

sion, an able man had treated it as a paradox; but he had since had the good fortune to find this very distinction drawn in a book of acknowledged authority, and to which the other side, at least, could not except. (He here read from the Federalist papers, Vol. I., p. 230 and 232.)

This position appeared to Mr. Legare, to be an elementary and fundamental one, and he thought it important to all correct reasoning upon these subjects, that it should be clearly apprehended at the outset. He would now proceed to examine the two questions made in the debate; first, whether a state legislature has a right to express an opinion upon the constitutionality of any measure of the federal government, and should that question be decided in the affirmative, then whether there is any ground for doing so now.

The Speaker had directed the whole force of his argument to the first point. He had repeated what is advanced by all who think a state has upon this subject, that the question of constitutionality or unconstitutionality is a question between the federal government and its own constituents, the people of the United States, to be decided by the supreme court; that it was a judicial, not a legislative matter; that the people had delegated to their legislatures, no power to review the acts of Congress, and the decisions of the supreme court.

Mr. Legare said, of all these objections, the last he had mentioned, struck him as being the most entirely groundless. It arose out of what appeared to him, to be a total misapprehension of the nature of representative government, and of a federal union. The notion of the gentleman was, that the government of the United States, stood in precisely the same relation, within its sphere to the people of the state, as the government of the state, and vice versa. So far it might be all very well, but when it was attempted to infer from that position, that the extent of the powers exercised by them was the same, he must beg leave to say, that there appeared to him to be no logical connection between the premises and the conclusion. The federal government, was a mere special agent, and was, therefore, in every case, expected to produce its authority to act—the *onus probandi* was upon it to show that it had the power it pretended to exercise, just as in its courts, the rule of law required, that a party should make it appear upon the record, that his cause comes within their limited jurisdiction. With respect to the state governments on the contrary, the very reverse was the case, the presumption was always in favor of the state legislature, as of the supreme court, and the *onus probandi* rested upon him, who denied the power of the former, as it did upon him who would except to the jurisdiction of the latter. In short, it resulted from the nature of a federal union, that the government of the union should be a limited one—it resulted on the contrary, from the nature of representative government, in a single, independent commonwealth, that wherever the power of making laws, or of legislature resided, there was to be found the supreme or sovereign power of the State, (s) except so far forth, as it might be circumscribed or qualified by its fundamental laws and constitutions—in other words, that the representatives of the people in a state legislature, were its general agents in all cases, and could do, (except as above,) whatever in a pure democracy the people themselves could do *in propria persona*.

Accordingly, Mr. L. said, the federal constitution was all affirmative—it contained grants of power, and the power it granted, was limited by its terms—while a state constitution was (except such parts of it, as relate to the distribution of the departments of government, the functions of majority, &c.) a *spurious* power *non grata*; and which therefore passed of course. He would be obliged to any gentleman, who disputed what he said, to open the constitution of the state, and put his finger upon a clause of it, that enabled or empowered the legislature to do any one thing. In short he took it to be too clear to admit of any doubt, that had there been no written constitution restraining and circumscribing its powers, the legislature of the state had been as omnipotent as the British parliament, to which it succeeded, and for the self same reason, and he was not aware, that this position had ever been disputed, until he read the argument of Mr. Plockley, in the case of *McCulloch*, (n) But it was said, that admitting the legislative powers of that body, to be as uncircumscribed as possible, still it remained to be shown, that this was the exercise of a legislative function, which was denied by the other side. Mr. L. said, that was restricting too much the meaning of the words *legislative* and *legislation*, which did not apply to the acts, only of sovereignty, by which laws considered as prospective, general rules of civil conduct were prescribed, but included in another sense every act of sovereignty whatever. Thus a bill of attainder, or a bill of pains and penalties, is rather a sentence than a law. Yet the constitution has expressly forbidden the legislature to pass such acts; which would have been superfluous, if *ex determini* the words just mentioned imported what gentlemen seemed to think they did. So of taxation—What rule of conduct is prescribed in a bill to raise supplies? It is neither more nor less, than an act by which the state appropriates to itself, or signifies an intention of appropriating to itself, by a compulsory contribution, a certain proportion of all the property of individuals within its jurisdiction. In short as has been said by Judge Patterson, in a case before the supreme court, (c) wherever the legislative power is undefined, it includes the judicial and executive attributes.

