Western Carolinian.

It is even wise to abstain from laws, which however wise and good in themselves, have the appearance 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 APRIL 8, 1833. [VOL XIII ... NO ...

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SENATE OF U. STATES.

SPEECH OF MR. CALHOUN,

OF SOUTH CAROLINA.

On the Bill further to provide for the collection of duties on Imports.

Mr. CALHOUN rose and addressed the Senate.

He knew not which, he said, was most objectionable, the provisions of the bill, or the temper in which its adoption had been urged. If the extraordinary powers with which the bill proposed to clothe the Executive, to the utter prostration of the Constitution, and the rights of the States, be calculated to impress our minds with alarm, at the rapid progress of despotism in our country, the zeal with which every circumstance, calculated to misrepresent or exaggerate the conduct of Carolina in the controversy, was seized on, with a view to excite hostility against her, but too plainly indicated the deep decay of that brotherly feeling which once existed between these States, and to which we are indebted for our beautiful Federal System. It was not his intention, he said, to advert to all these misrepresentations, but there were some so well calculated to mislead the and, as to the real character of the controversy, and hold up the State in a light so odious, that he did not feel himself justified in permitting them to pass unnoticed.

Among them, one of the most prominent was the false statement, that the object of S. Carolina was to exempt herself from her share of the public burthens, while she participated in the advantages of the Government. If the charge was true—if the State was capable of being actuated by such low and unworthy motives, neither as he considered her, he would not stand up on this floor and vindicate her conduct. Among her faults, and faults he would not deny she had, no one had ever yet charged her with that low and most sordid of vices—avarice.—Her conduct on all occasions had been marked with the very opposite quality. From the commencement of the revolution—from its first breaking out at Boston, till this hour, no State had been more profuse of its blood in the cause of the country: nor had any contributed so largely to the common treasury, in proportion to her wealth and population. She had in that proportion contributed more to the exports of the Union, on the exchange of which, with the rest of the world, the greater portion of the public burden had been levied, than any other State. No, the controversy was not such as has been stated; the State did not seek to participate in the advantages of the Government without contributing her full share to the public treasury. Her object was far different. A deep constitutional question lay at the bottom of the controversy. The real question at issue is, has the Government a right to impose burdens on the capital and industry of one portion of the country, not with a view to revenue, but to benefit another? and he must be permitted to say, that after the long and deep agitation of this controversy, it was with surprize, that he perceived so strong a disposition to misrepresent its real character. To correct the impression, which those misrepresentations were calculated to make, he would dwell on the point under consideration for a few moments longer.

The Federal Government has by an express provision of the Constitution, the right to lay duties on imports. The State has never denied, or resisted this right; nor even thought of so doing. The Government has, however, not been contented with exercising this power as she had a right to do, but had gone a step beyond it by laying imposts, not for revenue, but for protection. This, the State considered as an unconstitutional exercise of power—highly injurious and oppressive to her and the other staple States, and had accordingly met it with the most determined resistance. He did not intend to enter, at this time, into the argument, as to the unconstitutionality of the protective system. It was not necessary. It is sufficient that the power is no where granted; and that from the journals of the Convention which formed the Constitution, it would seem that it had been refused. In support of this, he might cite the statements of Luther Martin, which had been already referred to, to show that the Convention, so far from conferring the power on the Federal Government, had left to the States the right to impose duties on imports, with the express view of enabling the several States to protect their own manufactures. Notwithstanding this, Congress had assumed, without any warrant from the Constitution, the right of exercising this most important power, and had so exercised it, as to impose a ruinous burden on the labor and capital of the State, by which her resources were exhausted—the enjoyment of her citizens curtailed—the means of education contracted—and all her interests essentially and injuriously affected. We have been sneeringly told, that she was a small State; that her population did not much exceed half a million of souls; and that more than one half were not of the European race. The facts were so. He knew she could never be a great state; and that the only distinction to which she could aspire must be based on the moral and intellectual acquirements of her sons. To the developement of these, much of her attention had been directed; but this restrictive system, which had so unjustly exacted the proceeds of her labor to be bestowed on other sections, had so impaired the resources of the State, that if not speedily arrested, it would dry up the means of education, and with it deprive her of the only source through which she could aspire to distinction.

