THE STAR, AND NORTH CAROLINA GAZETTE.

NO. 8 RALEIGH, N. C. FRIDAY, FEBRUARY 15, 1833 VOL XXIV

THE STAR,
And North Carolina Gazette,
PUBLISHED, WEEKLY, BY
LAWRENCE & LEMAY.

TERMS.

SUBSCRIPTION, three dollars per annum—one half in advance. Subscribers in *other States* cannot be allowed to remain in arrears longer than one year, and persons resident without this State, who may desire to become subscribers, will be strictly required to pay the whole amount of the year's subscription in advance.

ADVERTISEMENTS, not exceeding fifteen lines, inserted three times for one dollar, and twenty-five cents for each continuance.

LETTERS to the Editors must be post-paid.

DEBATE

In the Senate of the United States on the bill further to provide for the collection of duties on imports.

MR. WILKINS'S SPEECH CONCLUDED.

The State of South Carolina is quoad the revenue laws, out of the Union. As to the revenue system, our fellow citizens of South Carolina are gone from us. What then is to prevent the goods imported into the State from being distributed into every part of the interior and along the coast? A legalized system would be introduced, he would not say of smuggling, for he would not impute so opprobrious a crime to the authorities of that State, but free ports make free goods, and Nullification makes free ports. Well, sir, what will prevent the goods from being sent to other States? Take the marks off from the goods, and they may be sent any where. If Nullification exempts goods from duties in South Carolina, it exempts them every where. They are marked "State rights," and the vessel is called "State sovereignty." They will not be imported under the glorious flag of the Union, but under the flag of South Carolina. South Carolina has got her Ordinance. Now we shall see how she will put it in execution, how it works practically. It will make general confusion: defeat equality in public burdens, and demoralize the community.

As Nullification is now about to go into full operation, what is to stay the hands of South Carolina, and prevent her from executing her present purpose? He was aware of the wide range of discussion which the questions connected with this subject would lead to. But this was the time for bringing those questions before Congress for decision. They should decide now in one way or the other. I am young and stout, said Mr. W. and am willing to see the question tried, and to abide the end of it. The whole question comes to a single point. What is the constitutional relation of a *single State* to the United States? If the Government is merely an "alliance" of States, a federal league between several distinct and independent sovereignties, from which any one may withdraw, there is an end of the question and of the bill. For South Carolina, leaning upon her sovereignty and reserved rights, has exercised the power which she claims of obeying and disobeying a law of the Union, just as she may construe it, to be constitutional or unconstitutional.

An attempt on his part to throw any additional light on this subject would be as unnecessary as to contribute a drop of water to the ocean. It was enough for him that he had a few well settled principles on this point, which he had always entertained, and which had been acted on from the foundation of the government to the present time. The Constitution was formed by the people. It was adopted by the States, which, like individuals, surrendered a portion of their sovereignty for the security of the rest. Those powers which are thus surrendered, however limited in number, are supreme in extent and application. The second paragraph in the 6th article of the Constitution, was, as it appeared to him, framed to meet this very case—to meet State legislation, State Nullification—to meet the case of State legislation which attempts to overthrow national legislation:—

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding."

This supremacy of power was necessary for the general welfare, because it consists in the use of powers which could not be confided to, nor exercised by, any one State. We always had a Union. The great object of the people, from one period to another, has been to render the Union "more perfect." Virginia took the lead in the last attempt, and her statesmen were among its foremost champions. Experience had manifested the want of a supreme power to bear immediately upon the people of the States. The laws of the Old Confederation bore on the States alone. Hence the Constitution begins, "We, the Peoples" and the conclusion of the 8th section of the 1st article, giving power to Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof," and the emphatic conclusion declaring such laws to be the supreme law of the land, in the aggregate sense of the term.

We owe allegiance both to the United States and to the State of which we are citizens. Are there, sir, any citizens who owe no allegiance to the United States? have the people of South Carolina abandoned the proud title of citizens of the United States? Has the General Government any power or quality of political sovereignty at all? If it has, that power must be brought to bear directly upon the people of the States, and of each State.

The Government of the United States forms a part of the Government of each State, enters into it, and supplies whatever may be wanting in State powers. You cannot bring about obedience to the laws, if their obligation and binding force are not directly on the people. If the laws are brought to bear on the *States* they may wrap themselves up in their sovereignty and their reserved rights, resort to Nullification, and, claiming the power to put their veto on the acts of Congress, they may overthrow your whole system of legislation. This doctrine impairs not the sovereignty of the people. The people retain their sovereignty in reference to the United States as well as to their respective States. They act here as well as in their State Legislatures. Whenever you exercise one of your great constitutional powers, the people act here, and are therefore bound by the law which they themselves made. This is the perfection of political institutions. The people make the laws, and the laws govern. The States are secure in their rights, and always were secure. He admitted their original absolute sovereignty, but as he had said before, they yielded up a portion of that sovereignty for the general good.

