LETTERS OF MR. MADISON.

From the National Intelligencer.

The history of the two Letters which we are about to publish is briefly as follows:

These Letters were not originally written for the Press, but are now authorized to be published, on the earnest representations of some of the friends of Mr. MADISON, to whom the publication appeared to be of great interest, and of deep importance to the Nation.

In the present state of our country these papers cannot but be highly acceptable to the public. The opinions of the distinguished author, one of the *framers* of the Constitution, if not the father of it, cannot but carry with them great weight. They are of the greater authority, from his having been appealed to by those who sustain doctrines opposite to those which he avows and defends. He stands, in this respect, as the arbiter between contending parties; and it is hoped that his lucid expositions will go far to convince many who have heretofore seriously questioned the power of Congress which he maintains.

In the calm philosophy of his retirement from the turmoil of the world, the judgment which he has deliberately formed, and now argumentatively sustains, cannot be suspected of being influenced by any political bias or casual excitement. His is the wisdom of age—the fruit of experience, plucked from the tree of knowledge.

LETTER I.

Montpelier, September 18, 1828.

DEAR SIR—Your late letter reminds me of our conversation on the constitutionality of the power in Congress to impose a tariff for the encouragement of manufactures; and of my promise to sketch the grounds of the confident opinion I had expressed, that it was among the powers vested in that body. I had not forgotten my promise, and had even begun the task of fulfilling it; but frequent interruptions, from other causes, being followed by a bilious indisposition, I have not been able sooner to comply with your request. The subjoined view of the subject might have been advantageously expanded; but I leave that improvement to your own reflections and researches.

The Constitution vests in Congress, expressly, "the power to lay and collect taxes, duties, imposts and excises;" and "the power to regulate trade."

That the former power, if not particularly expressed, would have been included in the latter as one of the objects of a general power to regulate trade, is not necessarily impugned by its being so expressed. Examples of this sort cannot sometimes be easily avoided, & are to be seen elsewhere in the Constitution. Thus the power "to define and punish offences against the law of nations," includes the power, afterwards particularly expressed, "to make rules concerning captures, &c. from offending neutrals." So also a power "to coin money" would doub less include that of "regulating its value," had not the latter power been expressly inserted. The term taxes, if standing *alone*, would certainly have included duties, imposts, and excises. In another clause it is said, "no tax or duties shall be laid on exports, &c." Here the two terms are used as synonymous. And in another clause, where it is said, "no State shall lay any imposts, or duties &c." the terms imposts & duties are synonymous. Pleonasms, tautologies, and the promiscuous use of terms and phrases, differing in their shades of meaning, (always to be expounded with reference to the context and under the control of the general character and manifest scope of the instrument in which they are found) are to be ascribed, sometimes to the purpose of greater caution; sometimes to the imperfections of language, and sometimes to the imperfection of man himself. In this view of the subject, it was quite natural, however certainly the general power to regulate trade might include a power to impose duties on it, not to omit it in a clause enumerating the several modes of revenue, authorised by the Constitution. In few cases could the "ex majori cautela" occur with more claim to respect.

Nor can it be inferred, that a power to regulate trade does not involve a power to tax it, from the distinction made in the original controversy with Great-Britain, between a power to regulate trade with the Colonies, and a power to tax them. A power to regulate trade between different parts of the Empire, was confessedly *necessary*; and was admitted to lie, as far as that was the case, in the British Parliament; the taxing part being at the same time denied to the Parliament, and asserted to be necessarily inherent in the Colonial Legislatures, as sufficient, and the only safe depositories of the taxing power. So difficult was it, nevertheless, to maintain the distinction in practice, that the ingredient of revenue was occasionally overlooked or disregarded in the British regulations, as in the duty on sugar and molasses imported into the Colonies. And it was fortunate that the attempt at an internal and direct tax, in the case of the Stamp Act, produced a radical examination of the subject before a regulation of trade with a view to revenue had grown into an established authority. One thing at least is certain, that the main and admitted object of the Parliamentary *regulations* of trade with the Colonies, was the encouragement of *manufactures* in Great-Britain.