There was another misstatement as to the nature of the controversy, so frequently made in debate, and so well calculated to mislead, that he felt bound to notice it. It has been said, that South Carolina claims the right to annul the Constitution and laws of the United States; and to rebut this supposed claim, the gentleman from Virginia (Mr. Rives,) has gravely quoted the Constitution to prove, that the Constitution and the laws made in pursuance thereof are the supreme laws of the land; as if the State claimed the right to act contrary to this provision of the Constitution. Nothing can be more erroneous: her object is not to resist laws made in pursuance of the Constitution, but those made without its authority, and which encroach on her reserved powers. She claims not even the right of judging of the delegated powers; but of those that are reserved, and to resist the former when they encroach upon the latter. He would pause to illustrate this important point.

All must admit that there are delegated and reserved powers: and that the powers reserved, are reserved to the States respectively. The powers then of the Government are divided between the General and the State Governments; and the point immediately under consideration is, whether a State has any right to judge as to the extent of its reserved powers, and to defend them against the encroachments of the General Government. Without going deeply into this point, at this stage of the argument, or looking into the nature and origin of the Government, there was a simple view of the subject which he considered as conclusive. The very idea of a divided power, implied the right, on the part of the State, for which he contended. The expression was metaphorical when applied to power. Every one readily understands that the division of matter consists in the separation of the parts. But, in this sense, it was not applicable to power. What then is meant by a division of power? He could not conceive of a division, without giving an equal right to each to judge of the extent of the power allotted to each. Such right he held to be essential to the existence of a division; and that to give to either party the conclusive right of judging not only of the share allotted to it, but of that allotted to the other, was to annul the division, and would confer the whole power on the party vested with such right. But it is contended that the Constitution has conferred on the Supreme Court the right of judging between the States and the General Government.—Those who make this objection, overlooked, he conceived, an important provision of the Constitution. By turning to the 10th amended article of the Constitution, it will be seen that the reservation of power to the States is not only against the powers delegated to Congress, but against the United States themselves; and extends, of course, as well to the judiciary, as to the other departments of the Government.

The article provides that all powers, not delegated to the United States, or prohibited by it to the States, are reserved to the States respectively, or to the people.—This presents the inquiry, what powers are delegated to the United States? They may be classed under four divisions; First, those that are delegated by the States to each other, by virtue of which the Constitution may be altered or amended by three fourths of the States, when, without which, it would have required the unanimous vote of all. Next the powers conferred on Congress; then those on the President; and, finally, those on the Judicial Department; all of which are particularly enumerated in the parts of the Constitution which organizes the respective departments. The reservation of powers to the States is, as he has said, against the whole, and is as full against the judicial, as it is against the executive and legislative departments of the Government. It could not be claimed for the one, without claiming it for the whole, and without, in fact, annulling this important provision of the Constitution. Against this, as it appeared to him, conclusive view of the subject, it has been urged that this power is expressly conferred on the Supreme Court, by that portion of the Constitution which provides, that the judicial power shall extend to all cases in law and equity, arising under the Constitution, the laws of the United States, and treaties made under their authority. He believed the assertion to be utterly destitute of any foundation. It obviously was the intention of the Constitution simply to make the judicial power commensurate with the law-making and treaty-making powers; and to vest it with the right of applying the Constitution, the laws, and the treaties, to the cases which might arise under them; and not to make it the judges of the Constitution, the laws, and the treaties themselves. In fact, the power of applying the laws to the facts of the case, and deciding upon such application, constitutes in truth the judicial power. The distinction between such power, and that of judging of the laws, would be perfectly apparent when we advert to what is the acknowledged power of the Court in reference to treaties or compacts, between sovereigns. It was perfectly established, that the Courts have no right to judge of the violation of treaties; and that, in reference to them, their power is limited to the right of judging, simply of the violation of rights under them; and that the right of judging of infractions belongs exclusively to the parties themselves, and not to the Courts; of which we have an example in the French treaty, which was declared by Congress null and void, in consequence of its violation by the Government of France. Without such declaration, had a French citizen sued a citizen of this country under the treaty, the Court could have taken no cognizance of its infraction; nor after such a declaration, would it have heard any argument or proof going to show that the treaty had not been violated.

The declaration of itself was conclusive on the court. But it would be asked how the court obtained the powers to pronounce a law or treaty unconstitutional, when they come in conflict with that instrument? He did not deny that it possesses the right, but he could by no means concede that it was derived from the Constitution. It had its origin in the necessity of the case.—Where there were two or more rules established, one from a higher, the other from a lower authority, which might come into conflict, in applying them to a particular case, the judge could not avoid pronouncing in favor of the superior against the inferior. It was from this necessity, and this alone, that the power which is now set up to overrule the rights of the States, against an express provision of the Constitution, was derived. It had no other origin. That he had traced it to its true source, would be manifest from the fact, that it was a power which, so far from being conferred exclusively on the Supreme Court, as was insisted, belonged to every court—inferior and superior—State and General—and even to foreign courts.

