Jno. Catmp, Jr

EASTERN-SHORE WHIG AND PEOPLE'S ADVOCATE.

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EDWARD MULLIKIN,
PUBLISHER OF THE LAWS OF THE UNION.

THE TERMS
Are THREE DOLLARS PER ANNUM, payable half yearly in advance.

No subscription discontinued until all arrearages are settled, without the approbation of the publisher.

ADVERTISEMENTS not exceeding a square, inserted THREE TIMES FOR ONE DOLLAR, and twenty five cents for each subsequent insertion—larger advertisements in proportion.

NEW AND CHEAP GOODS.

THE subscriber respectfully informs his friends and customers that he has just returned from Baltimore and is now opening at his store opposite the Court House

An extensive assortment of

SEASONABLE GOODS,

CONSISTING OF

DRY GOODS, IRON MONGERY. QUEENS WARE, GROCERIES, &c. &c.

which added to his former stock makes his assortment very complete.

AMONG WHICH ARE

Madeira, Lisbon, Sherry & Malaga } *Wines,*	Brown Sugar,
4th pr Cognac Brandy	White & green Coffee
Holland Gin	First and second quality Chocolate,
Jamaica and Antigua Spirits	New England Cheese.
N. England Rum,	Mould and dipt Candles,
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Old Rye, (very superior) and common Whiskey,	Spanish and American Segars,
Imperial, Hyson, Young Hyson & Hyson Skin } *Teas*	English and American Shot,
1st, 2d and 3d quality	Battie's Powder,
Loaf Sugar,	Buckwheat & common Flour,
	Rope & leading Lines,
	Coarse and fine Salt,
	Stone and Earthenware, &c. &c.

All of which will be sold cheap for Cash, or in Exchange for Feathers, Tow Linen, country Kersey or Apple and Peach Brandy.

SAMUEL MACKEY.

Easton, Dec. 11.

FANCY AND WINDSOR

CHAIR FACTORY,
No. 21 Pratt street,
Between Charles and Hanover Streets,
BALTIMORE.

THOMAS H. SEWELL, begs leave to inform his friends of the Eastern Shore, and the public generally, that he continues to manufacture, of superior materials and in the best style of workmanship,

all descriptions of

FANCY AND WINDSOR CHAIRS,

of the most approved and fashionable patterns.

☞Orders from his Eastern Shore friends and customers are attended to with the utmost punctuality—and the furniture, (securely packed,) delivered on board vessels, agreeably to directions.

N. B. Old chairs repaired and re-painted on reasonable terms.

aug 28 1year

WINTER SUPPLY.

NEW BOOTS AND SHOES.

THE subscriber having just returned from Baltimore, begs leave to announce to his friends and the public generally, that he is now opening at his stand, adjoining the Drug Store of Thomas H Dawson and Son, a handsome supply of the various articles connected with his business,

CONSISTING IN PART OF

Gentlemen's fine & coarse Water Proof Boots,
do and boy's coarse and fine Monroes
do do do Shoes,
do and Ladies Leather and Gum Elastic Over shoes,
Ladies calf skin boots & shoes,
do Lasting slippers,
do French Morocco & seal skin do,
Children's Boots & Shoes of all descriptions
A large supply of Boots and shoes for Servants.

He invites the Ladies particularly to call and examine a lot of very superior Lasting, French, Morocco, and Seal skin Slippers, from the Manufactory of Mr. G. Johnson of Baltimore. Also a splendid stock of Calf, Horse, Seal, Kid and Neats skin and waterproof upper, and a good supply of Spanish sole leather, which will be made up with neatness and despatch.

Also Seal skin Caps, Socks, Blacking, &c. all of which he is warranted in saying are as good, and many of them better than ever heretofore offered in this market, all of which will be sold low for cash.

The public's ob't. serv't.
JOHN WRIGHT.

dec 4 3w

CAUTION.

ALL persons are forwarned not to hunt on my farm with dog or gun, or haul Seine on my shore. Having sustained considerable injury from such trespasses, I am determined to enforce the law against all found offending after this date.

JAS. A. RIDGAWAY,
dec 15 3t Bancny's Point.

