullified act within those limits. A general convention of states must be called for the purpose of proposing amendments to the constitution, and thereby testing the question of constitutionality. The states in favor of the nullified act, must propose an amendment, conferring on Congress the power to pass such a law. That power is to be regarded as having never been delegated, unless three fourths of the states, in separate conventions, or in their respective legislatures, ratify the amendment so proposed."

If we designed to exhibit our own precise theory, in relation to the subject in dispute, it would be necessary to urge several very important qualifications, even of the two first of these propositions; but as our object is simply what has been stated—to examine the merits of nullification, we shall admit for the sake of argument, that "in all 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," and that "the Federal Constitution is a case of such a compact." We shall also in the same manner, admit the third proposition, concerning the right to nullify, with such explanations however of the term *right*, as will presently appear. All the remaining propositions we totally deny.

Let us endeavour in the first place to ascertain, what will be the state of things produced, by the exercise of this equal right of interpretation, which has been admitted. Parties enjoying equal rights to interpret a contract, may have the *perfect* right to a speculative interpretation—that is, to an *opinion* concerning its import; because two or more persons may entertain different opinions, without any necessary interference. But the right referred to in this discussion, is obviously the right of practical interpretation—the right of the parties, to give an effect to the contract, conformable to their respective opinions of its meaning. The right of none therefore can be perfect, since the right of each is qualified by the right of every other. For if any one had a *perfect* right, of practical interpretation—that of giving effect to his own opinion—the rights of all the others must yield to it; and all those others, so far from enjoying equal rights, would practically possess no rights at all. For example—two persons, placed in a situation where they can have no common judge, agree to build a house jointly, on a specified plan. During the progress of the work, they differ in their explanation of the original design. Each has a *perfect* right to consider his own explanation the true one; but neither can have the *perfect* right, to execute the work, according to his own judgment; since if such were the case, the other who in theory has an equal right, would in practice have none at all. As a house cannot be built in two ways at the same time, their practical rights unavoidably conflict; and each in maintaining his own, must necessarily oppose that of the other. Unless, therefore, one voluntarily yields, or there is a compromise, force alone can decide between them. In similar circumstances, the result would be the same, if the contract consisted of reciprocal promises. Each party would have a right to interpret the whole contract—not only the promise made by himself, but the promise made by the other.—If in a wilderness, where no civil law exists, it is stipulated between A and B, that at a certain time, A shall deliver to B a number of furs, and on a subsequent day, receive in exchange a number of bushels of grain; should a dispute ultimately arise, concerning the quantity of grain which was to be delivered, not only B would have a right to judge how much had been promised *by him;* but A likewise would have an equal right to judge how much had been promised *to him.* B would have a right to withhold any excess, which he thought was unjustly demanded, and A to seize what he thought, was unjustly withheld. If there were no compromise, the strongest must necessarily, prevail.

Foreign nations having no common judge, are on the same footing with individuals in a state of nature; and a dispute between them concerning the interpretation of a contract or treaty, would be governed by the same principles, and attended by the same consequences. Suppose at the end of a war between the U. States and Great Britain, that the American post of Niagara should be in possession of the British, and the Canadian post of Malden, in possession of the Americans. Suppose that the Americans, understanding by the treaty of peace, that the posts were to be mutually restored, should deliver Malden to its former masters. If the British asserted, that, according to their interpretation of the treaty, they were not bound to restore Niagara, and should finally refuse to evacuate that post, would the Americans acquiesce? Assuredly not. They would claim the right of interpreting both sides of the treaty—of judging how much they ought to regain, as well as how much they ought to restore; and if Niagara were not surrendered, they would either by a direct attack, or some other means, very speedily recommence hostilities.

Thus far it is apparent, that a full exercise of the right of each party to judge for itself, results in neither more nor less, than a decision by force. Let us see, whether the exercise of an equal right of interpretation among all the parties to the federal compact, would not tend to a similar issue. Every state on entering the union, delegated a portion of its original sovereign power, and, thereby, subjected itself to the legislation of the general government, to the extent of the power ceded. But this delegation was not made without an equivalent. The state at the same time, acquired a share of the legislative power of the general government; i. e. she acquired the right in conjunction with her confederates, to enact laws operating on all other states, to the very same extent, that she had conceded the right, to enact, laws operating on herself. This was the consideration, the *quid pro quo*, the very essence of the bargain. To exercise over a state any power which she did not delegate, is a violation of the compact—to resist a delegated power of the general government, which she has exercised conjointly with others, by act of Congress, is equally a violation of the compact. She is as much wronged, when her just power of legislating over others is obstructed, as when the unjust power of legislating over herself is usurped. She possesses an equal right to judge, whether she has suffered the one wrong, or the other—or in different words, if a state in the minority has a right to judge, that an act of Congress *is not* constitutional, a state in the majority has an equal right to judge, that it *is* constitutional. Since both parties according to the fundamental principle assumed, would possess also an equal right to judge of "the mode and measure of redress;" the one might select its own means of resisting, the other its own means of enforcing a law, whose constitutionality was disputed. Parties in this position, are evidently arrayed against each other, with the unqualified license of mutual hostility. If both parties have free choice of "the mode and measure of redress," states in the minority, without doubt, may nullify the law whose constitutionality they deny; and as clearly states in the majority, may endeavour to enforce it, by whatever means are considered most expedient. If neither party recedes, and gentle measures are ineffectual, the next resort will be to those which are violent, and civil war is the inevitable result.