This is a Constitution of power "granted," as a lawyer would say "for a valuable consideration." By the grant of these powers, you created the Constitution of the Union. You cannot take them back at pleasure. Here are we asked—can the creature be greater than the creator? No. But the creator may be bound by the act of the creature; the principal may be bound by the act of the agent, if the agent acts in pursuance of delegated power, particularly when the interests of third persons are concerned. We say to South Carolina, our prosperity depends upon the permanence of a system which you created; and you can't take back the power which you gave to your agents to exercise.

On the subject of practical Nullification, Mr. W. said he had made some notes, and the very circumstances which he had anticipated had happened. From a late number of the Charleston Mercury, which he held in his hand, he read an account of a great State Rights meeting at Charleston, whereat resolutions were adopted for forming companies to import goods free of duty. The merchants of South Carolina would, it was thought, be reluctant to hazard their commercial credit and convenience by availing themselves of the Replevin Law, and it had been doubted whether the force of the Ordinance would be tried. But, as he had expected, the politicians, not the merchants, had formed a plan for trying the experiment. Preparations had been made to bring the question to an issue as soon as the 1st day of February arrived. He had made a note of the questions, which would arise out of these considerations, but he would not detain the Senate by noticing them.

He would pass to the consideration of the provisions in the bill. The first section of the bill contains provisions which are preventive and peaceful. Mr. W. then read from the first section of the bill, as follows:

"*Be it enacted, &c.* That whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or unlawful threats or menaces against officers of the United States, it shall become impracticable, in the judgment of the President, to execute the revenue laws, and collect the duties on imports in the ordinary way in any collection district, it shall and may be lawful for the President to direct that the custom house for such district be established and kept in any secure place within some port or harbor of such district, either upon land or on board any vessel," &c.

It enjoins forbearance on the Executive, and gives him power to remove the custom house to a secure place, where the duties may be collected. It leaves the ports and districts as they now are, open for the commercial convenience of the good people of the States; and even the custom house would not be taken from the port or harbor where they now are. Our object in removing the custom house, is to prevent all collision if possible. The words "threats and menaces," do not run through the residue of the section. The power given in this clause is not new; the clause is simply declaratory of the existing law, as it has been held by our courts; for it has been decided, that where it is impossible to collect the duties, the officers of the customs may remove the custom house.

The next paragraph provides for the *cash* payment of duties under circumstances which render it impossible to collect the duties in the ordinary way. This is no great matter. We have already abolished the credits on duties to some extent, and this law carries out the system farther. Why should the practice of taking bonds be persisted in when they say they are not bound to pay the bonds. It is a mockery to take bonds when the Constitution and the law release the people bound from the obligation of the bonds. Suits must be brought to enforce the payment of the bonds, and the authority of the State and Federal tribunals would thereby be brought into conflict, which conflict the bill sought to avoid. The 62d section of the act of the 2d March, 1799, refuses credit to merchants who have refused to pay their bonds. The same principle is applied to the present case, where people are combined to prevent the payment of bonds.

The third and remaining exigency provided for in this first section, is the authority to employ the land or naval forces, or militia. This provision is entirely defensive. It merely confirms the authority for the protection of the custom house and revenue officers. The simple question is—do you require obedience to the laws? How can you make the people of South Carolina pay the duties? The custom house officers are not sufficiently numerous to enforce obedience to the laws: pains, penalties, indictments, all hang over the head of that man who is bold enough to exact payment. The Legislature forbids the enforcement of the law; and he who attempts to enforce it must suffer the penalty of the law as surely as he is convicted of the offence. The Marshal, in this stage of the business, cannot interpose. The militia cannot be called out, for the best reason in the world, that they are committed in support of the other side of the question. Now what is to be done? It is the duty of the President to take care that the laws shall be executed. He is invested with the power by the Constitution, and the public hold him responsible for its exercise. You can vest the power no where else. The first section of the 2nd Article of the Constitution invests the President with the "Executive power;" and he is required to take an oath faithfully to execute the office and preserve the Constitution. The second section of the same article makes him the commander-in-chief of the army and navy of the United States, and of the militia, when called into actual service. The only question is—is it necessary to give these means to enforce the laws. If we intend to enforce obedience to the laws, these powers must be given, and no where can they be constitutionally lodged but in the President. We give Andrew Jackson power simply to execute, for a limited time, the revenue laws of the country. Will, we confide this power to a man who has never abused any power reposed in him. He said that these proceedings were long anticipated. They were the subject of discussion during the late Presidential contest. Every vote had an eye to the South. He spoke this with respect to the other candidates, all of whom he knew would have supported the Constitution. He made no invidious distinctions.

