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POLITICAL.

STATE RIGHTS.

Important Document.—We have been permitted to lay before our readers the following important extract from a letter, written to the Hon. Warren R. Davis by Mr. Jefferson's grandson and executor:—*Telegraph.*

Richmond, March 8, 1832.

Dear Sir—Last spring, when I had the pleasure of meeting you in Washington, you enquired of me if I had any evidence in my possession which would show whether Mr. Jefferson was, or was not, the author of the resolutions offered by Mr. Breckenridge in the Kentucky Legislature in '98. I have examined and compared the MSS. in my possession with both the resolutions offered by Nicholas and Breckenridge; the first I find almost verbatim, as far as they go; the second, in part the ideas, but not the language. The MSS. contains nine resolutions. Nicholas adopted seven entire and part of the eighth. Breckenridge took the ideas in part of the omitted resolutions. I send you that omitted by Nicholas, you can best determine how far it concurs with B.'s.

Resolution eighth, after the word, "no body of men on earth," add, "that in cases of the abuse of the delegated power, the members of the general government being chosen by the people, a change by the people would be the constitutional remedy; but where powers are assumed, which have not been delegated, a nullification of the act is the rightful remedy: that every State has a natural right in cases not within the compact, [*cases non fœderis*] to nullify, of their own authority, all assumptions of power by others within their limits; that, without this right, they would be under the dominion, absolute and unlimited, of whomsoever might exercise this right of judgment for them: that, nevertheless, this commonwealth, from motives of regard and respect for its co-States, has wished to communicate with them on the subject: that with them alone it is proper to communicate, they alone being parties to the compact, and solely authorized to judge in the last resort of the power exercised under it. Congress being not a party, but merely the creature of the compact, and subject, as to its assumptions of power to the final judgment of those by whom, and for whose use itself and its powers were all created and modified."

Again, towards the conclusion of the same resolution, after the words "and will each" (add) "take measures of its own for providing that neither these acts, nor any others of the General Government, not plainly and intentionally authorized by the Constitution, shall be exercised within their respective territories."

"9. *Resolved*, That the said committee be authorized to communicate, by writing or personal conferences, at any time or place whatever, with any person or persons who may be appointed by any one or more of the co-States, to correspond or confer with them, and that they lay their proceedings before the next session of Assembly."

The above will give the whole of the MSS. omitted in the first Kentucky resolutions. The variations in those resolutions are merely such as would occur in copying or printing. You will perceive the sentence containing the word "nullification," nearly resembling an expression in the second resolution, and that many of the ideas are the same.

Mr. Madison's opinions.—A correspondent of the Telegraph says: It may not be improper, perhaps, at the present moment, when the decision of the Supreme Court, in the case of the Missionaries *vs.* the State of Georgia, is being published, that publication should be given to the following extracts from the report of Mr. Madison, in the year 1799, upon the Resolutions of the Legislature of Virginia of the preceding year. As that Report was made only ten years after the organization of the present Government, and Mr. Madison being generally regarded as the Father of the Constitution, it may be considered as a contemporary exposition of that instrument.

In commenting upon the 3d resolution, Mr. Madison says:

"It appears to your Committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that, where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges, in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority, of the Constitution, that it rests on this legitimate and solid foundation. The States, then, being the parties to the constitutional compact, and in their sovereign capacity, it follows, of necessity, that there can be no tribunal above their authority, to decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition.

"But it is objected that the judicial authority is to be regarded as the sole expositer of the Constitution in the last resort; and it may be asked for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner?

"On this objection it might be observed, *first:* that there may be instances of usurped power, which the forms of the Constitution would never draw within the control of the judicial department: *secondly*, that if the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer is, that the resolution of the General Assembly relates to those great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the *judicial department* also, may exercise or sanction dangerous powers beyond the grant of the Constitution; and consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority, as well as by another; by the judiciary, as well as by the executive, or the legislative.

"However true, therefore, it may be that the judicial department is, in all questions submitted to it by the forms of the Constitution to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the Government; not in relation to the rights of the parties to the compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the power delegating it; and the concurrence of this department with the others, in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very Constitution, which all were instituted to preserve."

☞The National Gazette recently asserted that "there is a power in the Supreme Court, fully adequate and unequivocally expressed," to determine disputes between the different members of this Confederacy—the Banner of the Constitution, in opposition to this doctrine, quoted several eminent authorities. We extract the following:

John Marshall, now Chief Justice of the U. States, whilst a member of Congress, and pending the case of Jonathan Robibns, expressed himself as follows:

"By extending the judicial power to *all cases in law and equity*, the Constitution has never been understood to confer on that department any *political power* whatever. To come within this description, a question must assume a legal form, for forensic litigation. There must be parties to come into court, who can be reached by its process, and bound by its power; whose rights admit of ultimate decision by a tribunal to which they are bound to submit."—[Bee's Reports, p. 278.

