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LEGISLATURE OF N. C.

In Senate, Dec. 27, 1832.

The report of the select committee to whom was referred the communication from the Governor of South Carolina, enclosing an ordinance of that State, and sundry documents, on the subject of Nullification, being under consideration, Mr. Montgomery, of Hertford, moved to strike out the 4th resolution, which motion Mr. Bailey, of Pasquotank, supported in an eloquent speech of some length; when Mr. Leak, the Senator from Richmond county, rose and spoke as follows:

I am indeed sorry, Mr. Chairman, that the subject of Nullification should have been broached; for, sir, I had fondly hoped, from the course of certain gentlemen on the floor, that this committee would have been saved the trouble, and, I may add, the unpleasantness of discussing it. For I already discover that much warmth is likely to accompany it; which, I fear, may convert the hall of legislation into one of angry feelings and bitter recriminations; that it may impair that harmony and good fellowship which has, thus far, characterised our body, and leave us to deplore, after the excitement shall have passed by, that we had not given, in our places, a silent vote on the occasion. For, sir, do we believe that if we had the persuasiveness of a Chesterfield, or the eloquence of a Patrick Henry, or could we unite the study of philosophy with the aid of rhetoric, that what we may now say should be calculated to change one Senator in the vote which will, this day, be recorded? No, sir. As well might we attempt, by argument, to remove the columns which support the dome of this edifice, as to attempt such. We have all come here with fixed and made up opinions on this doctrine; and we are steadfast and immoveable. Nothing, therefore, which we may say—nothing which we *can* say—can have effect; and, sir, had not the subject been introduced, I would not have troubled the House with a single remark; but, sir, as the Senator from Pasquotank has given us reasons why the motion should prevail, I ask the attention and indulgence of the committee for a few moments in reply.

I have always, Mr. Chairman, been opposed (and I now take occasion to say it) to the introduction of political resolutions in a legislative body; for I have ever viewed them as extraneous to its object, and foreign to its formation, and, of course, not coming within the legitimate sphere of legislative action. But, sir, I do think that, if ever a subject, from the magnitude of its character and the awful consequences which attach to the furtherance of the doctrine, formed an exception to the general rule, and justified a legislative expression of opinion, that subject is the present.

We should, Mr. Chairman, meet it calmly, coolly and dispassionately, recollecting, in the elegant language of the report accompanying the resolutions which are now under discussion, "that honest differences of opinion will arise; manly ingenuousness forbids their concealment; and magnanimity will appreciate their expression, and receive it with forbearance." But, sir, should they not be so received, should those sentiments which ought to find a hearty response in the bosom of every honorable man be suffered to pass by without due consideration? For one, I am not to be driven from my duty by a squeamish sensibility that what we may now do, might possibly offend our brethren, and, in the language of the gentleman from Pasquotank, goad them on. For, sir, let those brethren recollect that their precipitancy is about to jeopardise a joint inheritance; that their rashness has gathered over our heads an angry cloud, which may yet burst and scatter wide-spread desolation in its wake; that it may, sir, prostrate our last best hope—that which cost much blood and treasure. Recollecting these things, sir, let them be silent, when we come forth, as I trust we shall this day, the advocates of these resolutions, which speak forth, as I honestly believe they do, the sentiments of nineteen-twentieths of our constituents; and, sir, this is not the time, this is not the day, nor this the hour when we should be deterred from our duty by rigid adherence to courtly etiquette. I have not come here, Mr. Chairman, for the purpose of burning the torch of Electo. To me, sir, there is neither lustre in its fires, nor cheering warmth in its blazes; and had not remarks escaped the lips of my honorable friend from Pasquotank, mine, in all probability, would not have been opened. But, sir, after having listened to the animated strain of the eloquent gentleman from Pasquotank, supporting and sustaining South Carolina Nullification as both constitutional and *peaceful;* after having heard it advanced on this floor that it was the only conservative principle, I should be guilty of an unpardonable breach of duty to the people of Richmond county, were I to sit still—nay, sir, I should skulk from a duty which I owe this House, as an humble member of the able committee that reported the resolutions, were I not to stand forth their advocate.

