

[CONCLUDED.]

Subsequently to the date of those instructions and to the passage of the Ordinance, information has been received from sources entitled to be relied on, that owing to the popular excitement in the State, and the effect of the Ordinance, declaring the execution of the revenue laws unlawful, a sufficient number of persons in whom confidence might be placed, could not be induced to accept the office of Inspectors, to oppose with any probability of success, the force which will no doubt be used when an attempt is made to remove vessels and cargoes from the custody of the officers of the Customs, and indeed that it would be impracticable for the Collector, with the aid of any number of Inspectors whom he may be authorized to employ, to preserve the custody against such an attempt.

The removal of the Custom House from Charleston to Castle Pinckney, was deemed a measure of necessary precaution; and though the authority to give that direction is not questioned, it is nevertheless apparent, that a similar precaution cannot be observed, in regard to the ports of Georgetown and Beaufort, each of which, under the present laws, remains a port of entry, and exposed to the obstructions meditated in that quarter.

In considering the best means of avoiding or of preventing the apprehended obstruction to the collection of the revenue and the consequences which may ensue, it appears to be proper and necessary to enable the officers of the customs to preserve the custody of vessels and their cargoes, which, by the existing laws they are required to take, until the duties to which they are liable shall be paid or secured. The mode by which it is contemplated to deprive them of that custody is the process of replevin and that of *caupias in uiternam*, in the nature of a distress from the State tribunals organized by the Ordinance.

Against the proceeding in the nature of a distress it is not perceived that the Collector can interpose any resistance whatever; and against the process of replevin authorized by the law of the State, he, having no common law power, can only oppose such inspectors as he is by statute authorized, and may find it practicable, to employ; and these from the information already adverted to are shown to be wholly inadequate. The respect which that process deserves must therefore be considered.

If the authorities of South Carolina had not obstructed the legitimate action of the courts of the United States, or if they had permitted the State tribunals to administer the law according to their oath under the Constitution, and the regulations of the laws of the Union, the general government might have been content to look to them for maintaining the custody, and to encounter the other inconveniences arising out of the recent proceedings. Even in that case, however, the process of replevin from the courts of the State would be irregular and unauthorized. It has been decided by the Supreme Court of the United States, that the Courts of the United States have exclusive jurisdiction of all seizures made on land or water for a breach of the laws of the United States; and any intervention of a State authority, which, by taking the thing seized out of the hands of the United States officer, might obstruct the exercise of this jurisdiction is unlawful; that in such case the Court of the United States having cognizance of the seizure may enforce a re-delivery of the thing by attachment or other summary process; that the question under such a seizure whether a forfeiture has been actually incurred belongs exclusively to the Courts of the United States, and it depends on the final decree whether the seizure is to be deemed rightful or tortious; and that not until the seizure be finally judged wrongful and without probable cause by the courts of the United States, can the party proceed at common law for damages in the State courts.

But by making it "unlawful for any of the constituted authorities, whether of the United States or of the State, to enforce the laws for the payment of duties, and declaring that all judicial proceedings which shall be hereafter had in affiance of contracts made with purpose to secure the duties imposed by the said acts, are and shall be held utterly null and void," she has in effect abrogated the judicial tribunals within her limits in this respect—has virtually denied the United States access to the courts established by their own laws, and declared it unlawful for the Judges to discharge those duties which they are sworn to perform. In lieu of these she has substituted those state tribunals already adverted to,—the Judges whereof are not merely forbidden to allow an appeal or permit a copy of their record, but are previously sworn to disregard the laws of the Union, and enforce those only of South Carolina; and, thus deprived of the function essential to the judicial character, of inquiring into the validity of the law and the right of the matter, become merely ministerial instruments in aid of the concerted obstruction of the laws of the Union.

Neither the process nor authority of these tribunals, thus constituted, can be respected consistently with the supremacy of the laws or the rights and security of the citizens. If they be submitted to, the protection due from the government to its officers and citizens is withheld, and there is at once an end, not only to the laws, but to the Union itself.

