Western Carolinian.

It is even wise to abstain from laws, which however wise and good in themselves, have the semblance of inequality which find no response in the heart of the citizen, and which will be evaded with little remorse. The wisdom of legislation is especially seen in grafting laws on conscience.

Dr. Channing.

[BY BURTON CRAIGE.] SALISBURY, ROWAN COUNTY, N. C.....MONDAY FEBRUARY 11, 1833 [VOL., XIII. NO 668

TERMS

The WESTERN CAROLINIAN is published once a week at two dollars per annum, if paid within three months; or two dollars and fifty cents, if paid at any other time within the year. No Paper will be discontinued until all arrearages are paid, unless at the Editor's discretion.—No subscription will be received for a less time than one year.

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All letters addressed to the Editor must be post paid or they will not be attended to.

☞ These terms will be strictly adhered to.

CONGRESS.

IN SENATE.

A message was received from the President of the United States, by A. J. Donelson, Esq. his Secretary. It is as follows:

Gentlemen of the Senate, and House of Representatives:

[CONCLUDED.]

The period which constitutes the due time in which the terms proposed in the address are to be accepted, would seem to present scarcely less difficulty than the terms themselves. Though the revenue laws are already declared to be void in South Carolina, as well as the bonds taken under them, and the judicial proceedings for carrying them into effect, yet as the full action and operation of the ordinance are to be suspended until the first of February, the interval may be assumed as the time within which it is expected that the most complicated portion of the national legislation, a system of long standing, and affecting great interests in the community, is to be rescinded and abolished. If this be required, it is clear that a compliance is impossible.

In the uncertainty then, that exists as to the duration of the ordinance, and of the enactments for enforcing it, it becomes imperiously the duty of the Executive of the United States, acting with a proper regard to all the great interests committed to his care, to treat those acts as absolute and unlimited. They are, so far as his agency is concerned. He cannot either advance or lead to the performance of the conditions. He has already discharged the only part in his power, by the recommendation in his annual message. The rest is with Congress and the people; and, until they have acted, his duty will require him to look to the existing state of things, and act under them according to his high obligations.

By these various proceedings, therefore, the State of South Carolina has forced the General Government, unavoidably, to decide the new and dangerous alternative of permitting a State to obstruct the execution of the laws within its limits, or seeing it attempt to execute a threat of withdrawing from the Union. That portion of the people at present exercising the authority of the State, solemnly assert their right to do either, and as solemnly announce their determination to do one or the other.

In my opinion, both purposes are to be regarded as revolutionary in their character and tendency, and subversive of the supremacy of the laws and of the integrity of the Union. The result of each is the same; since a State in which, by an usurpation of power, the constitutional authority of the Federal Government is openly defied, and set aside, wants only the form to be independent of the Union.

The right of the people of a single State to absolve themselves, at will, and without the consent of the other States, from their most solemn obligations, and hazard the liberties and happiness of the millions composing this Union, cannot be acknowledged. Such authority is believed to be utterly repugnant, both to the principles upon which the General Government is constituted, and to the objects which it is expressly formed to attain.

Against all acts which may be alleged to transcend the constitutional power of the Government, or which may be inconvenient or oppressive in their operation, the Constitution itself has prescribed the modes of redress. It is the acknowledged attribute of free institutions, that, under them, the empire of reason and law is substituted for the power of the sword. To no other source can appeals for supposed wrongs be made, consistently with the obligations of South Carolina; to no other can such appeals be made with safety at any time; and to their decisions, when constitutionally pronounced, it becomes the duty, no less of the public authorities, than of the people, in every case to yield to a patriotic submission.

That State, or any other great portion of the people, suffering under long and intolerable oppressions, and having tried all constitutional remedies without the hope of redress, may have a natural right when their happiness can be no otherwise secured, and when they can do so without greater injury to others, to absolve themselves from their obligations to the Government, and appeal to the last resort, needs not, on the present occasion, be denied.

The existence of this right, however, must depend upon the causes which may justify its exercise. It is the *ultima ratio*, which presupposes that the proper appeals to all other means of redress have been made in good faith, and which can never be rightfully resorted to unless it be unavoidable. It is not the right of the State, but of the individual, and of all the individuals in the State. It is the right of mankind generally to secure, by all means in their power, the blessings of liberty and happiness; but when, for these purposes, any body of men have voluntarily associated themselves under a peculiar form of government, no portion of them can dissolve the association without acknowledging the correlative right in the remainder to decide whether that dissolution can be permitted consistent with the general happiness. In this view, it is a right dependent upon the power to enforce it. Such a right, though it may be admitted to pre-exist, and cannot be wholly surrendered, is necessarily subjected to limitations in all free governments, and in compacts of all kinds freely and voluntarily entered into, and in which the interest and welfare of the individual become identified with those of the community of which he is a member. In compacts between individuals, however deeply they may affect their relations, these principles are acknowledged to create a sacred obligation; and in compacts of civil government, involving the liberties and happiness of millions of mankind, the obligation cannot be less.