Mr. Chairman, we were correctly told by the Senator from Pasquotank, that we should weigh well what we are now about doing; that we should look into the character of Nullification, see what it is and what it is not, before we proceed to give an opinion on it; and to ponder long before we condemn the cause of a sister State. Sir, I, for one, agree with the gentleman, and admit that, in an over-heated zeal to put down Nullification, there is danger, and great danger in running into the opposite extreme of consolidation. Yes, sir, "to avoid Scylla, you strike on Charybdis," which is equally to be dreaded; and I am free to declare that, sooner than live in a government of unlimited powers, I would take Nullification with all its attendants of revolution, internal commotion and civil war. Yes, sir, I would take it, because it is revolution itself. But this is not our alternative. I thank God that we are not yet driven to this necessity; and, as much as I dislike the principle on which the present Tariff is predicated; as much as I believe it an unwarrantable assumption of power, as an indirect attempt to control the domestic industry of the country, and to raise up the manufacturing at the expense of the agricultural interests; yet, sir, I had rather bear with it for a season than to hazard our all. For I think I behold in the last modification an entering wedge, which will ultimately fritter it down to a revenue standard. Am I not, sir, borne out in these remarks? Look, sir, at the recent message of your President; look, sir, at the report of the Secretary of the Treasury; and then say we are hoping against hope. Shall we, then, just as twilight is appearing in the east, which will be followed by that luminary of free trade, whose genial ray shall make the South "blossom as the rose," shall we, I say, peril our ALL, and that, too, for a political abstraction, which, in the language of one of South Carolina's distinguished sons, is "either so subtle or so paradoxical as to mock the understanding?" Shall we, sir, indulge in following the speculations of liberty in the *abstract*, when there is danger of refining it away in the *substance?* No, sir. Forbid it, ye spirits of '76! forbid that your sons should so lightly appreciate your valorous achievements, and rush heedlessly on to ruin!

But, to return to the subject, we have been asked to consider the doctrine of Nullification, what it imports and what it means. Yes, sir, and I will do so. The fourth resolution, which is now proposed to be striken out, declares "that the doctrine of Nullification avowed by South Carolina, and lately promulgated in an ordinance, is revolutionary in its tendency, subversive of the Constitution of the United States, and leads to a dissolution of the Union." What, sir, I would ask, is there in this which is calculated to give rise to so much feeling? What in this the least exceptionable to the most fastidious sensibility? Is the unconstitutionality, or the revolutionary character of the doctrine denied? I ask you to listen to its definition; for whenever a term is used in science or politics, we go to the meaning which attaches thereto, before we can form a just estimate of it, before we can subscribe to what it imports. So it is with this new-fangled hotch-pot of a doctrine; and for its meaning, we will go to the modern political vocabulary of John C. Calhoun. In this, sir, we have his own words. [Here Mr. L. read from Mr. Calhoun's expose of July, 1831, in a letter to the editor of the Pendleton Messenger.]

> Sir, said Mr. Calhoun, speaking of Nullification, "so far from extreme danger, I hold that there never was a free State in which this great conservative principle, indispensible in all, was ever so safely lodged; in others, when the co-states representing the dissimilar and conflicting interests of the community, came into contact, the only alternative was compromise, submission, force. Not so in ours. Should the general government and a State come into contact, we have a higher remedy. The power which called the general government into existence, which gave it all its authority, and can enlarge, contract, or abolish the power at pleasure, may be invoked. The States themselves may be appealed to; three-fourths of which, in fact, form a power whose decrees are the Constitution itself, and whose voice silences discontent."