But the present question is unconnected with the former relations between Great-Britain and her Colonies, which were of a peculiar, a complicated, and in several respects, of an undefined character. It is a simple question under the Constitution of the United States, whether "the power to regulate trade with foreign nations" as a distinct and substantive item in the enumerated powers embraces the object of encouraging by duties, restrictions and prohibitions, the manufactures and products of the country! And the affirmative must be inferred from the following considerations:

1. The meaning of the phrase "to regulate trade," must be sought in the general use of it; in other words, in the objects to which the power was generally understood to be applicable, when the phrase was inserted in the Constitution.

2. The power has been understood and used by all commercial and manufacturing nations, as embracing the object of encouraging manufactures. It is believed that not a single exception can be named.

3. This has been particularly the case with Great Britain, whose commercial vocabulary is the parent of ours. A primary object of her commercial regulations is well known to have been the protection and encouragement of her manufactures.

4. Such was understood to be a proper use of the power by the United States most prepared for manufacturing industry, whilst retaining the power over foreign trade.

5. Such a use of the power by Congress, accords with the intention and expectation of the States, in transferring the power over trade from themselves to the Government of the U. States. This was emphatically the case in the Eastern, the more manufacturing Members of the Confederacy. Hear the language held in the Convention of Massachusetts.

By Mr. Dawes, an advocate for the Constitution, it was observed, "Our manufactures are "another great subject which has received no en- "couragement by national duties on foreign ma- "nufactures, and they never can by any autho- "rity in the old Confederation. Again, "If "we wish to *encourage our own manufactures*, "to preserve our own commerce, to raise the "value of our own lands, we must give Con- "gress the powers in question."

By Mr. Widgery, an opponent: "All we hear "is, that the merchant and farmer will flourish, "and that the mechanic and tradesman are to "make their fortunes directly, if the Constitu- "tion goes down."

The Convention of Massachusetts was the only one in New England whose debates have been preserved. But it cannot be doubted that the sentiment there expressed was common to the other States in that quarter, more especially to Connecticut and Rhode Island, the most thickly peopled of all the States, and having, of course, their thoughts most turned to the subject of manufactures. A like interference may be confidently applied to New-Jersey, whose debates in Convention have not been preserved. In the populous and manufacturing State of Pennsylvania, a partial account only of the debates having been published, nothing certain is known of what passed in her Convention on this point—But ample evidence may be found elsewhere, that regulations of trade, for the encouragement of manufactures, were considered as within the power to be granted to the new Congress, as well as within the scope of the national policy. Of the States south of Pennsylvania, the only two in whose Conventions the debates have been preserved are Virginia and North-Carolina, and from these no adverse inferences can be drawn. Nor is there the slightest indication that either of the two States farthest South, whose debates in Convention, if preserved, have not been made public, viewed the encouragement of manufactures, as not within the general power over trade to be transferred to the Government of the United States.

6. If Congress have not the power, it is annihilated for the nation; a policy without example in any other nation, and not within the reason of the solitary one in our own. The example alluded to, is the prohibition of a tax on exports, which resulted from the apparent impossibility of raising, in that mode, a revenue from the States, proportioned to the ability to pay it—the ability of some being derived, in a great measure, not from their exports, but from their fisheries, from their freights, and from commerce at large, in some of its branches altogether external to the United States; the profits from all which, being invisible and intangible, would escape a tax, on exports. A tax on imports on the other hand, being a tax on consumption, which is in proportion to the ability of the consumers, whencesoever derived, was free from that inequality.