Again, it might be said, that admitting the justice of the preceding remarks, still he had not met the argument that this was a question between the people and the federal government, which was to be decided by the supreme court alone, and with which the state legislatures had no more right to interfere, than Congress had to put a vote upon the proceedings of the state legislature. This argument appealed to Mr. L. to derive all its plausibility from a want of precision in stating it.

He did not pretend to say, that where Congress was exercising its undoubted constitutional powers the state legislatures had a right, except in extreme cases, to express any opinion about the policy of the measures projected or adopted; but, indeed, was for the people to do in public meetings, by petition and remonstrance. But, whereas, on the contrary, Congress was assuming or usurping a power which did not belong to it, it is the question was not between Congress and the people of the United States, as its constituents, but between Congress and the people of the individual states, or each of them, as were aggrieved as constituents of the state governments, and *quod hoc est foreignis propriis* in respect to Congress. This again, resulted necessarily from the nature of a federal union, or whatever else gentlemen might conceive our mixed form of government to be. One thing was admitted on all hands, that certain powers had not been granted to Congress, and that the states were to certain purposes distinct and independent sovereigns. It was immaterial what these powers and purposes were—it was quite enough for him to know, there were some such. Of these then, whatever they were, that assembly was the proper constitutional guardian—the people of South-Carolina, as their constituents acted, so to express it, in a different capacity from that in which they stood as an integral part of the United States, and if gentlemen put them in mind of their double allegiance, he hoped they would not forget, that there were double, or distinct rights and

duties growing out of it. This, however, he was afraid they had done, for if they were judged out of their own mouths, they thought the states they owed to the federal government so completely superseded and swallowed up all others, that right or wrong, as a constituted authority, or as a usurping power, that government was to be obeyed with a reverential silence and submission. Some had even gone so far as to say that the states had no rights. He did not choose to enter at large into that point, upon which, however, he would say that nothing could be urged, but what was sophistical and unnatural, but would content himself with quoting in confirmation of what he had said, the very words of the constitution, which he begged gentlemen to explain in any other way than he had, however imperfectly, done. "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, (state rights) or to the people." *Q. D.* is to say (unless you happen the word *State*, as gentlemen seemed to think it ought to be, all the rights not granted by the people to state governments (for there were some such), are reserved to the people—all the rights delegated to the state governments were reserved to the states as *organized bodies politic*, and independent sovereignties.

From the foregoing reasons, it would be easy to expose the fallacy of another favorite argument of gentlemen, which was always brought forward with great pomp and emphasis, and that was, that the new constitution had been ratified by convention of the people, whence it was inferred, that the interference of the states, was in all cases illegal. Here, again, his opponents ascribed to what was intended only to remove all obstructions to the operation of a government, or all clouds about its validity, within its proper sphere, the effect of extending and amplifying that sphere itself. He had never heard a reason assigned for the fact just mentioned, but he could venture to advance a conjecture of his own; which he could not but believe to be well founded. It was, that the founders of the constitution, who, as every one must be satisfied that has ever looked into the political writings of that day, were not only deeply conversant with the philosophy of government, but even treated questions connected with it, in a very speculative and refined way, entertained a doubt whether it was competent for a legislature to change the fundamental laws. What confirmed him in this notion, was, that a very popular publicist had embraced the negative of that proposition. (d) It was not material whether that doubt were well founded or not—it was enough that it existed—and the whole mystery of a ratification by a convention, and not by the legislatures, under whose power alone, the delegates had acted, was thus rationally and obviously explained. But what had the ratifying of the constitution by the people, to do with the extent of the powers conveyed in it, or with the right of those, to whom they had entrusted other powers, to guard and protect those other powers?

Then as to the idea that the Supreme Court of the United States—was the only arbiter to which recourse could be had in constitutional questions, Mr. Legare admitted that it would conduct very much to the peace and good order of society, that all matters of this kind, should be referred to some judicial tribunal, and be satisfactorily settled there. This, indeed, he confessed, was the strong ground of the other side, but it was not in itself so strong a ground, as it seemed to become from the technical way of considering these subjects, which prevailed so generally among the leading politicians of this country. This consideration had been argued with great force by the friends of Mr. Madison, and in the opinion of a very intelligent and learned man, of the people, triumphantly answered by Mr. Madison. (See his report.) (To be continued.)

