CAROLINA WATCHMAN.

BY HAMILTON C. JONES. SALISBURY, N. C. SATURDAY, JANUARY 26, 1833. VOL. 1—NO. 27

PROSPECTUS FOR THE CAROLINA WATCHMAN.

EDITED & PUBLISHED BY

HAMILTON C. JONES.

His object is to *instruct* and to *please*. He will therefore, with zeal and diligence set himself to this work, and he flatters himself that the great interests of Literature, Science, Politics, Agriculture and Commerce may be promoted by his labors. Good morals and refinement it shall be his ambition to uphold, and against the enemies of these, whether open or hidden, he will urge the utmost of his strength. Criticism, wit, anecdote and these other pungents that give zest to intellectual repasts he will endeavor to afford the *Watchman*. Believing in the patriotism, and just intentions of the President, and aware that undeserved blame can but hinder the proper action of Government, he will feel it his duty to resist the tide of obloquy which has been so freely poured forth against the Administration, and vindicate with energy its justifiable measures. He will be free however to sustain the continuance of the United States Bank, with such checks and modifications as experience may have shown to be necessary.

The Editor deems the excise of the power of making *Internal Improvements* by the general government, in the highest degree inexpedient: he believes that the distribution of large sums of money by Congress and the President, will produce jealousies, distrust and disaffection, and will thus weaken our union—to say nothing of the corrupting tendency of such legislation. Against a tariff which has for its object, the fostering of the interests of one section of our country at the expense of another, the best energies of this paper will be opposed.

Of the newly propogated doctrine of Nullification, is only necessary to say, that in all its phases and mutations, it is contrary to our most settled views of civil polity, and as such will be combated by the *Watchman*.

TERMS.

The Carolina Watchman, Is published every week at *Three Dollar* per year, in advance where the *subscribers* live Counties more than one hundred miles distant from Salisbury, and in all cases where the account is over one year standing, the price will be $4.

No subscription will be taken for less than one year: Advertising will be done a the usual rates. No subscription will be withdrawn until arrearages are paid, unless the *Editor chooses*.

Six subscribers paying the whole sum in advance, can have the *Watchman* at $2,50 for one year, and if advanced regularly, will be continued at the same rates afterwards.

All letters to the Editor must be *Post paid or* they will not be attended to.

Persons addressing the Editor on the business of this Office, will address him as Editor of the *Carolina Watchman*—Those that write on other business can direct to H. C. Jones.

N.B. All the subscriptions taken before the commencement of this paper, it will be remembered, become due on the publication of the first number.

THE WATCHMAN.

Salisbury.....Saturday, January, 26 1833

THE SENTIMENTS OF Mr. MADISON.

At the request of "several Republicans," we give the sentiments of Mr. *Madison*, on the all-absorbing questions that are now engaging public attention. The high source from which these opinions come as well as their intrinsic merit, entitle them to an attentive consideration. Mr. Madison was one of the body that originated the Constitution, and a member of the Virginia Convention that adopted it. He is one of those able Commentators, whose writings have thrown so much light on that instrument in the Federalist, and may be supposed to know as well as any other man in America the meaning of disputed passages. This publication is rendered the more proper, because some of Mr. M's writings are sometimes relied on by the disunion party as favoring their tenets.

Mr. Madison to Mr. E. Everett

'Montpelier, August, 1830.

'Dear Sir:

'I have duly received your letter, in which you refer to the "nullifying doctrine," advocated as a constitutional right, by some of our distinguished fellow-citizens; and to the proceedings of the Legislature in '98 and '99, as appealed to in behalf of that doctrine; and you express a wish for my ideas on those subjects.

'I am aware of the delicacy of the task in some respects, and the difficulty in every respect of doing full justice to it. But having, in more than one instance, complied with a like request from other friendly quarters, I do not decline a sketch of the views which I have been led to take of the doctrine in question, as well as some others connected with them; and of the grounds from which it appears, that the proceedings of Virginia have been misconceived by those who have appealed to them. In order to understand the true character of the Constitution of the United States, the error, not uncommon, must be avoided, of viewing it through the medium, either of a consolidated Government, or of a confederated Government, whilst it is neither the one nor the other; but a mixture of both. And having, in no model, the similitudes and analogies applicable to other systems of Government, it must, more than any other, be its own interpreter, according to its text and *the facts of the case*.