7. If revenue be the sole object of a legitimate impost, and the encouragement of domestic articles be not within the power of regulating trade, it would follow that no monopolizing or unequal regulations of foreign nations could be counteracted; that neither the staple articles of subsistence, nor the essential implements for the public safety, could, under any circumstances, be insured or fostered at home, by regulations of commerce, the usual and most convenient mode of providing for both; and that the American navigation, though the source of naval defence, of a cheapening competition in carrying our valuable and bulky articles to market, and of an independent carriage of them during foreign wars, when a foreign navigation might be withdrawn, must be at once abandoned, or speedily destroyed: it being evident that a tonnage duty in foreign ports against our vessels, and an exemption from such a duty in favor of foreign vessels, must have the inevitable effect of banishing ours from the ocean.

To assume a power to protect our navigation, and the cultivation and fabrication of all articles requisite for the public safety, as incident to the war power, would be a more latitudinary construction of the text of the Constitution, than to consider it as embraced by the specified power to regulate trade; a power which has been exercised by all nations for those purposes, and which effects those purposes with less of interference with the authority and conveniency of the States, than might result from internal and direct modes would be authorized, as far as deemed "unnecessary and proper," by considering the power as an incidental power.

8. That the encouragement of manufactures was an object of the power to regulate trade, is proved by the use made of the power for that object, in the first session of the First Congress under the Constitution; when among the members present were so many who had been members of the Federal Convention which framed the Constitution, and of the State Conventions which ratified it; each of these classes consisting also of members who had opposed and who had espoused, the Constitution in its actual form.—It does not appear from the printed proceedings of Congress on that occasion, that the power was denied by any of them. And it may be remarked, that Members from Virginia, in particular, as well of the anti-federal as the federal party, the names then distinguishing those who had opposed and those who had approved the Constitution, did not hesitate to propose duties and to suggest even prohibitions in favor of several articles of her production. By one a duty was proposed on mineral coal, in favor of the Virginia coal pits; by another, a duty on hemp was proposed, to encourage the growth of that article; and by a third, a prohibition even of foreign beef was suggested, as a measure of sound policy. [*See Lloyd's Debates.*]

A further evidence in support of the constitutional power to protect and foster manufactures by regulations of trade, an evidence that ought, of itself, to settle the question, is the uniform and practical sanction given to the power, by the General Government, for nearly forty years; with a concurrence or acquiescence of every State Government, throughout the same period; and it may be added, through all the vicissitudes of party which marked the period. No novel construction, however ingeniously devised, or however respectable and patriotic its patrons, can withstand the weight of such authorities, or the unbroken current of so prolonged and universal a practice. And well it is that this cannot be done, without the intervention of the same authority which made the Constitution. If it could be so done, there would be an end to that stability in Government, and in Laws, which is essential to good government and good laws, a stability, the want of which is the imputation which has at all times been levelled against Republicanism, with most effect, by its most dextrous adversaries. The imputation ought never, therefore, to be countenanced, by innovating constructions, without any plea of a precipitancy, or a paucity of the constructive precedents they oppose; without any appeal to material facts newly brought to light; and without any claim to a better knowledge of the original evils and inconveniences, for which remedies were needed, the very best keys to the true object and meaning of all laws and constitutions.

And may it not be fairly left to the unbiassed judgment of all men of experience and of intelligence, to decide, which is most to be relied on for a sound and safe test of the meaning of a Constitution, a uniform interpretation by all the successive authorities under it, commencing with its birth, and continued for a long period, through the varied state of political contests; or the opinion of every new Legislature, heated as it may be by the strife of parties—or warped, as often happens, by the eager pursuit of some favorite object—or carried away, possibly, by the powerful eloquence or captivating address of a few popular statesmen, themselves, perhaps, influenced by the same misleading causes? If the latter test is to prevail, every new legislative opinion might make a new Constitution, as the foot of every new Chancellor would make a new standard of measure.