## NINETEENTH CONGRESS. [FIRST SESSION.]

IN SENATE.—Feb. 27, 1803.  
The Senate met at 12 o'clock, a.m., after the journal had been read.

Mr. Hayne, of South-Carolina, rose and said: It becomes, Mr. President, my melancholy duty to announce to this House, that my respected colleague, the FATHER of the Senate, is no more. After a faithful and uninterrupted service in this body, of more than twenty-one years, he has fallen, in the height of his honor, and in the midst of his usefulness. Though he had lived to see almost every friend who had entered with him into public life (and all with whom he served were his friends) successively retiring from the busy scene, or swept from the stage of existence—though he had for many years found himself the oldest member of the Senate, yet he had not much passed the meridian of life, and we might have faltered ourselves with the hope that a long course of honor and usefulness was still before him. Mr. GAILLARD took his seat in the Senate on the 31st of January, 1803, and it is perhaps the highest tribute we could possibly pay to his memory to state, that he was four times successively re-elected to his high trust, and retained to his last hour the confidence of his fellow citizens. In 1810, (when he had been but five years a member,) Mr. GAILLARD was elected PARENT OF THE SENATE, to which office he was nine times most honorably chosen, having, for a period of fourteen years, presided over the deliberations of this Assembly. I am sensible that it is not admissible, on an occasion like the present to indulge myself in a studied eulogium on the virtues of our departed friend; and I deeply regret that the office of touching briefly on his character, had not fallen to the lot of one who could have spoken from long experience, and in the eloquent language of an early and well-tried friendship. My personal acquaintance with my late colleague was comparatively of recent date. Since I have served with him, however in this House, the mutual exchange of kind offices has never been, for a moment, interrupted, even by those unhappy differences of opinion which plant thorns in the path of the politician, and often estrange the dearest friends. Judging of his past course by what I have myself witnessed, and by the concurring testimony of his associates, I will not be accused of doing more than simple justice to the memory of our friend, when I say, that during a term of service altogether unexampled in this body, he constituted universal esteem and confidence. In his private intercourse with the members, his mildness and urbanity won all hearts. In fulfilling his duties as a Senator, the solidity of his judgement and his dignified and unostentatious deportment, elicited the esteem and commanded the respect of his associates. But it was in the performance of the high duties of the PRESIDING OFFICER of the Senate, (which he discharged for a longer period than has fallen to the lot of any other man,) that the conspicuous traits of his character were most fully developed. The ease and facility with which he fulfilled these duties,—evident, address, and often of the most brilliant and delicate nature—his perfect command of temper— exemplary patience, strict impartiality, and clear discernment—never, never been surpassed, and seldom equalled. Whatever might be the state of his health, neither was too great for his industry, no tribulation too severe for his patience. So thorough was his acquaintance with Parliamentary forms, and especially with the practice of this House, and such was his confidence repose in his justice, that his opinion on all questions of order was considered as *final*. The third was adjourned, ayes 127, nays 23.

On Monday, the resolutions, after much debate, were taken up, and the first was amended by striking the words—“as I am highly oppressive and partial in its operation,”—and then adopted, ayes 125, nays 24. After an unsuccessful attempt by Mr. Galloway, to amend it by adding—“but if the Congress of the United States determine to carry into effect that construction of the Constitution, then we claim an equitable participation in the expenditure to be made.” The third was then adopted, ayes 127, nays 23.

The following are the remarks of the editor of the Richmond Enquirer, on the adoption of the above resolutions, touching the federal government.

same necessary for him to explain the grounds of his decision, or to shed the light of his experience on questions before the Senate, no man could express himself with more simplicity, perspicuity, or force. I know not how better to sum up the merits of the deceased, than in the words of my venerable friend, (Mr. Macon, whose eulogy is no common praise,) and who lately declared that Mr. GAILLARD was designed by nature to preside over such an assembly as this—thus referring to him, in an appropriate sphere, a station of no common dignity, and duties of a most exalted nature. Such was the man whose loss we are this day called upon to deplore. On this occasion it becomes us to mourn; and I know, that, in paying the highest honors to his memory, we are giving utterance to the feelings of every member of the Senate, by whom the reconciliation of the virtues of our deceased brother will be long and faithfully cherished.