'From these it will be seen that the characteristic peculiarities of the Constitution are, 1, the mode of its formation; 2, the division of the supreme powers of Government between the States in their united capacity, and the States in their individual capacities.

'1. It was formed, not by the Governments of the component States, as the Federal Government for which it was substituted was formed. Nor was it formed by a majority of the people of the United States, as a single community, in the manner of a consolidated Government.

'It was formed by the States; that is, by the people in each of the States, acting in their highest sovereign capacity; and formed consequently by the same authority which formed the State Constitutions.

'Being thus derived from the same source as the Constitutions of the States, it has, within each State, the same authority as the Constitution of the State; and is as much a Constitution, in the strict sense of the term, within its prescribed sphere, as the Constitutions of the States are, within their respective spheres: but with this obvious and essential difference, that being a compact among the States in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the States individually, as the Constitution of a State may be at its individual will.

'2. And that it divides the supreme powers of Government, between the Government of the United States, and the Government of the individual States, is stamped on the face of the instrument; the powers of war and of taxation, of commerce and of treaties, and other enumerated powers vested in the Government of the United States, being of as high and sovereign a character, as any of the powers reserved to the State Governments.

'Nor is the Government of the United States, created by the Constitution, less a Government in the strict sense of the term, within the sphere of its powers, than the Governments created by the Constitutions of the States are, within their several spheres. It is like them organized into Legislative, Executive, and Judiciary Departments. It operates, like them directly on persons and things. And, like them, it has at command a physical force for executing the powers committed to it. The concurrent operation in certain cases, is one of the features marking the peculiarity of the system.

'Between these different Constitutional Governments, the one operating in all the States, the others operating separately in each, with the aggregate powers of Government divided between them, it could not escape attention, that controversies would arise concerning the boundaries of jurisdiction; and that some provision ought to be made for such occurences. A political system that does not provide for peaceable and authoritative termination of occurring controversies, would not be more than the shadow of a Government; the object and end of a real Government being, the substitution of law and order, for uncertainty, confusion, and violence.

'That, to have left a final decision, in such cases, to each of the States, then thirteen, and already twenty-four, could not fail to make the Constitution and laws of the United States different in different States, was obvious; and not less obvious, that this diversity of independent decisions must altogether distract the Government of the Union, and speedily put to an end to the Union itself. An uniform authority of the laws, is in itself a vital principle. Some of the most important laws could not be partially executed. They must be executed in all the States or they could be duly executed in none. An impost, or an excise, for example, if not in force in some States, would be defeated in others. It is well known that this was among the lessons of experience, which had a primary influence in bringing about the existing Constitution: A loss of its general authority would moreovor revive the exasperating questions between the State holding ports for foreign commerce, and the adjoining States without them; to which are now added all the inland States, necessarily carrying on their foreign commerce through other States.

'To have made the decisions under the authority of the individual States, co-ordinate, in all cases, with decisions under the authority of the United States, would unavoidably produce collisions incompatible with the peace of society, and with that regular and efficient administration, which is of the essence of free governments. Scenes could not be avoided, in which a ministerial officer of the United States, and the correspondent officer of an individual State, would have recontres in executing conflicting decrees; the result of which would depend on the comparative force of the local posses attending them; and that, a casualty depending on the political opinions and party feelings in different States.

'To have referred every clashing decision, under the two authorities, for a final decision, to the States as parties to the Constitution, would be attended with delays, with inconveniences, and with expenses, amounting to a prohibition of the expedient; not to mention its tendency to impair the salutary veneration for a system requiring such frequent interpositions, nor the delicate questions which might present themselves as to the form of stating the appeal, and as to the quorum for deciding it.

'To have trusted to negotiation for adjusting disputes between the Government of the United States and the State Governments, as between independent and separate sovereignties, would have lost sight altogether of a Constitution and Government for the Union, and opened a direct road from a failure of that resort, to the *ultima ratio* between nations wholly independent of and alien to each other. If the idea had its origin in the process of adjustment, between separate branches of the same Government, the analogy entirely fails. In the case of disputes between independent parts of the same Government, neither part being able to consumate its will, nor the Government to proceed without a concurrence of the parts, necessity brings about an accommodation. In disputes between a State Government, and the Government of the United States, the case is practically, as well as theoretically, different; each party possessing all the departments of an organized government, legislative, executive, and judiciary, and having each a physical force to support its pretensions. Although the issue of negotiation might sometimes avoid this extremity, how often would it happen among so many States, that an unaccommodating spirit in some would render that resource unavailing? A contrary supposition would not accord with a knowledge of human nature, or the evidence of our own political history.