CORRESPONDENCE.

To the Editor of the "Pendleton Messenger."

PENDLETON, Sept. 19th, 1832.

Dear Sir,—I am sure you will require no apology at my hands, for sending you the enclosed correspondence which has taken place between Mr. Calhoun and myself. After having obtained his consent to the publication of his letter of the 28th ult. the only question that could arise was, as to the mode by which the publication could be made the most promptly and extensively useful. I have therefore selected your press, as the medium of communicating to the good people of South Carolina the opinions of one of the most distinguished of her sons, on a question of deep and vital interest; on which he has reflected with profound deliberation,—opinions which are as much their property as his own, and which I cannot but think Mr. Calhoun has presented in a light approaching as nearly to demonstration as any subject which belongs to moral and not mathematical reasoning will permit.

Consider, therefore, the whole correspondence, as in your hands, to be published, if you please, as early as the engagements of your press will permit.

I remain, dear sir, with great esteem,
Very respectfully, your ob't. serv't.
J. HAMILTON, Junior.

Dr. F. W. SYMMES.

PENDLETON, July 31st, 1832.

My dear Sir: In reading again, a few days since, your communication addressed, last summer, to the editor of the "Pendleton Messenger," containing an exposition of the doctrine of the right of interposition, which belongs to a sovereign State in this confederacy, to arrest an usurpation on the part of the General Government, of powers not delegated to it, I felt satisfied, not only from a remark which you yourself made in that article, but from an obvious condensation of your argument, that there were still a variety of lights in which the truth and vital importance of this highly conservative principle to the liberties of the States, were quite familiar to the reflections of your own mind, which have not suggested themselves even to those who are the most zealously devoted to the doctrines in question.

Your patience has been so heavily taxed by the late oppressive session of Congress, (oppressive in every sense of the term,) that I feel some scruple in placing you under the requisition which my request is about to impose on you; but if you could find leisure this summer, for my private satisfaction and information, to fill out your argument of the last year, by going somewhat more into detail both as to the principles and consequences of nullification, you would add one more to the many obligations of friendship I owe you. As I shall be, during the residue of the summer, in Charleston, be pleased to direct to that place.

I remain, my dear Sir, with great esteem, your's faithfully and respectfully, J. HAMILTON, Jr.

Hon. J. C. HALHOUN, V. P. of the U. States.

FORT HILL, August 28th, 1832.

My Dear Sir: I have received your note of the 31st July, requesting me to give you a fuller developement of my views than that contained in my address last summer, on the right of a State to defend her reserved powers against the encroachments of the General Government.

As fully occupied as my time is, were it doubly so, the quarter from which the request comes, with my deep conviction of the vital importance of the subject, would exact a compliance.

No one can be more sensible than I am, that the address of last summer fell far short of exhausting the subject. It was in fact intended as a simple statement of my views. I felt that the independence and candor, which ought to distinguish one occupying a high public station, imposed a duty on me to meet the call for my opinion, by a frank and full avowal of my sentiments, regardless of consequences. To fulfil this duty, and not to discuss the subject, was the object of this address. But in making these preliminary remarks, I do not intend to prepare you to expect a full discussion on the present occasion. What I propose is to touch some of the more prominent points, that have received less of the public attention, that their importance seems to me to demand.

Strange as the assertion may appear, it is nevertheless true, that the great difficulty in determining, whether a State has the right to defend the reserved powers against the General Government, or in fact any right at all beyond those of a mere corporation, is to bring the public mind to realise plain historical facts, connected with the origin and formation of the government. Till they are fully understood, it is impossible that a correct and just view can be taken of the subject. In this connection, the first and most important point is to ascertain distinctly who are the real authors of the Constitution of the United States, whose powers created it, whose voice clothed it with authority, and whose agent, the government it formed in reality is. At this point I commence the execution of the task which your request has imposed.