Here, then, Mr. Chairman, you have "ex cathedra," from the very fountain head, that the very *basis* of this doctrine is, that there is a power *under* the provisions of the Constitution to decide points in controversy between the States and the United States; and, therefore, that the measure was a peaceful one. When we ask the advocates of Nullification to lay their finger upon the article or clause conferring or giving the power, they point to the fifth article, which speaks of amendments; and when we turn to see what that contains, we see it refers to amendments solely, and cannot, by the most forced construction, be tortured into a *power* of construction. Sir, need I say, that to amend an instrument and to construe an instrument, are distinct and dissimilar? Amendment means substitution, the supplying of something which is new; but, on the other hand, to construe an instrument, you are limited down to its letter; you have to decide *what the instrument means*—what it is, and what it ought to be. They are, sir, antipodes, diametrically dissimilar. The east is not farther from the west than amendment is from construction. They differ "toto cœlo;" and yet, Mr. Chairman, we are told by the advocates of this modern doctrine, that, under the fifth article of the Constitution, you may make up an issue, and tender it to the general government; and that the general government will be compelled to submit the question touching its infraction to the States in Convention; and that unless three-fourths say that the nullified act is constitutional, that the law nullified is null and void; but if they do, in the language of Mr. Calhoun, their decision silences discontent.

This admission, Mr. Chairman, to my mind, is conclusive, and is plainly an abandonment, of as well constitutional as sovereign Nullification.—Mark you, sir, he admits that if, upon a convocation of the States, three fourths shall declare the disputed law constitutional, that the contending State is bound to submit. Now, sir, what is the extent of this admission? Does it not go the whole length of the doctrine for which I contend—that the framers of the Federal Constitution intended something more by the instrument than that it should be considered a partnership at will—a mere rope of sand—without any binding efficacy? If I am asked how I arrive at this, I answer, by the admission of the leader in Nullification; for he admits, and virtually acknowledges the powers of the General Government, when expounded his way, to be obligatory, and differs only as to the *expositor*. Here then is an acknowledgment from him who *first* gave the ball of Nullification motion from the "causa causans," that powers may be rightfully exercised under it, even the power of controlling the domestic industry of the country, provided three fourths should so declare. If, Mr. Chairman, this were done—if the parties who created it, and who can contract, enlarge or amend it, were called together, and the question put as to the disputed power, and they were to decide it constitutional—see, sir, in what an awkward dilemma it would place the advocates of *constitutional* or *sovereign* Nullification. Why, according to their own showing, their favorite scheme of peaceful State interposition would, like the spirits of the mighty deep when exorcised by Prosperos' wand, be vanished into thin air—no resort left the State but the *ultima ratio*, an appeal to the sword. This, sir, must be conclusive; for, Nullification is claimed to be the exercise of a *sovereign* power—not a right derivative, but supreme, absolute, the highest. If then, sir, it is the exercise of a *sovereign*, supreme and absolute right, *how*, in the name of common sense, can any decision of the States, who may be called together, *deprive* a contending State of a right which appertains to her *sovereignty?* yet we are told by the Magnus Apollo himself that such are its effects. Of course it takes from the State what he calls *peaceful* State interposition, and leaves her no other right than an appeal to the sword. Sir, this cannot be answered. I challenge any gentleman to answer it.

No, sir, the doctrine will not hold water. Constitutional, peaceful Nullification cannot be sustained.—You might as well undertake to prove that a *felo de se*, a man who commits suicide, dies a natural death, as to say that Nullification is constitutional or peaceful, and those who support it "weave an enchanted web of a fairy tissue, as beautiful, but as transient as the helm of Gossamer when pearled with the morning dew, and glimmering to the morning sun."