'The Constitution, not relying on any of the preceding modifications, for its safe and successful operation, has expressly declared, on the one hand—1, "that the Constitution, and the laws made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the land; 2, that the Judges of every State shall be bound thereby, any thing in the Constitution and laws of any State to the contrary notwithstanding; 3, that the judicial power of the United States 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, &c."

'On the other hand, as a security of the rights and powers of the States, in their individual capacities, against an undue preponderance of the powers granted to the Government over them in their united capacity, the Constitution has relied on—1, the responsibility of the Senators and Representatives in the Legislature of the United States to the Legislatures and people of the States; 2, the responsibility of the President to the people of the United States; 3, the liability of the Executive and Judicial functionaries of the United States to impeachment by the Representatives of the people of the States, in one branch of the Legislature of the United States, and trial by the Representatives of the States, in the other branch: the State functionaries, Legislative, Executive, and Judicial, being, at the same time, in their appointment and responsibility, altogether independent of the agency of authority of the United States.

'How far this structure of the Government of the United States is adequate and safe for its objects, time alone can absolutely determine.—Experience seems to have shewn, that, whatever may grow out of future stages of our national career, there is, as yet, a sufficient control, in the popular will, over the Executive and Legislative Departments of the Government.—When the Alien and Sedition Laws were passed in contravention to the opinions & feelings of the community, the first elections that ensued put an end to them. And whatever may have been the character of other acts, in the judgment of many of us, it is but true, that they have generally accorded with the views of a majority of the States and of the people. At the present day, it seems well understood, that the laws which have created most dissatisfaction, have had a like sanction without doors; and that, whether continued, varied, or repealed, a like proof will be given of the sympathy and responsibility of the Representative body, to the constituent body. Indeed, the great complaint now is, against the results of this sympathy and responsibility, in the Legislative policy of the nation.

'With respect to the judicial power of the United States, and the authority of the Supreme Court in relation to the boundary of jurisdiction between the Federal and the State Governments, I may be permitted to refer to the thirty-ninth number of the "Federalist," for the light in which the subject was regarded by its writer, at the period when the Constitution was depending; and it is believed, that the same was the prevailing view then taken of it, that the same view has continued to prevail, and that it does so at this time, notwithstanding the eminent exceptions to it.

'But it is perfectly consistent with the concession of this power to the Supreme Court, in cases falling within the course of its functions, to maintain that the power has not always been rightly exercised. To say nothing of the period, happily a short one, when Judges in their seats did not abstain from intemperate and party harangues, equally at variance with their duty and their dignity; there have been occasional decisions from the bench, which have incurred serious and extensive disapprobation. Still it would seem, that, with but few exceptions, the course of the Judiciary has been hitherto sustained by the predominant sense of the Nation.

'Those who have denied or doubted the supremacy of the judicial power of the United States, and denounce at the same time a nullifying power in a state, seem not to have sufficiently adverted to the inefficiency of a supremacy in a law of the land, without a supremacy in the exposition and execution of the law: nor to the destruction of all equipoise between the Federal Government and the State Governments, if, whilst the functionaries of the Federal Government are directly elected by and responsible to the States, and the functionaries of the States are in their appointment and responsibility wholly independent of the United States, no constitutional control of any sort belonged to the United States over the States. Under such an organization, it is evident that it would be in the power of the States, individually, to pass unauthorized laws, and to carry them into complete effect, any thing in the constitution and laws of the United States to the contrary notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect, through the Legislative, Executive, or Judiciary organ of the State, would be equally fatal to the constituted relation between the two Governments.

'Should the provisions of the Constitution as here reviewed, be found not to secure the Government and rights of the States against usurpations and abuses on the part of the United States, the final resort, within the purview of the Constitution, lies in an amendment of the Constitution, according to a process applicable by the States.

'And in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses, rendering passive obedience and non-resistance a greater evil than resistance and revolution, there can remain but one resort, the last of all; an appeal from the cancelled obligation of the constitutional compact, to original rights and the law of self preservation. This is the *ultima ratio* under all Governments, whether consolidated, confederated, or a compound of both; and it cannot be doubted, that a single member of the Union, in the extremity supposed, but in that only, would have a right, as an extra and ultra constitutional right, to make the appeal.