Why did South Carolina throw away her vote on a distinguised individual, who was not a candidate? With an eye to this question why did the people of the United States vote for Andrew Jackson? With a view to this same question. For this provision in the law, there was a precedent to which he would refer. The act of 9th January, 1809, sec. 11—13, vol. 4, p. 194–5, to enforce the embargo, &c. The 2d section of the bill extends the jurisdiction of the Circuit Courts in revenue cases. It gives the right to sue in these courts for any injury incurred by officers, whilst engaged under the laws of Congress in the collection of duties on imports. It declares that property taken under the authority of the laws of the United States shall be irrepleviable, and only subject to the order and decrees of the courts of the United States; and it gives the penalty for the rescue of the property as is prescribed by the act of 30th April, 1790, sec. 22, vol. 2, p. 95. The provisions of that law make the penalty not to exceed 300 dollars, and imprisonment for three months. This section has two objects in view: first, it gives power to the officers to sue in the Federal Courts; and second, it provides that they shall not be dispossessed of property seized by them under the laws of the General Government, without the authority of the courts of the United States. The object of this section is to meet legislation by legislation. There is nothing in this provision shocking or harsh.

The laws of South Carolina, made to enforce the ordinance, are harsh and oppressive beyond any of the feudal laws. Under the replevin acts of South Carolina, the goods are first seized, if they are not given up the return is made and a *capias in withernam* issues; there is then a suit to recover back the duties; the Custom House officer cannot remove the suit to any other court, and the judges and jurors who are to decide the case are under oath to support the Ordinance. For this misdemeanor the officers are subjected to a fine of 500 dollars and 2 years imprisonment. And they are liable to have their own property, to double the amount of the goods seized, taken, and carried away. Every professional man knows to what cases a replevin law is usually confined. It views the custom house officer while discharging his duty, as a trespasser. If the replevy is not obeyed, the intermediate enquiry which the Common Law provides is discarded, and a writ of reprisal issues. It is not left discretionary with the Sheriff to take enough to satisfy the demand; but he is bound to take double the amount. There is no danger that this part of the law can ever be executed, for no one person will have property enough for so tremendous a grasp. The goods are taken finally from the custom house officer and carried off, and if he attempt to recapture them, he is liable to a fine of $10,000, and 2 years imprisonment. No such indictment is subject to traverse; that is, the accused shall not cross it; he shall not deny the facts alleged; he shall not plead "not guilty;" This is the technical effect of refusing a traverse. But can the word be taken in that sense in South Carolina? Perhaps the word, as used in the Ordinance, has a meaning peculiar to the South.

Mr. MILLER explained. The word had a peculiar meaning in South Carolina. At the first court the accused could traverse, but he had no right to continue the action. The Ordinance denied the right to the accused to continue the case after the first term, except for cause shown. The Ordinance, in creating this misdemeanor, merely applies to it the legal forms which in that State apply to all misdemeanors.

Mr. WILKINS. It was apparent that the Constitution of the courts in South Carolina makes it necessary to give the revenue officers the right to sue in the Federal Courts. It was not intended to restrict this right to any amount in controversy, nor to citizens of other States. It falls under the clause of the Constitution which gives jurisdiction to the United States Courts in all cases arising under the Constitution, Treaties, and Laws of the United States. He would put a case in a few words: Suppose the Collector of the port of South Carolina is prosecuted. He is carried to prison, or the *capias in withernam* is issued against him. His property is carried off and sold. The case comes before the State Court. He sets forth that, under the laws of the United States, he was obliged to do his duty. On the other side, it is said that the laws of the United States had been nullified; and the State laws had taken their place. Out of this issue springs a case provided for by the bill. But it is objected that the case will arise under the State law. But, shape it which way you may, the case arises out of the Laws and Constitution of the United States, and the judicial power extends to all cases in law and equity. It ought to be so. There ought to be a judicial power co-extensive with the power of legislation, and a co-extensive executive power. Without this co-extensive power, legislation would be useless in a free government. Neither domestic tranquillity, nor uniformity of rules and decisions, can be secured without it.