The formation and adoption of the Constitution are events so recent, and all the connected facts so fully attested, that it would seem impossible that there should be the least uncertainty in relation to them, and yet judging by what is constantly heard and seen, there are few subjects on which the public opinion is more confused. The most infinite expressions are habitually used in speaking of them. Sometimes it is said that the Constitution was made by the States, and at others, as if in contradiction, by the people, without distinguishing between the two very different meanings which may be attached to those general expressions; and this, not in ordinary conversation, but in grave discussions before deliberate bodies, and in judicial investigations, where the greatest accuracy, on so important a point, might be expected: particularly, as one or the other meaning is intended, conclusions the most opposite must follow, not only in reference to the subject of this communication, but as to the nature and character of our political system. By a State, may be meant either the government of a State or the people, as forming a separate and independent community; and by the people, either the American people taken collectively, as forming one great community, or as the people of the several States, forming, as above stated, separate and independent communities. These distinctions are essential in the inquiry. If, by the people, be meant, the people collectively, and not the people of the several States taken separately; and, if it be true, indeed, that the Constitution is the work of the American people collectively; if it originated with them, and derives its authority from their will, then there is an end of the argument. The right claimed for a State, of defending her reserved powers against the General Government, would be an absurdity.—Viewing the American people collectively, as the source of political power, the rights of the States would be mere concessions—concessions from the common majority, and to be revoked by them with the same facility, that they were granted. The States would, on this supposition, bear to the Union the same relation that counties do to the States; and it would, in that case, be just as preposterous to discuss the right of interposition, on the part of a State against the General Government, as that of the counties against the States themselves. That a large portion of the people of the U. States thus regard the relation between the States and the General Government, including many who call themselves the friends of State rights, and opponents of consolidation, can scarcely be doubted, as it is only on that supposition it can be explained, that so many of that description should denounce the doctrine for which the States contends, as so absurd. But fortunately, the supposition is entirely destitute of truth. So far from the Constitution being the work of the American people collectively, no such political body either now, or ever did exist. In that character the people of this country never performed a single political act, nor indeed can, without an entire revolution in all our political relations.

I challenge an instance. From the beginning, and in all the changes of political existence through which we have passed, the people of the United States have been united, as forming political communities, and not as individuals. Even in the first stage of existence they formed distinct colonies, independent of each other, and politically united only through the British Crown. In their first informal union, for the purpose of resisting the encroachments of the mother country, they united as distinct political communities; and, passing from their colonial condition, in the act announcing their independence to the world, they declared themselves, by name and enumeration, free and independent States. In that character they formed the old confederation; and, when it was proposed to supercede the articles of the confederation by the present Constitution, they met in convention as States, acted and voted as States; and the Constitution, when formed, was submitted for ratification to people of the several States; it was ratified by them as States, each State for itself; each by its ratification binding its own citizens; the parts thus separately binding themselves, and not the whole the parts; to which, if it be added, that it is declared in the preamble of the Constitution to be ordained by the people of the United States, and in the article of ratification, when ratified, it is declared, "to be binding between the States so ratifying," the conclusion is inevitable, that the Constitution is the work of the people of the States, considered as separate and independent political communities; that they are its authors—their power created it—their voice clothed it with authority—that the Government it formed is in reality their agent, and that the Union, of which it is the bond, is an union of States, and not of individuals. No one, who regards his character for intelligence and truth, has ever ventured directly to deny facts so certain; but while they are too certain for denial, they are, also, too conclusive, in favor of the rights of the States for admission. The usual course has been adopted; to elude what can neither be denied nor admitted; and never has the device been more successfully practised.—By confounding States with State Governments, and the people of the States with the American people collectively, things, as it regards the subject of this communication, totally dissimilar, as much so as a triangle and a square, facts, of themselves perfectly certain and plain, and which, when well understood must lead to a correct conception of the subject, have been involved in obscurity and mystery.

I will next proceed to state some of the results which necessarily follow, from the facts which have been established.

