

TERMS.

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PRESIDENT'S MESSAGE.

ON SOUTH CAROLINA AFFAIRS.

On Wednesday last, the President transmitted to both Houses of Congress, the following Message.

Gentlemen of the Senate and House of Representatives:

In my annual message, at the commencement of your present session, I adverted to the opposition to the revenue laws in a particular quarter of the United States, which threatened, not merely to thwart their execution, but to endanger the integrity of the Union.

It is to be regretted, however, that these conditions, even if they had been differed in the same binding force, are so undefined, depend upon so many contingencies, and are so directly opposed to the known opinions and interests of the great body of the American people, as to be almost hopeless of attainment.

The period which constitutes the due time in which the terms proposed in the address are to be accepted, would seem to present scarcely less difficulty than the terms themselves.

In the uncertainty, then, which exists as to the duration of the ordinance, and of the enactments of the Executive of the United States, acting with a proper regard to all the great interests committed to his care, to treat those acts as absolute and unqualified. They are so, as far as his agency is concerned. He cannot either embrace, or lead to the performance of, the conditions.

By these various proceedings, therefore, the State of South Carolina has forced the General Government unavoidably to decide the new and dangerous alternative of permitting a State to obstruct the execution of the laws within its limits, or seeking its remedy in a threat of withdrawal from the Union.

a repeal of the whole system of revenue laws, and by abstaining from the collection of any duties and imposts whatever.

It is also true, that in his Message to the Legislature, when urging the necessity of providing means for securing their safety by ample resources for repelling force by force, the Governor of South Carolina observed that he cannot but think that on a calm and dispassionate review by Congress and the functioning of the General Government, of the true merits of this controversy, the arbitration by a call of a Convention of all the States, which we sincerely and anxiously seek and desire, will be according to us.

From the diversity of the terms indicated in these two important documents, taken in connection with the progress of recent events in that quarter, there is too much reason to apprehend, without in any manner doubting the intentions of those public functionaries, that neither the terms proposed in the address of the Convention, nor those alluded to in the Message of the Governor, would appease the excitement which has led to the present excess.

It will not escape attention that the conditions on which they said, in the Address of the Convention, they would be willing to acquiesce, from no part of the Ordinance. While this Ordinance bears all the solemnity of a fundamental law, it is to be authoritative, upon all within the limits of South Carolina, and is absolute and unconditional in its terms.

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and as solemnly announce their determination to do one or the other.

In my opinion, both purposes are to be regarded as revolutionary in their character and tendency, and subversive of the supremacy of the laws and of the integrity of the Union.

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

Again, all acts which may be alleged to transcend the constitutional power of Government, or which may be inconvenient or oppressive in their operation, the constitution itself has prescribed the modes of redress.

That a State, or any other great portion of the people, suffering under long and intolerable oppression, and having tried all constitutional remedies without the hope of redress, may have a natural right when their happiness can be otherwise secured, and when they can do so without greater injury to others, to absolve themselves from their obligation to the Government, and appeal to the last resort, need not, on the present occasion, be denied.

The existence of this right, however, must depend upon the causes which may justify its exercise. It is the ultima ratio, which presupposes that the proper appeals to all other means of redress have been made in good faith, and which can never be rightfully resorted to, unless it be unavoidable. It is not the right of the State, but of the individual, and of all the individuals in the State.

Without adverting to the particular theories to which the federal compact has given rise, both as to its formation and the parties to it, and without inquiring whether it be merely federal, or social, or national, it is sufficient that it must be admitted to be a compact, and to possess the obligations incident to a compact; to be a compact by which power is created on the one hand, and obedience exacted on the other; a compact freely, voluntarily, and solemnly entered into by the several States, and ratified by the people thereof respectively; a compact, by which the several States, and the people thereof, respectively, have bound themselves to each other and to the federal government, and by which the federal government is bound to the several States, and to every citizen of the United States.

These deductions plainly flow from the nature of the federal compact, which is one of limitations, not only upon the powers originally possessed by the parties thereto, but also upon those conferred on the Government and every department thereof. It will be freely conceded, that by the principles of our system, all power is vested in the people, but to be exercised in the mode, and subject to the checks, which the people themselves have prescribed.

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

However it may be alleged that a violation of the compact by the measures of the Government can affect the obligations of the parties, it cannot even be pretended that such violation can be predicated of those measures until all the constitutional remedies shall have been fully tried. If the Federal Government exercise powers not warranted by the Constitution, and immediately affecting individuals, it will scarcely be denied that the proper remedy is a recourse to the Judiciary. Such undoubtedly is the remedy for those who deem the acts of Congress trying duties on imports and providing

for their collection to be unconstitutional. The whole operation of such laws is upon the individuals importing the merchandise; a State is absolutely prohibited from laying imposts or duties on imports or exports without the consent of Congress, and cannot become a party under those laws without importing in her own name, or wrongfully interposing her authority against them.