The nullifiers indeed contend, that if a law were nullified, a presumption would be created against its constitutionality; and that the majority would be bound, if it did not yield by repealing it, to call a convention of states, and solicit a formal grant of the power to pass such a law, in order that the question might be tested. This notion is utterly unfounded. In the first place, if the majority of states believes a law to be constitutional, and persists in maintaining it to be so; the contrary opinion of the minority cannot create a presumption of its unconstitutionality; unless we adopt the very extraordinary supposition, that a smaller number is more likely to be right than a greater. In the second place, the act of nullification itself is justified only on the ground, that all the parties have an equal right to interpret the Federal Compact, and to select their own mode and measure of redress, when they believe that a violation of it has occurred. The right of the parties must be the same, whether the violation is supposed to consist, in exercising a power which has not been conferred, or in resisting one which has actually been delegated. An attempt therefore, by the minority of states, to prescribe any particular mode of proceeding to the majority would be wholly absurd—it would be dictating the mode and measure of redress to their opponents, who possess by their own acknowledgment, the full privilege of choosing for themselves. The very first principles of nullification would justify the majority, in the *immediate* employment of such means, as were deemed most conducive, to the accomplishment of their purpose.

But let us suppose that the majority, suspending all measures of coercion, should gratuitously consent to call a convention, for proposing amendments to the constitution; and that the parties were accordingly assembled. The nullifiers would say to the majority: "We deny that Congress possesses the power which it has assumed, in passing the nullified act.—Propose to the states an amendment granting that power, and we shall see, whether Congress is to acquire it or not." To this the majority would of course reply: "We assert that Congress *does* possess the power which it has exercised, in passing the nullified act. Propose to the states an amendment taking away that power and we shall see, whether Congress is to *lose* it or not." What then would have been gained? The votes of a majority of the convention, must necessarily constitute the acts of that body; and no amendment which it rejected, could be submitted to the states for adoption. The parties would end where they began—But it may be argued, that although the majority would possess a formal right, to reject the proposition of the nullifiers; the latter would have equitable considerations to urge, which ought to ensure its adoption. Let us hear them—They would say—"The meaning of the parties is the spirit of a compact. When we ratified the Constitution, we believed that it did *not* confer on Congress the power in question. If the nullified law can be enforced, we live under a government exercising a power which we did *not* delegate, or suppose others to delegate: it is not the government which we designed. If you propose the amendment suggested by us, and it is ratified by three fourths of the states, *Congress will undeniably possess the power.* But if you reject our proposition, the result must be, that *a mere majority* may assume for Congress, a power which constitutionally can be conferred only by three fourths of the States." These arguments, plausible perhaps at a first view, labour under this material objection; that they are not only quite as good, but even considerably better, on the opposite side.—For the majority without hesitation could reply—"Yes, we agree with you, that the meaning of the parties is the spirit of a compact. But when *we* ratified the Constitution, we believed that it *did* confer on Congress, the power in question. If the nullified law can *not* be enforced, we live under a government deprived of a power, which *we did* delegate, and understood all others to delegate: it is not the Government which we designed. If you propose the amendment suggested by us, and it is ratified by three fourths of the States, *Congress will be undeniably divested of the power.* But if we accede to your proposition, the result must be, that *a minority, barely exceeding one fourth*, may deprive Congress of a power, which can constitutionally be taken away, only by three fourths of the States." A satisfactory reply to this answer, would, we apprehend, be somewhat difficult. In truth, the theory of nullification pressed to its ultimate consequences, would amount to this—that three fourths of the states are necessary to confer a power on Congress, while any number beyond one fourth, may take it away. Whether such a system would be expedient, we shall not at present enquire—most certainly it is not that of the Federal Constitution. In the article