Against such a force as the Sheriff may, and which, by the replevin act of South Carolina, it is his duty to exercise, it cannot be expected that a collector can retain his custody with the aid of the inspectors. In such case, it is true, it would be competent to institute suits in the United States Courts against those engaged in the unlawful proceeding; or the property might be seized for a violation of the revenue laws, and being libelled in the proper courts, an order might be made for its re-delivery, which would be committed to the Marshal for execu-

cution. But in that case the 4th section of the act, in broad and unqualified terms, makes it the duty of the Sheriff "to prevent such recapture or seizure, or to re-deliver the goods, as the case may be," even "under any process, order or decrees, or other pretext contrary to the true intent and meaning of the Ordinance aforesaid." It is thus made the duty of the Sheriff to oppose the process of the Courts of the United States, and for that purpose, if need be, to employ the whole power of the county; and the act expressly reserves to him all power, which, independently of its provisions, he could have used. In this reservation it obviously contemplates a resort to other means than those particularly mentioned.

It is not to be disguised that the power which it is thus enjoined upon the Sheriff to employ is nothing less than the *posse comitatus*, in all the rigor of the ancient common law. This power, though it may be used against unlawful resistance to judicial process, is in its character forcible, and analogous to that conferred upon the Marshals by the act of 1795. It is in fact the embodying of the whole mass of the population under the command of a single individual, to accomplish by their forcible aid what could not be effected peaceably and by the ordinary means. It may probably be said to be a relict of those ages in which the laws could be defeated rather by physical than moral force, and, in its origin, was conferred upon the Sheriffs of England to enable them to defend their country against any of the King's enemies when they come into the land, as well as for the purpose of executing process. In early and less civilized times, it was intended to include "the aid and attendance of all the knights and others who were bound to have harness." It includes, the right of going with arms and military equipments, and embraces larger classes and greater masses of population than can be compelled by the laws of most of the States to perform military duty.

If the principles of the common law are recognized in South Carolina, (and from this act it would seem they are,) the powers of summoning the *posse comitatus* will compel, under the penalty of fine and imprisonment, every man, over the age of fifteen and able to travel, to turn out at the call of the sheriff, and with such weapons as shall be necessary; and it may justify beating and even killing such as may resist. The use of the *posse comitatus* is therefore a direct application of force, and cannot be otherwise regarded than as the employment of the whole militia force of the county, and in an equally efficient form, under a different name. No proceeding which resorts to this power, to the extent contemplated by the act, can be properly denominated peaceable.

The act of South Carolina, however, does not rely altogether upon this forcible remedy. For even attempting to resist or disobey,—though by the aid only of the ordinary officers of the customs,—the process of replevin, the collector and all concerned are subjected to a further proceeding in the nature of a distress of their personal effects, and are moreover made guilty of a misdemeanor and liable to be punished by fine of not less than one thousand nor more than five thousand dollars, and to imprisonment not exceeding two years nor less than six months; and for even attempting to execute the orders of the court for retaking the property, the marshal and all assisting would be guilty of a misdemeanor and be liable to a fine of not less than three thousand dollars, nor more than ten thousand, and to imprisonment not exceeding two years nor less than one; and in case the goods should be retaken under such process it is made the absolute duty of the Sheriff to retake them.

It is not to be supposed, that in the face of these penalties aided by the powerful force of the county which would doubtless be brought to sustain the State officers, either that the collector could retain the custody in the first instance, or that the marshal could summon sufficient aid to retake the property pursuant to the order or other process of the court.

It is moreover obvious that in this conflict between the powers of the officers of the United States and of the State, (unless the latter be passively submitted to,) the destruction to which the property of the officers of the customs would be exposed, the commission of actual violence, and the loss of lives, would be scarcely avoidable.

Under these circumstances, and the provisions of the acts of South Carolina, the execution of the laws is rendered impracticable, even through the ordinary judicial tribunals of the United States. There would certainly be fewer difficulties and less opportunity of actual collision between the officers of the U States and of the State, and the collection of the revenue would be more effectually secured—if indeed it can be done in any other way—by placing the custom-house beyond the immediate power of the county.

For this purpose, it might be proper to provide, that whenever, by any unlawful combination or obstruction in any State, or in any port, it should become impracticable faithfully to collect the duties, the President of the United States should be authorized to alter and abolish such of the districts and ports of entry as should be necessary, and to establish the custom-house at some secure place within the same port or harbor of such State; and in such cases, it should be the duty of the collector to reside at such place, and to detain all vessels and cargoes until the duties imposed by law be properly secured, or paid in cash—deducting interest; that in such cases it should be unlawful to take the vessel and cargo from the custody of the proper officer of the customs, unless by process from the ordinary judicial tribunals of the U States; and that in case of an attempt otherwise to take the property by a force too great to be overcome by the officers of the customs, it should be lawful to protect the possession of the officers by the employment of the land and naval forces

and militia, under provisions similar to those authorized by the 11th section of the act of the 9th of January, 1809.