In theory, sir, some doctrines may do, particularly in the hands of skilful advocates. They hold before your eyes that which captivates your senses; they push it forward to your observation highly colored; they play upon your warmth of feeling, your fondness for every thing which has the semblance of liberty; but as sure as you embrace it, its counterpart will appear, and the fair phantom of liberty, which you have been told was the only conservative principle, will be succeeded by anarchy, turmoil, and consequent ruin to your country. These, sir, and these only, will be what will remain of practical peaceful Nullification, (about as strange a misnomer as that which is applied to a Tariff of protection; for that too is called the "American System.") They call it peaceful, and have done all that would make it warlike. The first step was to abolish the revenue laws, to close up every avenue through which it can be collected, and then declare that if the Government should attempt to enforce the law, that it will be resisted with the sword. Yes, sir, they have dissolved the Government itself so far as their own act could do, by repealing the 25th section of the Judiciary act, (or rather, sir, by effectually rendering it obsolete.) Call you this *peaceful?* Was there ever any thing so unlike itself, so unpeaceful? and shall we not warn our citizens of this wolf in the habilaments of a sheep? Yes, sir, it is our duty; and I am told that the citizens of South Carolina ere this see that a deception has been practiced on them—whether knowingly or not I will not say; (I hope the leaders themselves have been deceived.) Yes, Mr. Chairman, they have been deceived, not by the great body of her sons; for the whole of them are lovers of the Union—they are high minded, noble and chivalrous; not by the solid and substantial yeomanry of the State, for their only asperations are their country's welfare; but, sir, if the prints of that State are to be believed, they have been imposed on by a knot of politicians around Charleston—men who assume to themselves the right of giving tone to public opinion. Yes, sir, am I contradicted when I say that the city of Charleston of late years is becoming to that State what Paris has always been to France, and, in a great degree, gives the impetus to the most of her political machinery. Mr. Chairman, I trust, sir, that I have more of the milk of kindness in my composition than to impute motives which have frequently been imputed to the leaders of Nullification. I will not do it. But one thing I can say with propriety: that not one in twenty of her citizens, who voted for delegates to the late Convention, believed at the time of voting that the subject of secession would in any event come before the Convention. No, sir, I am told that it was not thought of; or, if thought of, it was not mentioned to the people. Yes, sir, I will further say, and think I am borne out in the assertion by the evidence which I have on the table, that a nullification of the Tariff comes with very bad grace from Messrs. Calhoun, M'Duffie and Hamilton. Look at the course of John Calhoun in 1816. You behold him *then* advocating it upon the protective principle, upon the ground, to use his own words, (in his speech of that day,) of placing the manufacturers beyond the reach of contingency. Yes, and three fourths of the delegates of that State supported it, to protect us from foreign competition. Then, sir, was hatched the mischievous contrivance of minimums, since so odious, because so delusive. Trace the same party on to 1821. You then find them (when a resolution was submitted in the Legislature of S. Carolina by P. H. Mays, declaring a Tariff of duties for protection to be unconstitutional) going en masse against the resolutions; and, sir, in the report which was submitted by Mr. Prioleau, (the chairman of the committee to whom Mr. Mays' resolutions were referred,) the right of Congress to lay duties for protection was distinctly admitted. The report went further. Hear its language. "That it took occasion to deprecate the practice, now becoming too common, of arraying the States as *separate* and distinct sovereignties against the General Government." To all of which Mr. Hamilton subscribed; for, if my memory serves me, he was then a member of the Legislature.