The first, and in reference to the subject of this communication, the most important is, that there is no direct and immediate connexion between the individual citizens of a State and the General Government. The relation between them is through the State. The Union is an union of States, as communities, and not an union of individuals. As members of a State, her citizens were originally subject to no control, but that of the State; and could be subject to no other, except by the act of the State itself.—The Constitution was accordingly submitted to the States for their separate ratification; and it was only by the ratification of the State, that its citizens became subject to the control of the General Government. The ratification of any other, or all the other States, without its own, could create no connection between them and the General Government, nor impose on them the slightest obligation. Without the ratification of their own State they would stand in the same relation to the General Government as do the citizens or subjects of any foreign State; and we find the citizens of North Carolina and Rhode Island actually bearing that relation to the Government, for sometime after it went into operation; these States having in the first instance declined to ratify. Nor had the act of any individual the least influence in subjecting him to the control of the General Government, except as it might influence the ratification of the Constitution by his own State. Whether subject to his control or not, depended wholly on the act of the State. His dissent has not the least weight against the assent of his State, nor his assent against its dissent.—It follows as a necessary consequence, that the act of ratification, bound the State as a community, as expressly declared in the article of ratification above quoted, and not the citizens of the State, as individuals; the latter being bound, through their State, and in consequence of the ratification of the former. Another, and a highly important consequence, as it regards the subject under investigation, follows with equal certainty; that on a question, whether a particular power, exercised by the General Government be granted by the Constitution, it belongs to the State, as a member of the Union, in her sovereign capacity, in convention, to determine definitely, as far as her citizens are concerned, the extent of the obligation which she contracted; and if in her opinion, the act exercising the power be unconstitutional, to declare it null and void; which declaration would be obligatory on her citizens. In coming to this conclusion, it may be proper to remark, to prevent misrepresentation, that I do not claim for a State the right to abrogate an act of the General Government. It is the Constitution that annuls an unconstitutional act. Such an act is of itself void, and of no effect.—What I claim is, the right of the State, as far as its citizens are concerned, to declare the extent of the obligation, and that such declaration is binding on them—a right, when limited to its citizens, flowing directly from the relation of the State the General Government, on the one side, and its citizens on the other, as already explained, and resting on the most plain and solid reasons.

Passing over what of itself might be considered conclusive, the obvious principle, that it belongs to the authority which imposed the obligation to declare its extent, as far as those are concerned on whom the obligation is placed, I shall present a single argument which, of itself, is decisive. I have already shown that there is no immediate connexion between the citizens of a State and the General Government, and that the relation between them is through the State. I have also shown, that whatever obligations were imposed by the declaration of the State ratifying the Constitution. A similar declaration, by the same authority, made with equal solemnity, declaring the extent of the obligation, must, as far as they are concerned, be of equal authority. I speak, of course, on the supposition that the right has not been transferred, as it will hereafter be shown that it has not. A citizen would have no more right to question the one than he would have the other declaration. They rest on the same authority; and as he was bound by the declaration of the State assenting to the Constitution, whether he assented or dissented, so would he be equally bound by a declaration, declaring the extent of that assent, whether opposed to or in favor of such declaration. In this conclusion I am supported by analogy. The case of a treaty between sovereign is strictly analogous. There, as in this case, the State contracts for the citizen or subject; there, as in this, the obligation is imposed by the State, and is independent of his will; and there, as in this, the declaration of the State determining the extent of the obligation contracted, is obligatory on him, as much as the treaty itself.

Having now, I trust, established the very important point, that the declaration of a State, as to the extent of the power granted, is obligatory on its citizens, I shall next proceed to consider the effects of such declaration in reference to the General Government; a question which necessarily involves the consideration of the relation between it and the States.—It has been shown that the people of the States, acting as distinct and independent communities, are the authors of the Constitution, and that the General Government was organized and ordained by them to execute its powers. The Government, then, with all of its Departments, is, in fact, the agent of the States, constituted to execute their joint will, as expressed in the Constitution.

In using the term agent, I do not intend to derogate, in any degree, from its character as a government. It is as truly and properly a government as the State governments themselves. I have applied it, simply because it strictly belongs to the relation between the General Government and the States, as, in fact, it does, also, to that between a State and its own government. Indeed, according to our theory, governments are in their nature but trusts, and those appointed to administer them, trustees or agents to execute the trust powers. The sovereignty resides elsewhere—in the people, not in the government; and with us, the people mean the people of the several States, originally formed into thirteen distinct and independent communities, and now into twenty four. Politically speaking, in reference to our own system, there are no other people. The General Government, as well as those of the States, is but the organ of their power; the latter that of their respective States, through which are exercised separately that portion of power not delegated by the Constitution, and in the exercise of which each State has a local and peculiar interest; the former, the joint organ of all the States, confederated into one general community, and through which they jointly and concurringly exercise the delegated powers, in which all have a common interest. Thus viewed, the Constitution of the United States, with the government it created, is truly and strictly the Constitution of each State, as much so as its own particular Constitution and government, ratified by the same authority, in the same mode, and having, as far as its citizens are concerned, its powers and obligations from the same source, differing only in the aspect under which I am considering the subject, in the pledged faith of the State to its co-States, and of which, as far as its citizens are concerned, the State, in the last resort, is the exclusive judge.