It is seen, with no little surprise, that an attempt has been made, in a highly respectable quarter, and at length reduced to a resolution, formally proposed in Congress, to substitute, for the power of Congress to regulate trade so as to encourage manufactures, a power in the several States to do so, with the consent of that body; and this expedient is derived from a clause in the tenth section of article first of the Constitution, which says: "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties, and imposts, laid by any State on imports and exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

To say nothing of the clear indications in the Journal of the Convention of 1787, that the clause was intended merely to provide for expenses incurred by particular States, in their Inspection laws, and in such improvements as they might choose to make in their harbors and rivers, with the sanction of Congress—objects to which the reserved power has been applied, in several instances, at the request of Virginia and Georgia—how could it ever be imagined that any State would wish to tax its own trade for the encouragement of manufactures, if possessed of the authority, or could, in fact, do so, if wishing it?

A tax on imports would be a tax on its own consumption; and the net proceeds going, according to the clause, not into its own Treasury, but into the Treasury of the United States, the State would tax itself separately for the equal gain of all the other States; and as far as the manufactures, so encouraged, might succeed in ultimately increasing the stock in market, and lowering the price by competition, this advantage, also, procured at the sole expense of the State, would be common to all the others.

But the very suggestion of such an expedient to any State, would have an air of mockery, when its *experienced* impracticability is taken into view. No one, who recollects or recurs to the period when the power over commerce was in the individual States, and separate attempts were made to tax, or otherwise regulate it, need be told that the attempts were not only abortive, but, by demonstrating the necessity of general and uniform regulations, gave the original impulse to the constitutional reform which provided for such regulations.

To refer a State, therefore, to the exercise of a power, as reserved to her by the Constitution, the impossibility of exercising which was an inducement to adopt the Constitution, is, of all remedial devices, the last that ought to be brought forward. And what renders it the more extraordinary, is, that, as the tax on commerce, as far as it could be separately collected, instead of belonging to the Treasury of the State, as previous to the Constitution, would be a tribute to the United States, the State would be in a worse condition, after the adoption of the Constitution, than before, in reference to an important interest, the improvement of which was a particular object in adopting the Constitution.

Were Congress to make the proposed declaration of consent to State tariffs in favor of State manufactures, and the permitted attempts did not defeat themselves, what would be the situation of States deriving their foreign supplies through the ports of other States? It is evident that they might be compelled to pay, in their consumption of particular articles imported, a tax for the common treasury, not common to all the States, without having any manufacture or product of their own, to partake of the contemplated benefit.

Of the impracticability of separate regulations of trade, and the resulting necessity of general regulations, no State was more sensible than Virginia. She was accordingly among the most earnest for granting to Congress a power adequate to the object. On more occasions than one in the proceedings of her legislative councils it was recited "that the relative situation of the States had been found, on *trial*, to require *uniformity* in their commercial regulations as the *only* effectual policy for obtaining in the ports of foreign nations a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the United States; for preventing animosities which cannot fail to arise among the several States from the interference of partial and separate regulations; and for deriving from commerce such aids to the public revenue as it ought to contribute, &c."

During the delays and discouragements experienced in the attempts to invest Congress with the necessary powers, the State of Virginia made various trials of what could be done by her individual laws.—She ventured on duties and imposts as a source of revenue: Resolutions were passed at one time to encourage and protect her own navigation and ship building; and in consequence of complaints and petitions from Norfolk, Alexandria, and other places, against the monopolizing navigation laws of Great Britain, particularly in the trade *between the United States and the British West Indies*, she deliberated, with a purpose controlled only by the inefficacy of separate measures, on the experiment of forcing a reciprocity by prohibitory regulations of her own. [See Journal of House of Delegates in 1785.]

The effect of her separate attempts to raise revenue by duties on imports, soon appeared in representations from her merchants, that the commerce of the State was banished by them into other channels, especially of Maryland, where imports were less burdened than in Virginia. [See Do. for 1786.]