Follow the party on to 1824. You then find the venerable Judge Smith, one of her ablest sons, (who was always a State rights man,) turned out of the American Senate, and his place supplied by Gov. Hayne. For what was this done? It was, sir, on account of his being a State rights man—a name at *that* day so odious, that they were called Radicals through derision. Judge Smith's notions were not *supple* enough for Mr. Calhoun. Judge Smith, sir, could not make the Constitution any thing or nothing, to suit the times; but, being an old fashioned Democrat, he adhered to his faith. Sir, when Mr. Smith returned home from Washington, true to his democratic republican principles, he spoke of them, wrote in their support, and the Legislature of the next session sustained his principles, thus leaving Mr. Calhoun in a minority at home. Pennsylvania and Rhode Island had, some little time before, I think, backed out from him as a candidate for the Presidency. What is he to do—in a minority at home, deserted abroad, placed in a situation little suiting a man of his ambition? Why, sir, I will tell you what I think he did. He all at once turned a somerset, became noisy about State rights, and even outstripped the Radicals themselves. They were perfectly astounded. Finding that it would not do to follow in the wake of Judge Smith, (for, sir, he will be second to none,) he grafts Nullification upon Radicalism, and at this day himself and his whole party are the loudest in the vociferations of reserved rights, State sovereignty, &c. The poor Radicals have been distanced and denounced as Federalists by these modern Republicans. Yes, sir,

> "Men change with circumstances,
> Manners change with climes,
> Tenets with books, and principles with times."

Mr. Calhoun has been different things at different times, and all things at the same time. Does it not then, Mr. Chairman, come with ill grace from him to say that the Tariff is unconstitutional, and cannot be tolerated? Sir, when he says that it is a *palpable* infraction of the Constitution, (by palpable is meant plain, obvious, about which there can be no mistake,) where *then*, sir, was the vigor of that intellect which figured on the floor of Congress? Where *then* were the powers of that master mind which, as if by intuition, comprehended any and every subject? Had he *then* his mind on the Presidency, and was he "buying golden opinions? Mr. Randolph says he was.

Let us now, sir, shift the scene, and turn to those other distinguished men, and see in what company they are to be found. We will take up Mr. M'Duffie, the author of a piece signed "One of the People." Hear his language. It was written about the time of Mays' resolutions. "Ambitious men," says Mr. M'Duffie, "of inferior talents, finding they have no hope to be distinguished in the councils of the national government, naturally wish to increase the power and consequence of the State Governments, the theatres in which they expect to acquire distinction. It is not, therefore, a regard for the rights of the people, and a real apprehension that these rights are in danger, that caused so much to be said on the subject of 'prostrate State sovereignty and consolidated government.' It is the ambition of that class of politicians who expect to figure only in the State councils, and of those States that are too proud to acknowledge a superior." Again, sir, in the same publication, he says, "We have more cause of apprehension from the States than from the General Government. In other words, there is in our system a greater tendency to disunion than to consolidation." These sentiments were at that day, to use the very words of the other distinguished gentleman in this drama, "*imperishable truths.*"

Again, sir, hear the language of a letter published in the United States' Telegraph, which has always been attributed to Mr. M'Duffie: "A man who will contend that our government is a confederacy of independent States, whose independent sovereignty was never in any degree renounced, and that it may be controlled or annulled at the *will* of the several independent States or sovereignties, can scarcely be regarded as belonging to the present generation. The several independent sovereign States control the General Government! What an absurdity! This is anarchy itself."

Mr. Chairman, I will not pursue the subject further. Are these then the men upon whose authority we are to test this doctrine? No, sir, I must be pardoned if I enter *my* disclaimer.