Without adverting to the particular theories to which the federal compact has given rise both as to its formation and the parties to it, and without inquiring whether it be merely federal, or social, or national, it is sufficient that it must be admitted to be a compact, and to possess the obligations incident to a compact; to be "a compact by which power is created on the one hand, and obedience exacted on the other; a compact freely, voluntarily, and solemnly entered into by the several States, and ratified by the people thereof, respectively; a compact by which the several States, and the people thereof, respectively, have bound themselves to each other, and to the Federal Government, and by which the Federal Government is bound to the several States, and to every citizen of the U. States." To this compact, in whatever mode it may have been done, the people of South Carolina have freely and voluntarily given their assent; and to the whole, and every part of it, they are, upon every principle of good faith, inviolably bound. Under this obligation they are bound, and should be required to contribute their portion of the public expense, and to submit to all laws made by the common consent, in pursuance of the Constitution, for the common defence and general welfare, until they can be changed in the mode which the compact has provided for the attainment of those great ends of the Government and of the Union. Nothing less than causes which would justify revolutionary remedy, can absolve the people from this obligation; and for nothing less can the Government permit it to be done without violating its own obligations, by which, under the compact, it is bound to the other States, and to every citizen of the United States.

These deductions plainly flow from the nature of the federal compact, which is one of limitations, not only upon the powers originally possessed by the parties thereto, but also upon those conferred on the Government, and every department thereof. It will be freely conceded that, by the principles of our system, all power is vested in the people; but to be exercised in the mode, and subject to the checks which the people themselves have prescribed. Those checks are undoubtedly, only different modifications of the same great popular principle which lies at the foundation of the whole, but are not, on that account, to be less regarded or less obligatory.

Upon the power of Congress, the veto of the Executive and the authority of the Judiciary, which is to extend to all cases in law and equity, arising under the Constitution and the Laws of the United States made in pursuance thereof, are the obvious checks; and the sound action of public opinion, with the ultimate power of amendment, are the salutary and only limitations upon the powers of the whole.

However it may be alleged that a violation of the compact by the measures of the Government can affect the obligations of the parties, it cannot even be pretended that such violation can be predicated of those measures until all the constitutional remedies shall have been fully tried. If the Federal Government exercise powers not warranted by the Constitution, and immediately affecting individuals, it will scarcely be denied that the proper remedy is a recourse to the judiciary. Such, undoubtedly, is the remedy for those who deem the acts of Congress laying duties and imposts and providing for their collection, to be unconstitutional. The whole operation of such laws is upon the individuals importing the merchandise; a State is absolutely prohibited from laying imposts or duties on imports or exports without the consent of Congress, and cannot become a party under these laws without importing in her own name, or wrongfully interposing her authority against them. By thus interposing, however, she cannot rightfully obstruct the operation of the laws upon individuals. For their disobedience to, or violation of, the laws, the ordinary remedies through the judicial tribunals would remain. And in a case where an individual should be prosecuted for any offence against the laws, he could not set up, in justification of his act, a law of the State, which, being unconstitutional, would therefore be regarded as null and void. The law of a State cannot authorize the commission of a crime against the United States or any other act which, according to the supreme law of the Union, would be otherwise unlawful. And it is equally clear, that, if there be any case in which a State, as such, is affected by the law beyond the scope of judicial power, the remedy consists in appeals to the people, either to effect a change in the representation, or to procure relief by an amendment of the Constitution. But the measures of the Government are to be recognized as valid, and, consequently, supreme, until these remedies shall have been effectually tried; and any attempt to subvert those measures, or to render the laws subordinate to State authority, and, afterwards, to resort to constitutional redress, is worse than evasive. It would not be a proper resistance to "*a government of unlimited powers*," as has been sometimes pretended, but unlawful opposition to the very limitations on which the harmonious action of the Government and all its parts absolutely depends. South Carolina has appealed to none of these remedies, but, in effect, has defied them all. While threatening to separate from the Union if any attempt be made to enforce the revenue laws otherwise than through the civil tribunals of the country, she has not only not appealed in her own name to those tribunals which the Constitution has provided for all cases in law or equity, arising under the Constitution and laws of the United States, but has endeavored to frustrate their proper action on her citizens by drawing the cognizance of cases under the revenue laws to her own tribunals, specially prepared and fitted for the purpose of enforcing the acts passed by the State to obstruct those laws, and both the judges and jurors of which will be bound, by the import of oaths previously taken, to treat the Constitution and laws of the United States in this respect as a nullity. Nor has the State made the proper appeal to public opinion, and to the remedy of amendment. For, without waiting to learn whether the other States will consent to a convention, or, if they do, will construe or amend the Constitution to suit her views, she has, of her own authority, altered the import of that instrument, and given immediate effect to the change. In fine, she has set her own will and authority above the laws, has made herself arbiter in her own cause, and has passed at once over all intermediate steps to measures of avowed resistance, which, unless they be submitted to, can be enforced only by the sword.