By thus interposing, however, she cannot rightfully obstruct the operation of the laws upon individuals. For their disobedience to, or violation of the laws, the ordinary remedies through the judicial tribunals would remain. And, in a case where an individual should be prosecuted for any offence against the laws, he could not set up, in justification of his act, a law of a State, which, being unconstitutional, would therefore be regarded as null and void.

The law of a State cannot authorize the commission of a crime against the United States, or any other act which, according to the supreme law of the Union, would be otherwise lawful. And it is equally clear, that if there be any case in which a State, as such, is affected by the law beyond the scope of judicial power, the remedy consists in appeals to the people, either to effect a change in the representation, or to procure relief by an amendment of the Constitution.

But the measures of the Government are to be recognized as valid, and consequently supreme, until these remedies shall have been effectually tried, and any attempt to subvert those measures, or to render the laws subordinate to State authority, and afterwards to resort to constitutional redress, is worse than evasive. It would not be a proper resistance to the Government of unlimited powers, as it has been sometimes pretended, but unlawful opposition to the very limitations on which the harmonious action of the Government and all its parts absolutely depends.

South Carolina has appealed to none of these remedies, but, in effect, has defied them all. While threatening to separate from the Union, if any attempt be made to enforce the revenue laws otherwise than through the civil tribunals of the country, she has not only not appealed in her own name to those tribunals which the Constitution has provided for all cases in law or equity arising under the Constitution and laws of the United States, but has endeavored to frustrate their proper action on her citizens by drawing the cognizance of cases under the revenue laws to her own tribunals, specially prepared and fitted for the purpose of enforcing the acts passed by the State to obstruct those laws, and both Judges and Jurors of which will be bound, by the import of acts previously taken, to treat the Constitution and laws of the United States in this respect as a nullity.

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

Up to the present period no revenue has been raised beyond the necessary wants of the country and the authorized expenditures of the Government. And as soon as the burden of the public debt is removed, those charged with the administration have promptly recommended a corresponding reduction of revenue.

That this system, thus pursued, has resulted in no such oppression upon South Carolina, needs no other proof than the solemn and official declaration of the late chief magistrate of that state, in his address to the Legislature. In that he says, that the occurrences of the past year, in connection with our domestic concerns, are to be reviewed with sentiments of fervent gratitude to the great dispenser of human events that tributes of grateful acknowledgments are due for the various and multiplied blessings he has been pleased to bestow on our people; that abundant harvests in every one of the states have crowned the exertions of agricultural labor; that health, almost beyond former precedent, has blessed our homes; and that there is no less reason for thankfulness in surveying our social condition.

It would indeed be difficult to imagine oppression where, in the general condition of a people, there was equal cause for thankfulness, as for abundant harvests, and varied and multiplied blessings with which a kind providence has favored them. Independently of these considerations, it will not escape observation, that South Carolina still claims to be a component part of the Union; to participate in the national councils, and to share in the public benefits, without contributing to the public burdens—thus asserting the dangerous anomaly of continuing in an association without acknowledging any other obligation to its laws than what depends upon her own will.

In this posture of affairs, the duty of the government seems to be plain. It incalculates a recognition of that state as a member of the Union, and subject to its authority; a vindication of the just power of the constitution; the preservation of the integrity of the Union; and the

execution of the laws by all constitutional means.

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

The same instrument confers on Congress the power not merely to lay and collect taxes, duties, imposts and excises; to pay the debts and provide for the common defence and general welfare; but to make all laws which shall be necessary and proper for carrying into effect the foregoing powers, and all other powers vested by the constitution in the government of the United States or in any department or office thereof; and also to provide for calling forth the militia for executing the laws of the Union.

In all cases similar to the present, the duties of the government become the measure of its powers; and whenever it fails to exercise a power necessary and proper to the discharge of the duty prescribed by the Constitution, it violates the public trusts not less than it would in transcending its proper limits. To refrain, therefore, from the high and solemn duties thus enjoined, however painful the performance may be, and thereby tacitly permit the rightful authority of the government to be contemned, and its laws obstructed by a single state, would neither comport with its own safety, nor the rights of the great body of the American people.

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

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

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

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

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

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

laws of the Union, and enforces those only of South Carolina; and, thus deprived of the function essential to the judicial character, of inquiring into the validity of the law, and the right of the matter, becomes merely ministerial instruments in aid of the concerted obstruction of the laws of the Union.

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

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

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

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

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

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

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

For this purpose, it might be proper to provide that, whenever, by any unlawful combination, or of obstruction, in any State, or in any port, it should become impracticable faithfully to collect the duties, the President of the United States should be authorized to alter and abolish such of the duties and ports of entry as should be necessary, and to establish the custom house at some secure place within the same port or harbor of such State; and, on such case, at such place, and to detain all vessels and cargoes until the duties imposed by law be properly secured, or paid in cash, deducting interest; that, in such cases, it should be unlawful to take the vessel and cargo from the custody of the proper officer of the customs, unless by process from the ordinary judicial tribunals of the United States; and that, in case of an attempt otherwise to take the property by force, or to resist, or to obstruct the officers of the customs, it should be lawful to protect the possession of the

property of the officers of the customs, it should be lawful to protect the possession of the