It may be said, (continued Mr. W.) that in this way you overturn State legislation, and that they ought to give their own direction to State controversies. So they may, but let them not come in collision with the Constitution and laws of the Union. In every controversy within any State, arising under a State law, coming in collision with the Constitution, or with a law of the United States, the Federal Courts have appellate jurisdiction. He felt himself too much exhausted to read a case or two to which he desired to call the attention of the Senate. But he meant to content himself with a mere referenee to the case of Martin vs. H[illegible]ter's lessee, in 1st Wheaton, p. and the case of Cohens vs. the State of Virginia, 6th Wheaton, p. 264, where this point had been decided. If appellate jurisdiction be given, the original could not be desired. All the residuum of jurisdiction remaining after the original jurisdiction given in specified cases, to the Supreme Court, might be exercised in any way by the inferior Courts that Congress might direct. These observations were applicable to the third section of the bill, which also provides for the extension of judicial jurisdiction, by allowing the party or officer of the U. States sued in the States Court for executing the laws of the Union, to *remove* the case to the Circuit Court. It gives the right to remove at any time *before* trial, but not after judgment had been given, and thus affects in no way the dignity of the State tribunals.—Whether in criminal or in civil cases, it gives this right of removal. Has Congress this power in criminal cases? He would answer the question in the affirmative. Congress had the power to give this right in criminal as well as in civil cases, because the second section of the third article of the Constitution, speaks of "all *cases in law* and equity," and these comprehensive terms cover all. He referred to the case of Matthews vs. Zane, 4th Cranch, page 382, which decides that, if two citizens of the same State, in a suit in their State court, claim title under the same act of Congress, the Supreme Court has an appellate jurisdistion, to revise and correct the decision of that court.

This decision was founded upon the principle that the 3d act of the Constitution, considered in connection with the Judiciary act of '89, would not give it a more extensive construction than it merited; and that the great object was, to render uniform the construction of the laws of the United States, and decisions under them upon the rights of individuals; and in such case it was entirely immaterial that both parties were citizens of the same State.

It was admitted by Mr. Harper, Counsel for Defendent in error, that the exercise of jurisdiction in such case, would be undoubted if it was to maintain the authority of the *laws of the United States*, against encroachments of the *State authorities*.

The clause in the Constitution to which he had adverted, refers to the character of the controversy, without regard to the parties, or the particular form of the action. The object of the suit, and not the tribunal, determined the jurisdiction. Was it to try the validity of an act of Congress? That question determined the jurisdiction. Was it to try any indictment for treason? That question determined the jurisdiction. It was more necessary that this jurisdiction should be extended over criminal than over civil cases. If it was not admitted that the Federal Judiciary had jurisdiction over criminal cases, then was Nullification ratified and sealed forever: for a State would have nothing more to do than to declare an act a felony or a misdemeanor to nullify all the laws of the Union. There were numerous prejudices—prejudices peculiar to particular States which, under any other view, would throw all jurisdiction into the State tribunals.

He would put a case to the Southern gentlemen, by way of illustration. It was one which they would feel disposed to resent, and one to which he felt a repugnance to refer; but he would take it as illustrative of the opinions he had thrown out. There was to be found in the Constitution, a clause which gives the right to the owner of a slave to pursue him from one State to another, and to take him wherever he may find him. Now it was known that there was in some States a strong feeling on this subject, and that particularly was this sensibility to be found in the State of Pennsylvania, where it was carried to a very great extent. In great party times, he would suppose that a party in Pennsylvania rallied on this great principle. Pennsylvania was covered over with zealous and highly respectable abolition societies. He would suppose that Pennsylvania carried these feelings to such an extent, as to pass a law to nullify this clause in the Constitution. He stated that he had, in the judicial station which he had occupied, had cases brought before him for decision, in which he had felt it to be extremely difficult to keep down this feeling. It had been even contended before him, that the pursuit of the slave by his owner into that State, was an unconstitutional act. He would suppose that Pennsylvania was to pass a law, declaring, that the moment a slave sets foot on her soil, he shall be at once elevated to the rank and privileges of a freeman, and that thus she should nullify the clause in the constitution on this point.