Such, then, is the relation between the State and General Government, in whatever light we may consider the Constitution, whether as a compact between the States, or of the nature of the legislative enactment, by the joint and concurring authority of the States, in their high sovereignty. In whatever light it may be viewed, I hold it as necessarily resulting, that in the case of a power disputed between them, the government, as the agent, has no right to enforce its construction against the construction of the State, as one of the sovereign parties to the Constitution, any more than the State Government would have against the people of the State, in their sovereign capacity, the relation being the same between them. That such would be the case between agent and principal, in the ordinary transactions of life, no one will doubt, nor will it be possible to assign a reason why it is not as applicable to the case of Government as to that of individuals. The principle, in fact, springs from the relation itself, and is applicable to it in all its forms and characters. It may, however, be proper to notice a distinction between the case of a single principal and his agent, and that of several principals and their joint agent, which might otherwise cause some confusion. In both cases, as between the agent and a principal, the construction of the principal, whether he be a single principal, or one of several, is equally conclusive; but, in the latter case, both the principal and the agent bear relation to the other principals, which must be taken in the estimate, in order to understand fully all the results which may grow out of the content for power between them. Though the construction of the principal is conclusive against the joint agent, as between them, such is not the case between him and his associates. They both have an equal right of construction, and it would be the duty of the agent to bring the subject before the principal, to be adjusted according to the terms of the instrument of association, and of the principal to submit to such adjustment.

In such cases, the contract itself is the law, which must determine the relative rights and powers of the parties to it. The General Government is a case of joint agency—the joint agent of the twenty-four sovereign States. It would be its duty, according to the principles established in such cases, instead of attempting to enforce its construction of its powers, against that of the States, to bring the subject before the States themselves, in the only form which, according to the provision of the Constitution it can be, by a proposition to amend in the manner prescribed in the instrument, to be acted on by them in the only mode they can, by expressly granting or withholding the contested power. Against this conclusion there can be raised but one objection, that the States have surrendered, or transferred the right in question. If such be the fact, there ought to be no difficulty in establishing it. The grant of the powers delegated is contained in a written instrument, drawn up with great care, and adopted with the utmost deliberation. It provides that the powers not granted, are reserved to the States and the people. If it be surrendered or transferred or, let then the grant be shown, and the controversy terminated; and surely, it ought to be shown, plainly and clearly shown before the States are asked to admit what if true, would not only divest them of a right, which, under all its forms, belongs to the principal over his agent, unless surrendered, but which cannot be surrendered without, in effect, and for all practical purposes, reversing the relation between them; putting the agent in the place of the principal, and the principal in that of the agent; and which would degrade the States from the high and sovereign condition which they have ever held, under every form of their existence, to be mere subordinate and independent corporations. But, instead of showing any such grant, not a provision can be found in the Constitution, *authorizing the General Government to exercise any control whatever over a State* by force, by veto, by judicial progress, or in any other form—*a most important omission, intended not accidental;* and as will as shown in the course remarks, omitted by the dictates of the profoundest wisdom.