Mr. DICKERSON, of New Jersey, then rose, and said: The honorable gentleman from South-Carolina has spoken of the character and services of his late distinguished colleague, in a manner highly creditable to the feelings of his heart. The facts he has stated have already become a portion of the history of this country. The services of his late colleague are to be found in almost every page of our state books, and our records, for the last twenty years. There are other facts, however, connected with his character, for which his memory will be more cherished by his intimate friends, than even for his public services. His humanity, his uniform mildness of deportment, in his intercourse with his associates in this body, and while presiding over our counsels, we have all witnessed; but the intense goodness of his heart could only be known to those with whom he lived on terms of intimacy. It has been my good fortune, said Mr. D. to be associated with him, as an inmate in the same families, for the last seven sessions of Congress,—in which time, I have never observed the least approach to harshness or severity towards those with whom he associated, or the slightest departure from those rules, by which gentlemen ought to be governed, in their intercourse with each other, but on the contrary, the most undivided observance of the forms and customs of politeness, which give to social intercourse its greatest charm. For me, a character, I could not but be inspired with sentiments of the most unfeigned attachment and respect. His society I have counted when he was in health, when in sickness, I have endeavored to soothe his moments of languor, and distress; and I watched, with the most painful solicitude, the last ebings of a life that endeared to me. In the death of this distinguished individual, the country has lost an able and faithful servant—and I have lost a most valued friend—and I trust, that, while mourning over the loss of the public, I have the indulgence of the Senate in thus depicting my own.

Mr. DICKERSON then offered the following resolution, which were successively and unanimously adopted:

Resolved, That a committee be appointed to take order for superintending the funeral of the Honorable JOHN GAILLARD, deceased, which will take place at eleven o'clock to-morrow morning; that the Senate will attend the same, and that notice of this event be given to the House of Representatives.

Resolved, That the members of the Senate, from a sincere desire of showing every mark of respect due to the memory of the Honorable JOHN GAILLARD, deceased, their late associate, will go into mourning for him for one month by the usual mode of wearing crepe round the left arm.

pect for the memory of the Honorable JOHN GAILLARD, the Senate do now adjourn.

The Senate then adjourned, according to eleven o'clock to-morrow.

The committee of arrangements, appointed in pursuance to the first resolution, are MORSE, HOLMES, BERRIEN, RUGGLES, VAN DYKE and FINDLAY.

The following is the order of the procession adopted by the committee of arrangements, for the funeral of the Honorable John Gaillard, Senator of the United States, from the State of South-Carolina:

The Committee of Arrangements, PALL BEARERS, and Mourning, will attend at Mr. Tim's, the late residence of the deceased, at ten o'clock, A.M. this day, at which time the corps will be removed, in charge of the Committee of Arrangements, attended by the Sergeant-at-arms of the Senate, from Mr. Tim's to the Senate chamber, where divine service will be performed.

At 11 o'clock the funeral will move from the Senate chamber to the place of interment, in the following order:

The Chaplains of both Houses, Physicians who attended the deceased, Committee of Arrangements—

Mr. Holmes,

Mr. Van Dyke, Findlay.

PALL BEARERS—

Mr. Dickerson, Chandler, Harrison.

Relatives of the deceased, and the Senators and Representatives from the State of South-Carolina, as mourners.

The President of the United States.

The Sergeant-at-arms of the Senate of the United States.

The Vice-President and Secretary.

The Sergeant-at-arms of the House of Representatives.

Speaker and Clerk.

The Supreme Court and Bar.

Heads of Departments.

Foreign Ministers.

Citizens and Strangers.

N.Y. Int. Feb. 23.

In the Virginia House of Delegates, at their late session, the following resolutions were reported by Mr. Dromgoole, from a select committee:

1. That the imposition of taxes and duties, by the Congress of the United States, for the purpose of protecting and encouraging domestic manufacture, is an unconstitutional exercise of power.

2d. That the Congress of the United States does not possess the power, under the Constitution, to adopt a general system of internal improvements in the States, as a national measure.

3d. That the appropriation of money by the Congress of the United States, to construct Roads, and Canals in the States, is a violation of the Constitution.