In deciding upon the course which a high sense of duty to all the people of the United States imposes upon the authorities of the Union in this emergency, it cannot be overlooked that there is no sufficient cause for the acts of South Carolina, or for her thus placing in jeopardy the happiness of so many millions of people. Misrule and oppression, to warrant the disruption of the free institutions of the Union, should be great and lasting, defying all other remedy. For causes of minor character, the Government could not submit to such a catastrophe, without a violation of its most sacred obligations to the other States of the Union, who have submitted their destiny to its hands.

There is, in the present instance, no such cause, either in the degree of misrule or oppression complained of, or in the hopelessness of redress by constitutional means. The long sanction they have received from the proper authorities and from the people, not less than the unexampled growth and increasing prosperity of so many millions of freemen, attest that no such oppression as would justify or even palliate such a resort, can be justly imputed either to the present policy or past measures of the Federal Government. The same mode of collecting duties, and for the same general objects, which began with the foundation of the Government, and which has conducted the country through its subsequent steps to its present enviable condition of happiness and renown, has not been changed. Taxation and representation—the great principles of the American revolution—have continually gone hand in hand; and at all times, and in every instance, no tax of any kind has been imposed without the participation—and, in some instances, which have been complained of, with the express assent of a part of the representatives of South Carolina in the councils of the Government. Up to the present period no revenue has been raised beyond the necessary wants of the country, and the authorized expenditures of the Government. And as soon as the burthen of the public debt is removed, those charged with the administration have promptly recommended a corresponding reduction of revenue.

That this system, thus pursued, has resulted in no such oppression upon South Carolina, needs no other proof than the solemn and official declaration of the late chief magistrate of that State, in his address to the Legislature. In that he says, that "the occurrences of the past year, in connection with our domestic concerns, are to be reviewed with a sentiment of fervent gratitude to the great disposer of human events; that tributes of grateful acknowlegment are due for the various and multiplied blessings he has been pleased to bestow on our people; that abundant harvests in every quarter of the State have crowned the exertions of agricultural labor; that health, almost beyond former precedent, has blessed our homes; and that there is not less reason for thankfulness in surveying our social condition." It would indeed be difficult to imagine oppression where, in the social condition of a people, there was equal cause of thankfulness, as for abundant harvests, and varied and multiplied blessings with which a kind providence has favored them.

Independently of these considerations, it will not escape observation, that South Carolina still claims to be a component part of the Union; to participate in the national councils, and to share in the public benefits, without contributing to the public burthens—thus asserting the dangerous anomaly of continuing in an association without acknowledging any other obligations to its laws than what depends upon her own will.

In this posture of affairs the duty of the Government seems to be plain. It inculcates a recognition of that State as a member of the Union, and subject to its authority; a vindication of the just power of the constitution; the preservation of the integrity of the Union; and the execution of the laws by all constitutional means.

The Constitution, which his oath of office obliges him to support, declares that the Executive "*shall take care that the laws be faithfully executed*;" and in providing that he shall from time to time give to Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient, imposes the additional obligation of recommending to Congress such more efficient provision for executing the laws, as may from time to time be found requisite.

The same instrument confers on Congress the power not merely to lay and collect taxes, duties, imposts, and excise; to pay the debts and provide for the common defence and general welfare; but "to make all laws, which shall be necessary and proper for carrying into effect the foregoing powers, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof;" and, also, to provide for calling forth the militia for executing the laws of the Union. In all cases similar to the present, the duties of the Government become the measure of its powers; and whenever it fails to exercise a power necessary and proper to the discharge of the duty prescribed by the Constitution, it violates the public trusts not less than it would in transcending its proper limits. To refrain, therefore, from the high and solemn duties thus enjoined, however painful the performance may be, and thereby tacitly permit the rightful authority of the Government to be contemned, and its laws obstructed by a single State, would neither comport with its own safety, nor the rights of the great body of the American people.