But the Senator from Delaware, (Mr. Clayton) relies on the Journals of the Convention to prove that it was the intention of that body to confer on the Supreme Court the right of deciding in the last resort between a State and the General Government. He would not follow him through the journals, as he did not deem that to be necessary to refute his argument. It was sufficient for this purpose to state, that Mr. Rutledge reported a resolution providing expressly that the United States and the States might be parties before the Supreme Court. If this proposition had been adopted, he would ask the Senator whether this very controversy between the U. States and South Carolina might not have been brought before the Court? He would also ask him, whether it could be brought before the court as the Constitution now stands? If he answers the former in the affirmative, and the latter in the negative, as he must, then it is clear, his elaborate argument to the contrary notwithstanding, that the report of Mr. Rutledge was not in substance adopted as he contended; and that the Journals, so far from supporting, are in direct opposition to the position which he attempts to maintain. He might push the argument much further against the power of the court, but he did not deem it necessary, at least at this stage of the discussion. If the views which had already been presented be correct, and he did not see how they could be resisted, the conclusion was inevitable, that the reserved powers were reserved equally against every department of the Government, and as strongly against the judicial as against the other departments; and of course were left under the exclusive will of the States.

There still remained another misrepresentation of the conduct of the State, which has been made with the view of exciting odium. He alluded to the charge that South Carolina supported the Tariff of 1816, and was, therefore, responsible for the protective system. To determine the truth of this charge it becomes necessary to ascertain the real character of that law—whether it was a tariff for revenue or for protection; which presents the enquiry of what was the condition of the country at that period? The late war with Great Britain had just terminated, which, with the restrictive system that preceded it, had diverted a large amount of capital and industry from commerce to manufactures, particularly to the cotton and woollen branches. There was a debt at the same time of one hundred and thirty millions of dollars hanging over the country; and the heavy war duties were still in existence.—Under these circumstances the question was presented, to what point the duties ought to be reduced? That question involved another—at what time the debt ought to be paid? which was a question of policy, involving in its consideration all the circumstances connected with the then condition of the country. Among the most prominent arguments in favor of an early discharge of the debt, was that the high duties which it would require to effect it, would have at the same time the effect of sustaining the infant manufactures, which had been forced up under the circumstances to which he had adverted. This view of the subject had a decided influence in determining in favor of an early payment of the debt. The sinking fund was accordingly raised from seven to ten millions of dollars, with the provision to apply the surplus which might remain in the Treasury, as a contingent appropriation to that fund; and the duties were granted to meet this increased expenditure. It was thus that the policy and justice of protecting the large amount of capital and industry, which had been diverted by the measures of the Government, into new channels, as he had stated, was combined with the fiscal action of the Government, and which, while it secured a prompt payment of the debt, prevented the immense losses to the manufacturers, which would have followed a sudden and great reduction. Still, revenue was the main object, and protection but the incidental. The bill to reduce the duties was reported by the committee of Ways and Means, and not of Manufactures? and it proposed a heavy reduction on the then existing rate of duties. But what of itself, without other evidence, was decisive as to the character of the bill, is the fact that it fixed a much higher rate of duties on the unprotected than the protected article. He would enumerate a few leading articles only: woollen and cotton above the value of 25 cents on the square yard, though they were the leading objects of protection, were subject to a permanent duty of only 20 per cent Iron, another leading article among the protected, had a protection of not more than 9 per cent, as fixed by the act, and of but 15 as reported in the bill. These rates were all below the average duties as fixed in the act, including the protected, the unprotected, and even the free articles. Mr. C. said he had entered into some calculation in order to ascertain the average rate of duties in the act. There was some uncertainty in the data, but he felt assured that it was not less than 30 per cent. *ad valorem*; showing an excess of the average duties above that imposed on the protected articles enumerated, of more than 10 per cent., and thus clearly establishing the character of the measure, that it was for revenue and not protection.