Such a tendency of separate regulations was indeed too manifest to escape anticipation. Among the projects prompted by the want of a Federal authority over commerce, was that of a concert first proposed on the part of Maryland for a uniformity of regulations between the two States, and Commissioners were appointed for that purpose. It was soon perceived, however, that the concurrence of Pennsylvania was as necessary to Maryland as of Maryland to Virginia, and the concurrence of Pennsylvania was accordingly invited. But Pennsylvania could no more concur without New-York than Mryland without Pennsylvania, nor New-York without the concurrence of Boston, &c.

These projects were superceded for the moment by that of the Convention at Annapolis in 1786, and forever by the Convention at Philadelphia in 1787, and the Constitution which was the fruit of it.

There is a passage in Mr. Necker's work on the finances of France which affords a signal illustration of the difficulty of collecting, in contiguous communities, indirect taxes, when not the same in all, by the violent means resorted to against smuggling from one to another of them. Previous to the late Revolutionary war in that country, the taxes were of very different rates in the different Provinces; particularly the tax on salt, which was high in the interior provinces and low in the maritime, and the tax on tobacco, which was very high in general, whilst in some of the provinces the use of the article was altogether free. The consequence was that the standing army of patrols against smuggling had swollen to the number of twenty-three thousand; the annual arrest of men, women, and children, engaged in smuggling, to five thousand five hundred and fifty; and the number annually arrested on account of salt and tobacco alone, to seventeen or eighteen hundred, more than three hundred of whom were consigned to the terrible punishment of the Gallies.

May it not be regarded as among the providential blessings to these States, that their geographical relations, multiplied as they will be by artificial channels of intercourse, give such additional force to the many obligations to cherish that union which alone secures their peace, their safety, and their prosperity! Apart from the more obvious and awful consequences of their entire separation into independent sovereignties, it is worthy of special consideration, that, divided from each other as they must be by narrow waters and territorial lines merely, the facility of surreptitious introductions of contraband articles, would defeat every attempt at revenue in the easy and indirect modes of impost and excise; so that whilst their expenditures would be necessarily and vastly increased by their new situation, they would, in providing for them, be limited to direct taxes on land or other property, to arbitrary assessments on invisible funds, and to the odious tax on persons.

You will observe that I have confined myself in what has been said, to the constitutionality and expediency of the power in Congress to encourage domestic products by regulations of commerce. In the exercise of the power, they are responsible to their constituents; whose right and duty it is in that as in all other cases, to bring their measures to the test of justice and of the general good.

With great esteem and cordial regard.

JAMES MADISON.

Jos. C. CABELL, Esq.

[The other of these Letters shall be published hereafter.]

FOR THE REGISTER.

INTERNAL IMPROVEMENT—RIGHT OF CONGRESS, &c. &c.

The account of the proceedings of the Senate, in Committee of the Whole, on Tuesday last, as given in the last 'Star,' is so deficient and inaccurate, that it is thought proper to submit the following statement:—

The Senate on that day resolved itself into a committee of the whole House, *Mr. Davidson* in the Chair, on the Resolution reported by the committee of the whole on the 12th inst. declaring, as the opinion of the Legislature, that "Congress have a right to create a fund for Internal Improvements and Education, to be apportioned among the States in proportion to their federal representation, and to be applied to such particular objects as each State may specify." This resolution was introduced by *Mr. Shober*, as an amendment to the resolutions offered by *Mr. Wellborn*, had been adopted by the committee of the whole, by a vote of 29 to 27. It was the object of the friends of the measure, in going again into a committee of the whole upon the subject, to amend and to alter the phraseology of the resolution. Accordingly as soon as the subject had been announced by the Chair, *Mr. Croom* moved to amend the resolution by striking out the whole of it, except the word *Resolved*, and to insert the following:

Resolved, by the Senate and House of Commons of the State of North-Carolina, That inasmuch as the Congress of the United States have claimed and exercised the right to appropriate funds for Internal Improvement, which claim is not likely to be abandoned, it is therefore the sense of this Legislature, that the best means of protecting the States from the partial and unjust exercise of the same, would be, that the funds thus to be employed shall be distributed among the several States in the ratio of their federal numbers, and be applied to the objects specified by the Legislatures of said States.