It being thus shown to be the duty of the Executive to execute the laws by all constitutional means, it remains to consider the extent of those already at his disposal, and what it may be proper further to provide.

In the instructions of the Secretary of the Treasury to the collectors in South Carolina, the provisions and regulations made by the act of 1799, and also the fines, penalties, and forfeitures for their enforcement, are particularly detailed and explained. It may be well apprehended, however, that these provisions may prove inadequate to meet such an open, powerful, organized opposition as is to be commenced after the 1st of February next.

Subsequently to the date of these instructions, and to the passage of the ordinance, information has been received, from sources entitled to be relied on, that owing to the popular excitement in the State, and the effect of the ordinance declaring the execution of the revenue laws unlawful, a sufficient number of persons in whom confidence might be placed could not be induced to accept the office of inspector, to oppose, with any probability of success, the force which will, no doubt, be used when an attempt is made to remove vessels and their cargoes from the custody of the officers of the customs, and indeed, that it would be impractical for the collector, with the aid of any number of inspectors whom he may be authorized to employ, to preserve the custody against such an attempt.

The removal of the custom house from Charleston to Castle Pinckney, was deemed a measure of necessary precaution; and though the authority to give that direction is not questioned, it is nevertheless apparent that a similar precaution cannot be observed in regard to the ports of Georgetown and Beaufort, each of which, under the present laws, remain a port of entry, and exposed to the obstructions meditated in that quarter.

In considering the best means of avoiding or of preventing the apprehended obstruction to the collection of the revenue, and the consequences which may ensue, it would appear to be proper and necessary to enable the officers of the customs to preserve the custody of vessels and their cargoes, which by the existing laws they are required to take, until the duties to which they are liable shall be paid or secured. The mode by which it is contemplated to deprive them of that custody is the process of replevin, and that of *capias in withernam* in the nature of a distress from the State tribunals organised by the ordinance.

Against the proceedings in the nature of a distress, it is not perceived that the Collector can interpose any resistance whatever; and against the process of replevin authorised by the law of the State, he, having no common law power, can only oppose such inspectors as he is by statute authorised, and may find it practicable to employ; and these, from the information already adverted to, are shown to be wholly inadequate.

The respect which that process deserves, must therefore be considered.

If the authorities of South Carolina had not obstructed the legitimate action of the courts of the United States, or if they had permitted the State tribunals to administer the law according to their oath under the Constitution and the regulations of the laws of the Union, the General Government might have been content to look to them for maintaining the custody, and to encounter the other inconveniences arising out of the recent proceedings. Even in that case, however, the process of replevin from the courts of the State would be irregular and unauthorised. It has been decided by the Supreme Court of the United States that the courts of the United States have exclusive jurisdiction of all seizures made on land or water, for a breach of the laws of the United States, and any intervention of a State authority, which, by taking the thing seized out of the hands of the United States officer, might obstruct the exercise of the jurisdiction, is unlawful; that in such case the court of the United States, having cognizance of the seizure, may enforce a redelivery of the thing by attachment or other summary process; that the question under such a seizure, whether a forfeiture has been actually incurred, belongs exclusively to the courts of the United States, and it depends on the final decree, whether the seizure is to be deemed rightful or tortuous; and that not until the seizure be finally judged wrongful and without probable cause by the courts of the U. States, can the party proceed at common law for damages in the State courts.

But, by making it "unlawful for any of the constituted authorities, whether of the United States or of the State, to enforce the laws for the payment of duties, and declaring that all judicial proceedings which shall be hereafter had in affirmance of the contracts made with purpose to secure the duties imposed by the said acts, are, and shall be held utterly null and void" she has in effect abrogated the judicial tribunals within her limits in this respect, has virtually denied the United States access to the courts established by their own laws, and declared it unlawful for the judges to discharge those duties which they are sworn to perform. In lieu of these, she has substituted those State tribunals already adverted to, the judges whereof are not merely forbidden to allow an appeal, or permit a copy of their records, but are previously sworn to disregard the laws of the Union, and enforce those only of South Carolina; and, thus deprived of the function essential to the judicial character, of inquiring into the validity of the law, and the right of the matter, become merely ministerial instruments in aid of the concerted obstruction of the laws of the Union.

Neither the process nor authority of these tribunals, thus constituted, can be respected, consistently with the supremacy of the laws, or the rights and security of the citizen. If they be submitted to, the protection due from the Government to its officers and citizens is withheld, and there is, at once, an end, not only to the laws, but to the Union itself.