'This brings us to the expedient lately advanced, which claims for a single State a right to appeal against an exercise of power by the Government of the United States decided by the State to be unconstitutional, to the parties to the constitutional compact; the decision of the State to have the effect of nullifying the act of the Government of the United States, unless the decision of the State be reversed by three fourths of the parties.

'The distinguished names and high authorities which appear to have asserted and given a practical scope to this doctrine, entitle it to a respect which it might be difficult otherwise to feel for it.

'If the doctrine were to be understood as requiring the three fourths of the States to sustain, instead of that proportion to reverse the decision of the appealing State, the decision to be without effect during the appeal, it would be sufficient to remark, that this extra-constitutional course might well give way to that marked out by the Constitution, which authorizes two thirds of the States to institute and three fourths to effectuate an amendment of the Constitution, establishing a permanent rule of the highest authority, in place of an irregular precedent of construction only.

'But it is understood that the nullifying doctrine imports that the decision of the State is to be presumed valid, and that it overrules the law of the United States, unless overruled by three fourths of the States.

'Can more be necessary to demonstrate the inadmissibility of such a doctrine, than it puts it in the power of the smallest fraction over one fourth of the United States, that is, of seven States out of twenty-four, to give the law and even the Constitution to seventeen States, each of the seventeen having, as parties to the Constitution, as equal right with each of the seven, to expound it, and to insist on the exposition? That the seven might, in particular instances be right, and the seventeen wrong, is more than possible. But to establish a positive and permanent rule giving such a power, to such a minority, over such a majority, would overturn the first principle of free government, and in practice necessarily overturn the Government itself.

'It is to be recollected that the Constitution was proposed to the people of the States as *a whole*, and unanimously adopted by the States as *a whole*, it being a part of the Constitution that not less than three fourths of the States should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases where peculiar interests were at stake, a proportion even of three fourths is distrusted, and unanimity required to make an alteration.

'When the Constitution was adopted as a whole it is certain that there were many parts, which, if separately proposed, would have been promptly rejected. It is far from impossible, that every part of a Constitution might be rejected by a majority, and yet taken together as a whole be unanimously accepted. Free Constitutions will rarely if ever be formed, without reciprocal concessions; without articles conditioned on and balancing each other. Is there a Constitution of a single State out of the twenty-four that would bear the experiment of having its component parts submitted to the people and separately decided on?

'What the fate of the Constitution of the United States would be if a small portion of the States could expunge parts of it particularly valued by a large majority' can have but one answer.

'The difficulty is not removed by limiting the doctrine to cases of construction. How many cases of that sort, involving cardinal provisions of the constitution, have occurred? How many may hereafter spring up? How many might be ingeniously created, if entitled to the privilege of a decision in the mode proposed?

'It is certain that the principle of that mode would not reach further than is contemplated. If a single State can of right require three-fourths of its co-States to overrule its exposition of the Constitution, because that proportion is authorised to amend it, would the plea be less plausible that, as the Constitution was unanimously established, it ought to be unanimously expounded?

'The reply to all such suggestions seems to be unavoidable and irresistible; that the Constitution is a compact, that its text is to be expounded according to the provisions for expounding it—making a part of the compact; and that none of the parties can rightfully renounce the expounding provision more than any other part. When such a right accrues, as may accrue, it must grow out of abuses of the compact releasing the sufferers from their fealty to it.

'In favor of the nullifying claim for the State, individually, it appears, as you have observed, that the proceedings of the Legislature of Virginia, in '98 and '99, against the Alien and Sedition Acts, are much dwelt upon.

'It may often happen, as experience proves, that erroneous constructions, not anticipated, may not be sufficiently guarded against, in the language used; and it is due to the distinguished individuals, who have misconceived the intention of those proceedings, to suppose that the meaning of the Legislature, though well comprehended at the time, may not however be obvious to those unacquainted with the contemporary indications and impressions.

'But it is believed that by keeping in view the distinction between the Government of the States, and the States in the sense in which they are parties to the constitution; between the rights of the parties, in their concurrent and in their individual capacities; between the several modes and objects of interposition against the abuses of power, and especially between interpositions within the purview of the Constitution, and interpositions appealing from the Constitution to the rights of nature paramount to all constitutions; with an intention, always of explanatory use, to the views and arguments which were combatted, the Resolutions of Virginia, as vindicated in the Report on them, will be found entitled to an exposition, showing a consistency in their parts, and an inconsistency of the whole with the doctrine under consideration.