Sir, we have been told by the able Senator from Pasquotank that the South Carolina doctrine is the doctrine of the Virginia and Kentucky resolutions; and Thomas Jefferson and James Madison have been appealed to as sponsors for its *orthodoxy*. Much has been said of the able report of Mr. Madison in the Virginia Legislature of 1799, and able, indeed, it is. To every sentiment therein contained do I most heartily subscribe. That report contains the republican faith, the doctrine of State rights, but not State abuses; and as a proof that it does, bear with me while I read a part of a letter from Mr. Madison himself to the editor of the North American Review as late as August, 1830. Listen, and see if he does not nullify Nullification, and declare it to be an exotic. After other observations, Mr. Madison says, "This brings us to the *expedient* lately advanced, which claims to a State the right to appeal against an exercise of power by the General 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 they 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, 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 authorises two-thirds of the States to institute, and three-fourths to effectuate an amendment to the Constitution, establishing a permanent rule of the highest authority instead 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 overturns the law of the United States. Can more be necessary to demonstrate the *inadmissability of such a doctrine* than that it puts it into the smallest fraction over one-fourth of the United States, that is to say, of seven States out of the 24, to give the law, and even the Constitution to the seventeen States, each of the seventeen having, as parties to the Constitution, an equal right with each of the seven to expound it, and to insist on the exposition that the seven might in particular cases be right and the seventeen be 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 principles of free government, and in practice necessarily overturn the government itself." Can language, sir, be stronger than this? and yet, strange to tell, this gentleman is claimed as one of the authors of Nullification. No, Mr. Chairman, Virginia never thought of force. She was for correcting the evil through the ballot-box. Hence she appealed to her sister States for co-operation. Her force was the strong arm of moral sentiment, and her revolution was the revolution of public opinion. In this I am sustained by both Mr. Jefferson and Mr. Madison, and by the history of that day. Can more be wanting to negative the assertion? Look at the report which the other day emanated from the Legislature. I allude, sir, to the committee which was raised on the same communication which we have had. A committee of twenty-one of the most distinguished members of her present Legislature. What, sir, do they say? do they not deny the doctrine, and declare that it leads to disunion? Can *more* be wanting? If it be, look to Kentucky, who has recently come out on the same subject. Does she not breathe the *same* language, and use the *same* sentiment? Should not *all* these, in the language of Mr. Calhoun, silence the assertion?

Something has been said about the Proclamation, as leading in its feature to consolidation. Sir, for one, I was surprised to see some of the sentiments which it contains. They do not meet my approbation; for I believe that States have rights. That ours is a government of strictly delegated powers; and that those not expressly delegated are reserved to the States—I believe I cannot doubt it. That a State has the right, in extreme cases to secede, I cannot believe otherwise. I would not if I could. But it must indeed be an extreme case. Every other remedy must be tried. There must be left no other alternative. It must be such a plain, palpable and *ruinous* infraction of the instrument, which, if submitted to, would make us indeed "hewers of wood and drawers of water."

Sir, we have been told by the Senator from Pasquotank, that Nullification is the only conservative principle—that all governments have it. I deny that they have the South Carolina Nullification, which has been proclaimed in every city, town, borough, hamlet and cross roads, and about whose definition there can be no mistake, (except as to the character of the principle when extended.) I deny, sir, that our government possesses it, and yet I challenge *all* the institutions ever devised by man to compare with our State and Federal Governments. It is here, sir, under the happy influence of our Federal and State laws, that we worship under our own vine and fig tree. It is here the right of property is respected. It is *here*, by their wholesome operation, man, as in no country under the sun, enjoys liberty of speech, thought, word, deed and action. It is *here* that you are scarcely conscious of being governed. It is *here* that you have *no* censorship of the press, *no* proscription, *no* guillotine. It is *here* that there is *no* titled nobility, *no* crowned heads, *no* stars and garters; and, sir, last, though not the least, it is *here*, in free and happy America, that, presenting an *undivided front*, we are equal, and more than equal to any power on earth; and yet, with *this*, we are not contented; but are seeking out a doctrine which aims a dead blow at *Union*, (and when that is gone, farewell to liberty.) Yes, sir, the doctrine is an excrescence on State rights, and bears the same relation to republicanism as does licentiousness to liberty, as does morality to religion, as has been said, Mr. Speaker, of the celebrated Macassor poison, (borrowing the sentiment of one of North Carolina's sons,* of whom she need be proud,) "that so subtle was it in its operation, and so tremendous in its efficacy, that the smallest possible quantity was sufficient to destroy life. Let but a needle puncture the skin dipped in its deadly venom, and the tide which flows through the human frame is thoroughly corrupted. Not *less* subtle, not less fatal to political life is the doctrine of South Carolina Nullification. It ex-

* Mr. Gaston.

(See 4th page.)