2. *Be it further resolved*, That our Senators in Congress are hereby instructed, and our Representatives requested, to use their influence to procure the adoption by Congress of measures to this effect, and that a copy of these resolutions be sent to each of our Senators and Representatives in Congress, and to the Governor of the United States.

The adoption of this amendment was advocated by Messrs. Croom, Shober, Wellborn and Miller, and opposed, in common with the original resolution, by Messrs. Speight of Greene, Hunt, Spaight of Craven, and by Mr. Brown, who proposed to amend the amendment by a proposition to amend the Constitution of the United States, so as to give to Congress the right to make Internal Improvements.

Mr. Speight of Greene said, that the amendment proposed by the gentleman from Lenoir, (Mr. Croom,) while it carried a specious outside, was in reality one of the most dangerous propositions that could be submitted to this Legislature. While it professed to aim at an apparent good, it conceded to Congress the dangerous power in question. He denied the right to instruct as well our Senators as our Representatives in Congress. He denied that there are in reality any surplus funds for Congress thus to bestow, and such, said he, would be the operation of the late tariff law, that the revenue must be greatly diminished in future. The whole country, he said, was on the eve of a general bankruptcy. Besides, he was unwilling that this Legislature should have the control of such funds, lest they should again become wild and speculative, and employing another Hamilton Fulton, dissipate these funds in vain and Quixotic attempts.

Mr. Spaight of Craven was opposed to the amendment. He considered it as an evasion of the question which ought to be met. He thought this course would enable Congress to buy up the States. He hoped that North-Carolina, hitherto so determined an opponent of this power would not now appear as an applicant for the bounty of the General Government.

Mr. Brown, in the course of his remarks, eulogized very highly the opinions and characters of Messrs. Jefferson and Madison, and expressed much contempt for those of "*Adams, Clay & Company.*"

Mr. Shober expressed himself satisfied with the amendment of the gentleman from Lenoir, and opposed to the amendment of the gentleman from Caswell, (Mr. Brown) as this would in reality give to Congress that dangerous power of which gentlemen complained so much.

Mr. Wellborn expressed himself in favor of the amendment offered by the gentleman from Lenoir. He observed that North-Carolina was one of the original thirteen States—that we have equally fought, we have equally bled, and ought equally to share the public bounty. But what is the fact? While other States are receiving millions, we scarcely get a few thousands.

Mr. Miller thought that the amendment of the gentleman from Lenoir steered clear of the Constitutional difficulty, and as such he would support it.

Mr. Croom said, that inasmuch as his amendment avoided the Constitutional question, he had hoped, that while it would prove more agreeable to the friends of the measure, it would also prove less objectionable to its opponents. But these gentlemen, it would appear, are not to be mitigated in regard to a matter on which they seem to entertain something like a superstitious horror. He did not agree with the gentleman from Greene in considering the U. States generally as on the verge of bankruptcy, though the situation of our own State is sufficiently embarrassing, and he read, as a counterpart to the gentleman's statement, the following passage from the late message of the President:

"The receipts of the existing year, greater by nearly two millions of dollars than had been foreseen, with a prospect of income for the next scarcely less abundant; the receipts of the last four years presenting a large and gratifying excess over those of the four years preceding; the foreign commerce of the country in a state of prosperity, from the improving condition of leading departments of industry at home, a consequent increase in the exportation of products; the increase of its tonnage, that foundation of naval strength, as well as commerce; the public debt annually and rapidly decreasing, under the application of surplus revenue to annual and rapidly increasing; the public revenue preserved at an equal value in every part of the Union, through the power of transfer promptly made by the Bank of the United States without expense or risk to the nation, and the currency maintained in a healthful state by the same Institution."

Twelve millions of the national debt, said he, have been recently paid off, and it is fair to presume, that in a few years the debt will be entirely extinguished. The question "how are the funds of the General Government to be disposed of?"