Looking back, even at this distant period, with all our experience, he perceived but two errors in the act; the one in reference to iron, and the other the minimum duty on coarse cottons. As to the former he conceived that the bill, as reported proposed a duty relatively too low, which was still further reduced in its passage through Congress. The duty, at first, was fixed at seventy five cents the hundred weight; but, in the last stage of its passage, it was reduced by a sort of caprice, occasioned by an unfortunate motion, to forty five cts. This injustice was severely felt in Pennsylvania, the State, above all others, most productive of iron; and was the principal cause of that great reaction, which has since thrown her so decidedly on the side of the protective policy. The other error was that, as to coarse cottons, on which the duty was as much too high, as that on iron was too low. It introduced, besides, the obnoxious minimum principle, which has since been so mischievously extended; and to that extent, he was constrained, in candor, to acknowledge, as he wished to disguise nothing, the protective principle was recognized by the act of 1816. How this was overlooked, at the time, it is not in his power to say. It escaped his observation, which he can account for only on the ground that the principle was then new, and that his attention was engaged by another important subject; the question of the currency, then so urgent, and with which, as chairman of the committee, he was particularly charged. With these exceptions, he again repeated, he saw nothing in the bill to condemn. Yet, it was on the ground that the members from the State had voted for the bill, that the attempt is now made to hold up Carolina as responsible for the whole system of protection which has since followed, though she has resisted its progress in every stage. Was there ever greater injustice? And how was it to be accounted for, but as forming a part of that systematic misrepresentation and calumny, which has been directed for so many years, without interruption, against that gallant and generous State. And why has she thus been assailed? Merely because she abstained from taking any part in the Presidential canvass; believing that it had degenerated into a mere system of imposition on the people; controlled, almost exclusively, by those whose object it was to obtain the patronage of the Government; and that, without regard to principle or policy. Standing apart from what she considered a contest, in which the public had no interest, she has been assailed by both parties, with a fury altogether unparalelled; but which, pursuing the course which she believed liberty and duty required, she has met with a firmness equal to the fierceness of the assault. In the midst of this attack he had not escaped. With a view of inflicting a wound on the State, through him he had been held up as the author of the protective system; and one of its most strenuous advocates. It was with pain that he alluded to himself, on so deep and grave a subject as that now under discussion; and which, he sincerely believed, involved the liberty of the country. He now regretted, that under the sense of injustice, which the remarks of a Senator from Pennsylvania, (Mr. WILKINS,) excited for the moment, he had hastily given his pledge to defend himself against the charge which had been made in reference to his course in 1816; not that there would be any difficulty in repelling the charge, but because he felt a deep reluctance in turning the discussion, in any degree, from a subject of so much magnitude to one of so little importance as the consistency or inconsistency of himself, or any other individual, particularly in connexion with an event so long since passed. But for this hasty pledge, he would have remained silent as to his own course, on this occasion; and would have borne with patience and calmness, this, with the many other misrepresentations with which he had been so incessantly assailed for so many years.

The charge, that he was the author of the protective system, had no other foundation but that, he, in common with the almost entire south, gave his support to the tariff of 1816. It is true, that he advocated that measure, for which he might rest his defence, without taking any other, on the ground that it was a tariff for revenue, and not for protection; which he had established beyond the power of controversy. But his speech on the occasion had been brought in judgment against him by the Senator from Pennsylvania. He had since cast his eyes over the speech; and he would surprise, he had no doubt, the Senator, by telling him that, with the exception of some hasty and unguarded expressions, that he retracted nothing he had uttered on that occasion. He only asked that he might be judged in reference to it, in that spirit of fairness and justice which was due to the occasion; taking into consideration the circumstances under which it was delivered, and bearing in mind that the subject was a tariff for revenue and not for protection; for reducing and not raising the revenue. But, before he explained the then condition of the country, from which his main arguments in favor of the measure were drawn, it was nothing but an act of justice to himself, that he should state a fact in connexion with his speech that was necessary to explain what he had called hasty and unguarded expressions. His speech was an *impromptu*; and, as such, he apologized to the House, he appears from the speech as printed, for offering his sentiments on the question without having duly reflected on the subject. It was delivered at the request of a friend when he had not previously the least intention of addressing the House; he alluded to Samuel D. Ingham, then and now, as he was proud to say, a personal and political friend—a man, of talents and integrity—with a clear head, and firm and patriotic heart; then among the leading members of the House; in the palmy state of his political glory, though now for a moment depressed—depressed, did he say—no! it was his State which was depressed— Pennsylvania, which had deserted him under circumstances which, instead of depressing, ought to have elevated him in her estimation. He came to me, said Mr. C., when sitting at my desk writing, and said that the House was falling into some confusion, accompanying it with a remark, that I knew how difficult it was to rally so large a body when once broken on a tax bill, as had been experienced during the late war. Having a higher opinion of my influence than it deserved, he requested me to say something to prevent the confusion. I replied, said Mr. C., that I was at a loss what to say; that I had been busily engaged on the currency, which was then in great confusion, and which, as I had stated, had been placed particularly under my charge, as the chairman of the committee on that subject. He repeated his request, and the speech which the Senator from Pennsylvania has complimented so highly was the result.