On Monday, the resolutions, after much debate, were taken up, and the first was amended by striking the words—“as I am highly oppressive and partial in its operation,”—and then adopted, ayes 125, nays 24. After an unsuccessful attempt by Mr. Galloway, to amend it by adding—“but if the Congress of the United States determine to carry into effect that construction of the Constitution, then we claim an equitable participation in the expenditure to be made.” The third was then adopted, ayes 127, nays 23.

The following are the remarks of the editor of the Richmond Enquirer, on the adoption of the above resolutions, touching the federal government.

The proceedings of the House of Delegates on the 26th ult. will be found deeply interesting to the majority of our readers. The House met at the early hour of 9 o'clock in the morning; and did not adjourn until the late hour of 6 in the Evening. When the largest portion of this day was devoted to a consideration of the most important resolutions, which have been brought forward during the present session. The ayes and nays were called not less than seven times; and the result was, that these temperate, judicious, and expressive resolutions were carried by a most overwhelming majority. We congratulate the friends of the constitution on this success. Virginia, true to her old established principles, the principles of '90 and '99, has once more expressed her adherence to them, through the organ of the Senate, by whom the reconciliation of the virtues of our deceased brother will be long and faithfully cherished.

We entertain no doubt of the concurrence of the Senate. That patriotic, enlightened, and disinterested body will never hesitate to re-assert the independence of the political principles of Virginia, (see report of '99 and '99) and to re-assert the inestimable truths, which are there promulgated. Nothing but such principles can save our country from the “gulf of consolidation.” Permit the federal government to usurp all the authority which has been claimed for it; forget that the Constitution is a digest of delegated and specified powers yield to all the sweeping assumptions of Mr. Adams’s extraordinary Message; let the Secretary of the Treasury, as he lists all the capital and labour of our country, and white Ireland, should consider it a presuming to take a chair, which in his opinion would be more suitably filled by an Irish Catholic. Nihilism of eminent private virtue and long-tried worth.

London, Jan. 9.—The Murebury Correspondent of the 29th ult. gives a description of a population which, it is said, the Emperor Constantine will issue on his arrival at St. Petersburg. If this may be depended upon, it would seem, that, uniting the policy of the present King of France with his accession to the throne, it is the wish of the new Autocrat that in regard to politics, his reign shall be but a continuation of that of his brother.

It most distinctly avows his determination to adhere to the Holy Alliance, and, generally, to the system established and maintained by the deceased Emperor.

City two o'clock.—The Diamond on Consols is about to come to payment to the public. Money is in course of payment to the public. Money is exceedingly abundant, and out of the house first rate bills can be easily discounted. There has been scarcely any thing doing in Consols, they reached \$21.15, but they have since declined to \$20, buyers, where they now remain steady. It is sufficiently established, on the authority of letters from Hamburg of the 4th inst., that Nicholas has been proclaimed Emperor of Russia, and Constantine retains the Sovereignty of Poland; this has the effect of advancing Russia Stock \$1 per cent, but made no impression on the Consol Market.

Nothing worthy of observation has occurred in the foreign market. The South-American Bonds are \$1.44, and the shares without much variation. Colombian bonds \$2.10; Mexican, \$2.00; Spanish bonds, 12½; Greek bonds, 14. Up to this hour we have not heard of the arrival of any express from Paris.

London, Jan. 10.—Arrival of the Grand Duke Nicholas to the Throne of Russia.—We are at length enabled to remove all doubt respecting the succession of his to the Imperial Majesty, the Emperor Alexander. Latest intelligence has been received this morning of the abdication of Constantine, in favor of his brother Nicholas, who has been proclaimed Emperor at St. Petersburg. The publication of this remarkable and important event we shall look for with impatience.

The Agent of Lloyd's, at Gibraltar, under date of the 19th Dec. conveys the following fresh important intelligence.

In consequence of the opposition made by the Spanish authorities to any assistance from hence to the vessels driven on shore on the bowsprits during the late gale, for the purpose of getting them off, Sir John Phillips, of his Majesty's ship *Theodora*, on Saturday evening last, sent his boat armed, and they succeeded in getting off the *Providence* of Malta, after discharging her cargo, and are now working at the *Ferry Wharf*. A strong detachment from the Garrison, under the command of a field officer, was sent out to co-operate, and remained out all night. The out-pots still continue reinforced. It is said, Sir John intends to get off a *Portuguese* schooner and some other vessels that are stranded. The Spaniards, upon seeing an armed force, made no further opposition.