John Quincy Adams, late President of the United States, in his Message to Congress, of December 1828, uses the following language:

"The United States of America, and the people of each State of which they are composed, are each of them sovereign powers. The legislative authority of the whole is exercised by Congress, under authority granted them in the common Constitution. The legislative power of each State is exercised by Assemblies, deriving their authority from the Constitution of the State. Each is sovereign within its own province. The disposition of power between them pre-supposes that these authorities will move in harmony with each other. The members of the State and General Governments are all under oath to support both, and allegiance is due to the one and to the other. The case of a conflict between these two powers has not been supposed; *nor has any provision been made for it in our institutions;* as a virtuous nation of ancient times existed more than five centuries without a law for the punishment of parricide."

The next authority we shall cite is that of the late *Chief Justice Tilghman*, of Pennsylvania, one of the most eminent lawyers of that State. In the celebrated case of Gideon Olmstead, in the year 1809, in which a conflict arose, relative to the powers of the Federal and State Governments, that led to the calling out of a body of militia, by the Governor of the latter, to resist the execution of a process issued by the Federal Court, the Chief Justice closed his decision in the following language:

"The counsel of Olmstead have brought forward a preliminary question, whether I have a right to discharge the prisoner, even if I should be *clearly* of opinion that the District Court had no jurisdiction. I am aware of the magnitude of this question, and have given it the consideration it deserves. My opinion is, with great deference to those who may entertain different sentiments, that, in the case supposed, I should have a right, and it would be my *duty*, to discharge the prisoner, This right flows from the nature of our Federal Constitution, which leaves to the several States absolute supremacy in all cases in which it is not yielded to the United States. This sufficiently appears from the general scope and spirit of the instrument. The United States have no power legislative or judicial, except what is derived from the Constitution. When these powers are clearly exceeded, the independence of the States and the peace of the Union demand that the State Courts should, in cases brought properly before them, give redress. There is no law which forbids it—their oath of office exacts it—and if they do not, what course is to be taken? We must be reduced to the miserable extremity of opposing force to force, and arraying citizen against citizen: for it is in vain to expect that the States will submit to manifest and flagrant *usurpations of power* by the United States, if (which God forbid) they ever attempt them. If Congress should pass a bill of attainder, or lay a tax or duty on articles exported from any State, (from both which powers they are expressly excluded) such laws would be null and void, and all persons who acted under them would be subject to actions in the State courts. If a court of the U. States should enter a judgment against a State which refused to appear in an action brought against it by a citizen of another State, or by a foreign State, such judgment would be void, and all persons who act under it would be trespassers. These cases appear so plain, that they will hardly be disputed. It is only in considering *donbtful* cases that our minds feel a difficulty in deciding. But if, in the plainest case which can be considered, the State courts may declare a judgment (of the United States courts) to be void, the *principle* is established."

The fourth authority we shall cite is that of the late *Chief Justice McKean*. In the case of the Commonwealth *vs.* Cobbett, in December term, 1798, the Court, in giving its opinion, employed the following language:

"Previous to the delivery of my opinion in a cause of such importance as to the consequences of the decision, I will make a few preliminary observations on the Constitution and laws of the United States of America.

"Our system of government seems to me to differ, in form and spirit, from all other governments that have heretofore existed in the world. It is, as to some particulars, National—in others, Federal—and in all the residue, Territorial, or in districts called States.

"The divisions of power between the National, Federal, and State governments, (all derived from the same source, the authority of the people,) must be collected from the Constitution of the United States. Before it was adopted, the several States had absolute and unlimited sovereignty within their respective boundaries; all the powers, legislative, executive, and judicial, excepting those granted to Congress under the old Constitution. They now enjoy them all, excepting such as are granted to the government of the United States by the present instrument, and the adopted amendments, which are for particular purposes only. The government of the United States forms a part of the government of each State; its jurisdiction extends to the providing for the common defence against exterior injuries and violence, the regulation of commerce, and other matters specially enumerated in the Constitution. All other powers remain in the individual States, comprehending the interior and other concerns. These, combined, form one complete government. Should there be any defect in this form of government, or any collision occur, it cannot be remedied by the sole act of the Congress, or of a State; the people must be resorted to, for enlargement or modification. If a State should differ with the United States about the construction of them, *there is no common umpire but the people*, who should adjust the affair by making amendments in the constitutional way, or suffer from the defect. In such a case, the Constitution of the United States is Federal; it is a league, or treaty, made by the individual States as one party, and all the States as another party. When two nations differ about the meaning of any clause, sentence, or word, in a treaty, neither has an exclusive right to decide it; they endeavor to adjust the matter