He (Mr. C.) would ask, whether the facts stated ought not in, justice, to be borne in mind by those who would hold him accountable, not only for the general scope of the speech, but for every word and sentence which it contained. But, said Mr. C., in asking this question, it was not his intention, to repudiate the speech. All he asked was, that he might be judged by the rules which, in justice, belonged to the case. Let it be recollected that the bill was a revenue bill, and, of course, that it was constitutional. He need not remind the Senate, when the measure is constitutional, that all arguments calculated to show its beneficial operation may be legitimately pressed into service, without taking into consideration whether the subject, to which the arguments refer be within the sphere of the constitution or not. If, for instance, a question were before the body to lay a duty on bibles, and a motion be made to reduce the duty, or admit bibles duty free, who could doubt that the argument in favor of the motion that the increased circulation of the bibles would be in favor of the morality and religion of the country, would be strictly proper? Or, who would suppose that he who had adduced it had committed himself, on the constitutionality of taking the religion or morals of the country under the charge of the Federal government? Again: Suppose the question to be to raise the duty on silk, or any other article of luxury, & that it should be supported on the ground that it was an article mainly consumed by the rich and extravagant, could it be fairly inferred that, in the opinion of the speaker, Congress had the right to pass sumptuary laws? He only asked that those plain rules be applied to his argument on the tariff of 1816. They turned almost entirely on the benefits which manufactures conferred on the country in time of war: and which no one could doubt. The country had recently passed through such a state. The world was, at that time, deeply agitated by the effects of the great conflict, which had so long raged in Europe, and which no one could tell how soon again might return. Bonaparte had but recently been overthrown; the whole southern part of this continent was in a state of revolution, and was threatened with the interference of the Holy Alliance, which, had it occurred, must almost necessarily have involved this country in a most dangerous conflict. It was under these circumstances that he had delivered the speech, in which he urged the House, that, in the adjustment of the tariff, reference ought to be had to a state of war, as well as peace; and that its provisions ought to be fixed on the compound views of the two periods—making some sacrifice in peace in order that the less might be made in war. Was this principle false? and, in urging it, did he commit himself to that system of oppression since grown up, and which has for its object the enriching of one portion of the country at the expense of the other?

Mr. C. said, the plain rule in all such cases was, that when a measure was proposed, the first thing is to ascert in its constitutionality: and, that being ascertained, the next was its expediency, which last opened the whole field of argument for and against. Every topic may be urged calculated to prove it wise or unwise—so in a bill to raise imports. It must first be ascertained that the bill is based on the principles of revenue, and that the money raised is necessary for the wants of the country. These being ascertained, every argument, direct and indirect, may be fairly offered, which may go to show that, under all the circumstances, the provisions of the bill are proper or improper. Had this plain and simple rule been adhered to, we should never have heard of the complaint of Carolina. Her objection is not against the improper modification of a bill acknowledged to be for revenue; but that under the name of imposts, a power, essentially different from the taxing power, is exercised—partaking much more of the character of a penalty than a tax. Nothing is more common than that things closely resembling in appearance should widely and essentially differ in their character. Arsenic, for instance, resembles flour, yet one is deadly poison, and the other that which consitutes the staff of life. So, duties imposed, whether for revenue or protection, may be called imposts, though nominally and apparently the same, yet differ essentially in their real character.

Mr. C. said he should now return to his speech on the Tariff of 1816. To determine what his opinions really were on the subject of protection at that time, it would be proper to advert to his sentiments before and after that period. His sentiments preceding 1816, on this subject, are matter of record. He came into Congress in 1812, a devoted friend and supporter of the then administration; yet one of his first efforts was to brave the administration, by opposing its favorite measure the restrictive system—embargo, non intercourse, and all—and that upon the principle of free trade. The system remained in fashion for a time; but after the overthrow of Bonaparte, he (Mr. C.) had reported a bill from the Committee on Foreign Relations, to repeal the whole system of restrictive measures. While the bill was under consideration, a worthy man, then a member of the House, (Mr. McKim, of Baltimore,) moved to except the non-importation act, which he supported on the ground of encouragement to manufactures. He (Mr. C.) resisted the motion on the very grounds on which Mr. McKim supported it. He maintained that the manufacturers were then receiving too much protection, and warned its friends that the withdrawal of the protection which the war and the high duties then afforded, would cause great embarrassment; and that the true policy in the