This provision, however, will not shield the officers and citizens of the United States acting under the laws from suits and prosecutions in the tribunals of the State which might thereafter be brought against them; nor would it protect their property from the proceeding by distress; and it may well be apprehended that it would be inefficient to insure a proper respect to the process of the constitutional tribunals in prosecutions for offences against the U. States, and to protect the authorities of the U. States, whether judicial or ministerial, in the performance of their duty. It would, moreover, be inadequate to extend the protection due from the government to that portion of the people of South Carolina against outrage and oppression of any kind, who may manifest their attachment and yield obedience to the laws of the Union.

It may therefore be desirable to revive, with some modifications better adapted to the occasion, the 6th section of the Act of the 3d March, 1815, which expired on the 4th of March 1817, by the limitation of that of 27th of April, 1816, and to provide that in any case where *suit* shall be brought against any individual in the Courts of the State for any act done under the laws of the United States, he should be authorized to remove the said cause by petition into the Circuit Court of the United States, without any copy of the record, and that that Court should proceed to hear and determine the same as if it had been originally instituted therein; and that in all cases of injuries to the persons or property of individuals acting under the laws of the United States for disobedience to the ordinance and laws of South Carolina in performance thereof, redress may be sought in the Courts of the United States.

It may be expedient, also, by modifying the resolution of the 3d March, 1791, to authorize the Marshals to make the necessary provision for the safe keeping of prisoners committed under the authority of the U. S.

Provisions less than these, consisting as they do for the most part, rather of a revival of the policy of former Acts called for by the existing emergency, than of the introduction of any unusual or rigorous enactments, would not cause the laws of the Union to be properly respected and enforced. It is believed these would prove adequate, unless the military force of the State of South Carolina, authorized by the late act of the Legislature, should be actually embodied and called out in aid of their proceedings, and of the provisions of the Ordinance generally. Even in that case, however, it is believed that no more will be necessary than a few modifications of its terms to adapt the Act of 1795 to the present emergency, as by that Act the provisions of the law of 1792 were accommodated to the crisis then existing; and by conferring authority upon the President, to give it operation during the session of Congress, and without the ceremony of a Proclamation, whenever it shall be officially made known to him by the authority of any State, or by the Courts of the United States, that within the limits of such State the laws of the U. States will be openly opposed, and their execution obstructed by the actual employment of military force or by any unlawful means whatsoever, too great to be otherwise overcome.

In closing this communication I should do injustice to my own feelings not to express my confident reliance upon the disposition of each Department of the Government to perform its duty, and to co-operate in all measures necessary in the present emergency.

The crisis undoubtedly invokes the fidelity of the patriot and the sagacity of the statesman; not more in removing such portion of the public burthen as may be unnecessary, than in preserving the good order of society and in the maintenance of well regulated liberty.

While a forbearing spirit may, and I trust, will be exercised towards the errors of our brethren in a particular quarter, duty to the rest of the Union demands that open and organized resistance to the laws should not be executed with impunity.

The rich inheritance bequeathed by our fathers has devolved upon us the sacred obligation of preserving it by the same virtues which conducted them through the eventful scenes of the revolution, and ultimately crowned their struggle with the noblest model of civil institutions. They bequeathed to us a Government of laws, and a Federal Union, founded upon the great principle of popular representation.

After a successful experiment of forty-four years, at a moment when the Government and the Union are the objects of the hopes of the friends of civil liberty throughout the world, and in the midst of public and individual prosperity unexampled in history, we are called upon to decide whether these laws possess any force, and that Union the means of self preservation. The decision of this question by an enlightened and patriotic people cannot be doubtful. For myself, fellow-citizens, devoutly relying upon that kind Providence, which has hitherto watched over our destinies, and anticipated a profound reverence for those institutions I have so much cause to love, and for the American people whose partiality honored me with their highest trust, I have determined to spare no effort to discharge the duty which in this conjuncture is devolved upon me. That a similar spirit will actuate the representatives of the American people is not to be questioned; and, I fervently pray that the Great Ruler of nations may so guide your deliberations and our joint measures as that they may prove salutary examples, not only to the present, but to future times, and solemnly proclaim that the Constitution and the Laws are supreme and the Union *indissoluble*.

ANDREW JACKSON.
Washington, January 16, 1833.

Congressional.

ANALYSIS OF PROCEEDINGS.