'That the Legislature could not have intended to sanction such a doctrine, is to be inferred from the debates in the House of Delegates, and from the address of the two Houses to their constituents, on the subject of the Resolutions.—The tenor of the debates, which were ably conducted, and are understood to have been revised for the press by most, if not all, of the speakers, discloses no reference whatever to a constitutional right in an individual State to arrest by force the operation of a law of the United States.—Concert among the States for redress against the alien and sedition laws, as acts of usurped power was a leading sentiment, and the attainment of a concert, the immediate object of the course adopted by the Legislature, which was that of inviting the other States "to *concur* in declaring the acts to be unconstitutional, and to *co-operate*, by the necessary and proper measures, in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, and to the People."* That by the necessary and proper measures to be *concurrently* and *co-operatively* taken, were meant measures known to the Constitution, particularly the ordinary control of the People and Legislatures of the States, over the Government of the United States, cannot be doubted; and the interposition of this control, as the event showed, was equal to the occasion.

It is worthy of remark, and explanatory of the intentions of the Legislature, that the words "not law, but utterly null, void, and no force or effect." which had followed, in one of the Resolutions, the word "unconstitutional," were struck out by common consent. Though the words were in fact but synonymous with "unconstitutional," yet to guard against a misunderstanding of this phrase as more than declaratory of opinion, the word "unconstitutional" alone was retained, as not liable to that danger.

'The published Address of the Legislature to the People, their constituents, affords another conclusive evidence of its views. The Address warns them against the encroaching spirit of the General Government, argues the unconstitutionality of the alien and sedition acts, points to other instances in which the constitutional limits had been overleaped; dwells upon the dangerous mode of deriving power by implication; and in general presses the necessity of watching over the consolidating tendency of Federal policy.—But nothing is said that can be understood to look to means of maintaining the rights of the States, beyond the regular ones, within the forms of the Constitution.

'If any further lights on the subject could be needed, a very strong one is reflected in the answers to the Resolutions, by the States which pretested against them. The main objection of these, beyond a few general complaints of the inflamatory tendency of the Resolutions, was directed against the assumed authority of a State Legislature to declare a law of the United States unconstitutional, which they pronounced an unwarrantable interference with the exclusive jurisdiction of the Supreme Court of the United States. Had the Resolution been regarded as avowing and maintaining a right, in an individual State, to arrest by force the execution of a law of the United States, it must be presumed that it would have been a conspicuous object of their denunciation.

'With cordial salutations,

JAMES MADISON.

Mr. E. Everett.

* See the concluding Resolution of 1798.

Mr. Madison to Mr. Ingersoll.

Montpelier, June 25, 1831.

Dear Sir: I have received your friendly letter of 18th instant. The few lines which answered your former one, of the 21st of January last, were written in haste and in bad health; but they expressed, though without the attention in some respects due to the occasion, a dissent from the views of the President, as to a Bank of the United States, and a substitute for it; to which I cannot but adhere. The objections to the latter have appeared to me to preponderate greatly over the advantages expected from it, and the constitutionality of the former I still regard as sustained by the considerations to which I yielded in giving my assent to the existing Bank.

The charge of inconsistency between my objections to the constitutionality of such a bank in 1791, and my assent in 1817, turns on the question, how far legislative precedents, expounding the constitution, ought to guide succeeding Legislatures, and to overrule individual opinions.

Some obscurity has been thrown over the question, by confounding it with the respect due from one Legislature to laws passed by preceding Legislatures. But the two cases are essentially different. A constitution being derived from a superior authority, is to be expounded and obeyed, not controlled or varied, by the subordinate authority of a Legislature. A law, on the other hand, resting on no higher authority than that possessed by every successive Legislature, its expediency as well as its meaning is within the scope of the latter.

The case in question has its true analogy in the obligation arising from judicial expositions of the law on succeeding judges; the Constitution being a law to the Legislator, as the law is a rule of decision to the judge.