The Journal and proceedings of the Convention which formed the Constitution, afford abundant proof that there was in the body a powerful party, distinguished for talents and influence, intent on obtaining for the General Government a grant of the very power in question, and that they attempted to effect this object in all possible ways, but fortunately without success. The first project of a Constitution submitted to the Convention (Gov. Randolph's) embraced a proposition to grant power "to negative all laws contrary, in the opinion of the National Legislature, to the articles of the Union, or any treaty subsisting under the authority of the Union, and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof. The next project submitted (Charles Pinckney's) contained a similar provision. It proposed "that the Legislature of the United States should have the power to revise the laws of the several States that may be supposed to infringe the powers exclusively delegated by this Constitution to Congress, and to negative and annul such as do." The next was submitted by Mr. Paterson, of New Jersey, which provided, "if any State, or body of men in any State, shall oppose or prevent the carrying into execution such acts or treaties, [of the Union,] the Federal Executive shall be authorised to call forth the powers of the confederated States, or so much thereof as shall be necessary, to enforce or compel the obedience to such acts, or observance of treaties." Gen. Hamilton's next succeeded, which provided that "all laws of the particular States contrary to the Constitution or the laws of the United States to be utterly void; and the better to prevent such laws being passed, the Governor or President of each State shall be appointed by the General Government, and shall have a negative on the law about to be passed, in the State of which he is Governor or President."

At a subsequent period, a proposition was moved and referred to a committee, to provide that "the jurisdiction of the Supreme Court shall extend to all controversies between the United States and any individual State;" and, at a still later period, it was moved to "grant power to negative all laws passed by the several States, interfering, in the opinion of the legislature, with the general harmony and interest of the Union, provided that two thirds of the members of each house assent to the same," which, after an ineffectual attempt to commit, was withdrawn.

I do not deem it necessary to trace through the journals of the Convention the fate of these various propositions. It is sufficient, that they were moved, and failed, to prove conclusively, in a manner never to be obliterated, that the Convention which framed the Constitution was opposed to granting the power to the General Government in any form through any of its Departments, legislative, executive, or judicial, to coerce, or control a State, though proposed in all conceivable modes, and sustained by the most talented and influential members of the body. This, one would suppose, ought to settle forever the question of the surrender, or transfer of the power, under consideration; and such in fact would be the case, were the opinion of a large portion of the community not biassed, as in fact it is, by interest. A majority have a direct interest in enlarging the power of the Government, and the interested adhere to power with a pertinacity which bids defiance to truth, though sustained by evidence as conclusive as mathematical demonstration; and accordingly, the advocates of the powers of the General Government, notwithstanding the impregnable strength of the proof to the contrary, have boldly claimed on construction, a power, the grant of which was so perseveringly sought and so sternly resisted by the Convention. They rest the claim on the provisions in the Constitution, which declare, "that this Constitution and the laws made in pursuance thereof, shall be the supreme law of the land," and that "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority."

I do not propose to go into a minute examination of these provisions. They have been so frequently and so ably investigated, and it has been so clearly shown, that they do not warrant the assumption of the power, claimed for the Government, that I do not deem it necessary. I shall, therefore, confine myself to a few detached remarks.

I have already stated that a distinct proposition was made to confer the very power in controversy on the Supreme Court, which failed; which, of itself ought to overrule the assumption of the power by construction, unless sustained by the most conclusive arguments; but when it is added, that this proposition was moved (20th August) subsequent to the period of adopting the provisions above cited, vesting the court with its present powers, (18th July) and that an effort was made at a still later period, (23d August) to invest Congress with a negative of all State laws, which in its opinion, might interfere with the general interest and harmony of the Union, the argument would seem too conclusive against the powers of the court, to be overruled by construction, however strong.

Passing by, however, this, and also the objection, that the terms *cases in law and equity,* are technical, embracing only questions between parties, *amenable* to the process of the court, and of course, excluding questions between the State and the General Government; an argument which has never been answered; there remains another objection perfectly conclusive.

The construction, which would confer on the Supreme Court the power in question, rests on the ground that the Constitution has conferred on that tribunal the high and important right of deciding on the *constitutionality of laws.* That it possesses this power I do not deny, but I do utterly, that its conferred by the Constitution, either by the provision above cited, or any other. It is a power derived not from the Constitution, but from the necessity of the case; and so far from being possessed by the Supreme Court exclusively, or peculiarly, it not only belongs to every court of the country, high or low, civil or criminal, but to all foreign courts before which a case may be brought, involving the construction of a law, which may conflict with the provisions of the Constitution. The reason is plain. Where there are two sets of rules pre-

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