FRIDAY, JANUARY 18.

In the Senate, yesterday, Mr. King introduced a bill to extend the powers of the Board of Canal Commissioners, for the improvement of the Tennessee river in the State of Alabama. Mr. Hendricks presented a memorial of the Legislature of Indiana on the subject of the National Road. Resolutions were submitted by Messrs. Benton, Tipton, and Foot. After the transaction of the usual morning business, the Senate resumed the consideration of the bill appropriating for a limited time the proceeds of the sales of the public lands, and the amendment proposed by the Committee on Public Lands, (in lieu thereof,) for the reduction of the price of the public domain. Mr. Grundy addressed the Senate one hour, in an eloquent speech in opposition to the general principles of the original bill, and in favor of the amendment with proper modifications. He was followed by Mr. Ewing in favor of the original bill. Mr. Poindexter, with a view to perfect the original bill before the question was taken on the amendment, proposed to add several additional sections, providing for a gradual reduction of the price of the public lands, remaining unsold for a specified period after being brought into market—granting pre-emptions under certain circumstances—providing for continuing the surveys—and guaranteeing to the new States, that the present minimum price of the public lands, shall not be increased during the existence of the proposed law. Mr. Clay opposed this amendment, with the exception of the latter clause. After a few observations by Messrs. Black, Poindexter, Buckner, and King, the Senate, without taking the question, adjourned.

In the House of Representatives Mr. Hubbard, from the Committee on Revolutionary Pensions, reported a bill for establishing a Pension Office, and to authorize the appointment of a Commissioner of Pensions, which was read twice and committed. Mr. Wilde from the Committee of Ways and Means reported a resolution referring the estimates from the Commissioner of the Land Office to the Committee of Public Lands and directing an enquiry into certain branches of expenditures, which after being amended on motion of Mr. Wickliffe, so as to empower the Committee to send for persons and papers, was adopted. Mr. Hogan offered a resolution directing an enquiry by the Committee of Naval Affairs into certain alleged misconduct of officers employed in the naval service, which was adopted. The resolutions heretofore offered by Mr. Adams calling on the President and Secretary of the Treasury for lists of the articles referred to by them respectively in their annual Message and Report, in their remarks upon the reduction of the duties, were taken up and discussed by Messrs. Adams and Hoffman until the hour allotted to morning business had expired. The House then, on motion of Mr. Clay, went into Committee of the Whole on the state of the Union, Mr. Wayne in the Chair upon the Tariff Bill. Mr. McKennan addressed the House nearly an hour and a half against the bill, and was followed by Mr. Root in favor of the general principles of the bill, who after addressing the Committee more than an hour gave way to a motion that the Committee rise, which was carried and the House adjourned.

SATURDAY, JANUARY 19.

In the Senate, yesterday, the resolutions submitted on Thursday by Messrs. Tipton and Benton, were considered and agreed to. The resolution offered on the same day by Mr. Foot, was taken up, and, on motion of that gentleman, laid on the table. After the transaction of other unimportant morning business, the Senate resumed the consideration of the bill appropriating, for a limited time, the proceeds of the sales of the Public Lands, the question being on the amendment proposed by Mr. Poindexter. Mr. King addressed the Senate in a speech of an hour's length in opposition to the original bill, and in favor of the amendment. He was followed by Mr. Chambers in reply, and in favor of the original bill. Without taking any question, the Senate adjourned.

In the House of Representatives, Mr. Conner, from the Committee on Post Offices and Post Roads, reported a bill for the better organization of the Post Office Department, and adjustment of the salaries of its officers and clerks. Several private bills were also reported. The resolutions heretofore offered by Mr. Adams, calling on the President and Secretary of the Treasury for information, relative to the reduction of duties, was further debated by Messrs. Hoffman, Adams, and Stewart, until the hour expired. The House then went into Committee upon the Tariff bill, Mr. Wayne in the Chair. Mr. Root resumed and concluded his speech in favor of the general principles of the bill, after speaking about two hours. Mr. Verplanck then went into an explanation and defence of the provisions of the bill, which occupied a little more than an hour, and concluded by modifying the duties upon teas, which, by a mistake which he explained, had been reported in the bill at a higher rate than had been intended by the Committee, to 5 cents per lb. upon Green teas, 3 cents upon Souchong and other black teas, and 14 cents upon Bohea. Mr. Jenifer then moved the Committee rise, which was carried, and the House adjourned.

MONDAY, JANUARY 21.