It would be deemed very hard by the Southern gentlemen that they could not try the question of the constitutionality of that law before the Supreme Court. And if the State of Pennsylvania were to pass a law imposing a fine of 10,000 dollars and five years imprisonment on any owner of a slave found in pursuit of him, and that her jurors and judges are all sworn to regard this law, he would ask whether the United States Courts could not have jurisdiction in this matter. The power of the Judiciary would be entirely nugatory if it could be evaded by throwing the case into the form of a criminal proceeding. He referred the Senate to the cases of the United States vs. Moore, 3d Cranch p. 159, where it was admitted that Congress might give the power; and to that of Martin v. Hunter's Lessee, 1 Wheaton p. 350–1, where it was admitted that criminal are the strongest cases.

The fourth section of the bill was merely matter of form. There was no constitutional principle involved in it. It only authorized the Courts of the United States to supply the want of a copy of the record. It was intended to obviate the difficulty which was likely to arise from the novel provision contained in the 8th section of the Replevin Law of South Carolina, which makes it penal in the Clerk to furnish such record. This provision did not meddle with the penalty of the Clerk of the State Court, but contented itself with providing means to supply the deficiency.

The fifth section authorizes the employment of military force under extraordinary circumstances too powerful to overcome without such agency, and to be preceded by the Proclamation of the President. What he had already said had reference also to this section of the bill. He would now merely refer the Senate to some precedents.

The first precedent which he would notice was to be found in the Act of May 2d, 1792, vol. 2, p. 264, repealed by the Act of Feb. 28, 1795, renewing the power to call forth the militia, which Act was still in force. This law grew out of the Western Insurrection in Pennsylvania. Like the present bill, although it was merely intended to meet that exigency, it was so framed as to continue in force. So the bill under consideration, although it had special reference to South Carolina, pointed not to her alone. If the opposition to the laws should extend itself, and the spirit of disobedience should exhibit itself, whether in the South or the North, the general principles of the bill would be equally applicable. It was an amendment of our code of laws to which the attention of Congress had now been called, and which was rendered immediately necessary by the peculiarity of our present situation.

The second precedent to which he would invite the attention of the Senate was the Act of the 3d of March, 1807, vol. 4, p. 115, "to suppress insurrections and obstructions to the laws," and "to cause the laws to be duly executed." That act authorized the President to call out the land and naval force to suppress insurrections, &c. These were the objects for which then, as in the present bill, this extraordinary power had been conferred.

Another precedent would be found in the Act of Jan. 9, 1809 sec. 11, vol. 4, p. 194, to enforce the embargo, and which gives the power to employ the land and naval forces, in general terms, to assist the custom house officers. There was at that moment a great excitement, although nothing like the solemn position in which South Carolina has now placed herself. Yet it was deemed expedient to confer on the President this power.

He would now refer to the last precedent with which he should trouble the Senate. It so happened in the History of Pennsylvania that that State took from Virginia a strip of land bordering on the Alleghany and Ohio rivers. On this strip of land where Virginia had been accustomed to exercise jurisdiction, for which she had opened the titles, and where she had held her courts, there arose an insurrection. This had been called the Western Insurrection, but it was a singular fact that it was confined to this narrow strip of land which Pennsylvania took from Virginia. The President was then authorized to call out the Militia of the State, because they were not committed against the United States, but were willining to obey the call. The man to whose name history has no parallel put himself at the head of these troops to queli the insurrection. All power was placed in his hands by the act of Nov. 24, 1794, vol. 2, p. 431, and the President was authorized to place in West Pennsylvania a corps of 2500 men either drafted or enlisted.

The sixth section of the bill had reference to the replevin law of South Carolina, and was justified and rendered necessary by the 12th section of that act which prohibited any person from hiring or permitting to be used any building, to serve as a jail for the confinement of any person committed for a violation of the revenue laws, under penalty of being adjudged guilty of a misdemeanor and fined 1000 dollars and imprisoned for one year. The State law, therefore, closes all the gaols and buildings of South Carolina against prisoners held by process from the United States for a refusal to yield obedience to their laws. It was necessary, therefore, that something should be done. The case might not be fully met by the resolution of 3d March, 1791, vol. 2, p. 236; and this section merely incorporates that provision, without the introduction of any novel principle.

The seventh and remaining section of the bill extends the writ of habeas corpus to a case not covered by existing laws. These laws do not extend to any other than cases of confinement under the authority of the United States, and when committed for trial before the United States Courts, or are necessary to testify. He referred the Senate to vol. 2, p. 63, to the 14th section of the judiciary act. The present section merely extended the privileges of that act, which was so essential to the protection of the liberties of our citizens. It extended the act to cases of imprisonment for executing the laws of the United States. There would be noth-