Against such a force as the sheriff may, and which, by the replevin law of South Carolina it is his duty to exercise, it cannot be expected that a collector can retain his custody with the aid of the inspectors. In such case, it is true, it would be competent to issue suits in the United States Courts against those engaged in the unlawful proceeding; or the property might be seized for a violation of the revenue laws, and being libelled in the proper courts, an order might be made for its redelivery, which would be committed to the Marshal for execution. But, in that case, the 4th section of the act, in broad and unqualified terms, makes it the duty of the sheriff "to prevent such recapture or seizure, or to redeliver the goods as the case may be," "even under any process, order, or decree, or other pretext, contrary to the true intent and meaning of the ordinance aforesaid." It is thus made the duty of the sheriff to oppose the process of the courts of the United States, and for that purpose, if need be, to employ the whole power of the country. And the act expressly reserves to him all power, which, independently of its provisions, he could have used. In this reservation it obviously contemplates a resort to other means than those particularly mentioned.

It is not to be disguised, that the power which it is thus enjoined upon the sheriff to employ, is nothing less than the *posse comitatus*, in all the rigor of the ancient common law. This power, though it may be used against unlawful resistance to judicial process, is in its character forcible, and analogous to that conferred upon the Marshals by the act of 1795. It is, in fact, the embodying of the whole mass of the population, under the command of a single individual, to accomplish by their forcible aid what could not be effected peaceably and by the ordinary means. It may properly be said to be a relick of those ages in which the laws could only be defended rather by physical than moral force, & in its origin, was conferred upon the Sheriffs of England, to enable them to defend their county against any of the king's enemies when they came into the land, as well as for the purpose of executing process. In early and less civilized times, it was intended to include "the aid and attendance of all knights and others who were bound to have harness." It includes the right of going with arms and military equipment, and embraces larger classes and greater masses of population than can be compelled by the laws of most of the States to perform military duty. If the principles of the common law are recognized in South Carolina, (and from this act it would seem they are,) the power of summoning the *posse comitatus* will compel, under the penalty of fine and imprisonment, every man over the age of fifteen, and able to travel, to turn out, at the call of the Sheriff, and with such weapons as may be necessary; and it may justify beating, and even killing, such as may resist. The use of the *posse comitatus* is, therefore, a direct application of force, and cannot be otherwise regarded than as the employment of the whole militia force of the country, and in an equally efficient form, under a different name. No proceeding which resorts to this power, to the extent contemplated by the act, can be properly denominated peaceable.

The act of South Carolina, however, does not rely altogether upon this forcible remedy. For even attempting to resist or disobey—though by only the ordinary officers of the customs,—the process of replevin, the collector and all concerned are subjected to a further proceeding, in the nature of a distress of their personal effects and are, moreover, made guilty of a misdemeanor, and liable to be punished by a fine of not less than one thousand, nor more than five thousand dollars, and to imprisonment, not exceeding two years, and not less than six months; and for even attempting to execute the orders of the court for retaking the property, the marshal, & all assisting, would be guilty of a misdemeanor, and liable to a fine, of not less than three thousand dollars, nor more than ten thousand, and to imprisonment, not exceeding two years, nor less than one; and in case the goods should be retaken under such process, it is made the absolute duty of the sheriff to retake them.

It is not to be supposed that, in the face of these penalties, aided by the powerful force of the country, which would doubtless be brought to sustain the State officers, either that the collector would retain the custody in the first instance, or that the marshal could summon sufficient aid to retake the property, pursuant to the order, or other process of the court.

It is, moreover, obvious that in this conflict between the powers of the officers of the United States and of the State (unless the latter be passively submitted to) the destruction to which the property of the officers of the customs would be exposed, the commission of actual violence, and the loss of lives, would be scarcely avoidable.

Under these circumstances, and the provisions of the acts of South Carolina, the execution of the laws is rendered impracticable even through the ordinary judicial tribunals of the United States. There would certainly be fewer difficulties and less opportunity of actual collision between the officers of the United States and of the State, & the collection of the revenue would be more effectually secured—if indeed it can be done in any other way—by placing the custom house beyond the immediate power of the county.

For this purpose it might be proper to provide that whenever, by any unlawful combination or obstruction in any State, or any port, it should become impracticable faithfully to collect the duties, the President of the United States should be authorised to alter and abolish such of the districts and ports of entry as should be necessary, and to establish the custom house at some secure place within some port or harbor of such State; and in such cases it should be the duty of the collector to reside at such place, and to detain all vessels and cargoes until the duties imposed by law should be properly secured or paid in cash, deducting interest; that in such cases it should be unlawful to take