In the Senate, on Saturday, the consideration of the bill appropriating for a limited time the proceeds of the sales of the public lands, was resumed—the question being on the amendment proposed by Mr. Poindexter. Mr. P. addressed the Senate at length in favor of his amendment, and the original bill; before he had concluded, an adjournment took place.

In the House of Representatives, Mr. Cambreleng, from the Committee on Commerce, reported a bill to regulate the compensation of officers of Revenue Cutters. Several private bills were reported and resolutions adopted. The resolutions heretofore offered by Mr. Adams, calling on the President and the Secretary of the Treasury for information relative to the Tariff, were further debated by Messrs. Stewart and Adams, until the hour allotted to morning business had expired. The House then went into Committee on the Tariff. Mr. Jenifer addressed the Committee about an hour in opposition to some of the features of the bill, and was followed by Mr. Denny, who spoke about two hours against its general principles. Mr. E. D. White moved the Committee rise; which was carried, and the House adjourned.

From the N. Y. Courier & Enquirer.

LATE FROM ENGLAND.

By the packet ship *COLONIA*, Captain Robinson, which arrived yesterday, the editor of the Courier and Enquirer has received London papers to the evening of the 4th of December inclusive. The advices last received were to the morning of that day, those which have now reached us are therefore some hours later.

A letter from Antwerp gives an interesting account of the state of affairs at that place. We were not before aware that the inundations caused by General Chasse had rendered the Tete de Flandres and other points on the left bank of the Scheldt, inaccessible to the French troops. This if we may venture an opinion, materially increases the strength of his position, indeed we are inclined to attribute his apparent inaction more to confidence in his own resources than to any disinclination or inability to impede the approaches of the French. The latter appear hitherto to have taken no step of importance towards the reduction of the citadel, and every thing indicates the awkward position in which the ridiculous system of non-intervention, has placed those who are parties to it.

Some stormy debates had taken place in the French Chamber of Deputies, still the accounts from Paris of the 2d December say, "every thing promises a tranquil winter in Paris. The opposition are completely defeated; and the 6th June is too recent to permit of their venturing on rebellion; even the *Tribune* reluctantly admits that the time is gone by for street *meutes*. Trade is not reviving so rapidly in Paris as in the Departments; but some improvement has taken place, and it is hoped that the ensuing winter will be much gayer than the last."

From the London Courier of Dec. 4.

The Hamburg papers to the 27th ult., the Allgemeine Zeitung to the 28th, and Frankfort journals to the 29th, all inclusive, have also arrived.

The accounts from Berlin of the 22d, state that scarcely any body there believed in war.

From Vienna, of the same date, it is also announced, that the news of the entrance of the French army into Belgium, which had arrived there that morning, had not much affected the funds.

The following are extracts:

SUMMIS OF THE INTENTIONS OF PRUSSIA.

Berlin, Nov. 21.

The visit of the Queen of Holland to Berlin has no political object whatever. Prussia has very decidedly taken its resolution in this matter. We are neither inclined to suffer Belgium to become a French province, nor to sacrifice to the obstinacy of Holland the manufacturing interests of our Rhenish provinces by the denial of the free navigation of the rivers, as has been the case for these fifteen years; but if Antwerp does not obtain free communication with the sea, no alternative would remain for Belgium but to give itself entirely up to France. It ought to be the first care of Holland, if it understood its interest, to prevent this. A moderate tonnage duty will doubtless be allowed it; and wagers are laid here that peace will be signed in three weeks.

November 22.

The same activity is observed in the foreign departments; the conference with the Ambassadors of the Great Powers are very frequent, but hardly any body now believes that there will be a war.

We hear that there are three different opinions in the Council of State; one decidedly in favor of peace, at the head of which is Prince William, the King's brother, who is seconded by several Ministers—a second, which considers that war will not be necessary, unless demonstrations should be of no avail, and the articles of the treaty of November 15, signed by the Five Powers, should be violated, and this opinion is said to be especially entertained in a higher quarter; lastly, one decidedly warlike, which would have every advance beyond the frontiers by an army considered as a declaration of war, (this opinion is said to be advocated by some princes.) With the well known pacific sentiments of our King, and the confidence of other Governments in his impartiality and justice, we may still hope the best.

One of the veterans of the seven years' war died here on the 10th inst., Major-General William V. Rudorff, a native of Landenburg, in Pomerania; he was in the 92d year of his age. *Hamburg paper*, Nov. 27.