And why are judicial precedents, when formed on due discussion and consideration, and deliberately sanctioned by reviews and repetitions, regarded as of binding influence, or rather of authoritative force, in settling the meaning of a law? It must be answered, 1st Because it is a reasonable and established axiom, that the good of society requires, that the rules of conduct of its members should be certain and known, which would not be the case if any judge, disregarding the decisions of his predecessors, should vary the rule of law according to his individual interpretation of it. Misera est servitus ubi jus est aut vagum aut incognitum. 2d. Because an exposition of the law, publicly made, and repeatedly confirmed by the constituted authority, carries with it fair inference the sanction of those who, having made the law through their Legislative organ, appear, under such circumstances, to have determined its meaning through their judiciary organ.

Can it be of less consequence that the meaning of a Constitution should be fixed and known, than that the meaning of a law should be so? Can, indeed, a law be fixed in its meaning and operation, unless the Constitution be so? On the contrary, if a particular Legislature, differing in the construction of the Constitution from a series of preceding constructions, proceed to act on that difference, they not only introduce uncertainty and instability in the Constitution, but in the laws themselves; inasmuch as all laws preceding the new construction and inconsistent with it are not only annulled for the future, but virtually pronounced nullities from the beginning.

But is said that the Legislator, having sworn to support the Constitution, must support it in his own construction of it, however different from that put on it by his predecessors, or whatever be the consequences of the construction. And is not the judge under the same oath to support the law? yet has it ever been supposed that he was required, or at liberty to disregard all precedents, however solemnly repeated and regularly observed; and by giving effect to abstract and individual opinions, to disturb the established course of practice in the business of the community? Has the wisest and most concientious judge ever scrupled to acquiesce in decisions in which he has been overruled by the mature opinions of the majority of his colleagues, and subsequently to conform himself thereto, as to authoritative expositions of the law? And is it not reasonable that the same view of the official oath should be taken by a Legislator, acting under the Constitution, which is his guide, as is taken by a judge acting under the law, which is his?

There is in fact, and in common understanding, a necessity of regarding a course of practice, as above, characterized, in the light of a legal rule of interpreting a law: and there is a like necessity of considering it a constitutional rule of interpreting a constitution.

That there may be extraordinary and peculiar circumstances controlling the rule in both cases, may be admitted: but with such exceptions, the rule will force itself upon the practical judgment of the most ardent theorist. He will find it impossible to adhere to, and act officially upon his solitary opinions as to the meaning of the law or Constitution, in opposition to a construction reduced to practice, during a reasonable period of time: more especially where no prospect existed of a change of construction by the public or its agents. And if a reasonable period of time, marked with the usual sanctions would not bar the individual prerogative, there could be no limitation to its exercise, although the danger of error must increase with the increasing oblivion of explanatory circumstances, and with the continual changes of the import of words and phrases.

Let it then be left to the dicision of every intelligent and candid judge, which on the whole, is must to be relied on for the true and safe construction of a constitution—that which has the uniform sanction of successive legislative bodies through a period of years, and under the varied ascendency of parties; or that which depends upon the opinions of every new legistature, heated as it may be by the spirit of party, eager in the pursuit of some favorite object, or led astray by the eloquence and address of popular statesmen, themselves, perhaps, under the influence of the same misloading causes.

It was in conformity with the view here taken of the respect due to deliberate and reiterated precedents, that the Bank of the United States, though on the orgmal question held to be unconstitutional, received the executive signature in the year 1817. The act orginally established a bank had undergone ample discussions in its passage through the several branches of the government. It had been carried into execution throughout a period of twenty years, with annual legislative recognitions; in one instance, indeed, with a positive ratification of it into a new state; and with the entire acquiescence of all the local authorities, as well as of the nation at large to all of which may be added, a decreasing prospect of any change in the public opinion adverse to the constitutionality of such an institution. A veto from the executive under these circumstances, with an admission of the expediency and almost necessity of the measure, would have been a defiance of all the obligations derived from a course of precedents amounting to the requisite evidence of the national judgment and intention.

It has been contended that the authority of precedents was in that case invalidated by the consideration, that they proved only a respect for the stipulated duration of the Bank, with a toleration of it until the law should expire, and by the casting vote given in the Senate by the Vice President in the year 1811, against a bill for establishing a national Bank, the vote being expressly giv-

* No. 39. 'It is true, that in controversies, relating to the boundary between the two jurisdictions the tribunal which is ultimately to decide, is to be established under the General Government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the General, rather than under the local Governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combatted.