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EXPOSITION
AND PROTEST,

REPORTED
BY THE SPECIAL COMMITTEE

OF THE
HOUSE OF REPRESENTATIVES,

ON
THE TARIFF;

READ AND ORDERED TO BE PRINTED,

Dec. 19th, 1828.



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1829.

The Committee of the whole, to whom were referred the Governor's Message and various memorials on the subject of the Tariff, having reported, and the House having adopted the following resolution, viz :

“ *Resolved*, That it is expedient to protest against the unconstitutionality and oppressive operation of the system of protecting duties, and to have such protest entered on the Journals of the Senate of the United States—Also, to make a public exposition of our wrongs and of the remedies within our power, to be communicated to our sister states, with a request that they will co-operate with this state in procuring a repeal of the Tariff for protection, and an abandonment of the principle; and if the repeal be not procured, that they will co-operate in such measures as may be necessary for arresting the evil.”

“ *Resolved*, That a committee of seven be raised to carry the foregoing resolution into effect :” which was decided in the affirmative, and the following gentlemen appointed on the committee, viz—JAMES GREGG, D. L. WARDLAW, HUGH S. LE GARE, ARTHUR P. HAYNE, WM. C. PRESTON, WILLIAM ELLIOTT, and R. BARNWELL SMITH.

The special Committee to whom the above Resolution was referred, beg leave to Report the following Exposition and Protest—

EXPOSITION.

THE Committee have bestowed on the subject referred to them, the deliberate attention which its importance merits; and the result, on full investigation is, an unanimous opinion, that the Act of Congress of the last session, with the whole system of legislation imposing duties on imports, not for revenue, but for the protection of one branch of industry, at the expense of others, is unconstitutional, unequal and oppressive; calculated to corrupt the public morals, and to destroy the liberty of the country. These propositions they propose to consider in the order stated, and then to conclude their report, with the consideration of the important question of the remedy.

The Committee do not propose to enter into an elaborate, or refined argument on the question of the constitutionality of the Tariff system.

The general government is one of specific powers, and it can rightfully exercise only the powers expressly granted, and those that may be "necessary and proper" to carry them into effect; all others being reserved expressly to the states, or to the people. It results necessarily, that those who claim to exercise a power under the constitution, are bound to shew, that it is expressly granted, or that it is necessary and proper, as a means to some of the granted powers. The advocates of the Tariff have offered no such proof. It is true, that the third section of the first article of the constitution of the United States authorizes Congress to lay and collect an impost duty, but it is granted as a tax power, for the sole purpose of revenue; a power in its nature essentially different from that of imposing protective or prohibitory duties. The two are incompatible; for the prohibitory system must end in destroying the revenue from impost. It has been said that the system is a violation of the spirit and not the letter of the constitution. The distinction is not material. The constitution may be as grossly violated by acting against its meaning as against its letter; but it may be pre-

per to dwell a moment on the point, in order to understand more fully the real character of the acts, under which the interest of this, and other states similarly situated, has been sacrificed. The facts are few and simple. The constitution grants to Congress the power of imposing a duty on imports for revenue; which power is abused by being converted into an instrument for rearing up the industry of one section of the country on the ruins of another. The violation then consists in using a power, granted for one object, to advance another, and that by the sacrifice of the original object. It is, in a word, a *violation of perversion*, the most dangerous of all, because the most insidious, and difficult to resist. Others cannot be perpetrated without the aid of the judiciary; this may be, by the executive and legislative alone. The courts by their own decisions cannot look into the motives of legislators—they are obliged to take acts by their titles and professed objects, and if *they* be constitutional they cannot interpose their power, however grossly the acts may violate the constitution. The proceedings of the last session sufficiently prove, that the House of Representatives are aware of the distinction, and determined to avail themselves of the advantage.

In the absence of arguments drawn from the constitution itself, the advocates of the power have attempted to call in the aid of precedent. The committee will not waste their time in examining the instances quoted. If they were strictly in point they would be entitled to little weight. Ours is not a government of precedents, nor can they be admitted, except to a very limited extent, and with great caution, in the interpretation of the constitution, without changing in time the entire character of the instrument. The only safe rule is the constitution itself, or, if that be doubtful, the history of the times. In this case, if doubts existed, the journals of the convention would remove them. It was moved in that body to confer on Congress, the very power in question; to encourage manufactures, but it was deliberately withheld, except to the extent of granting patent rights for new and useful inventions. Instead of granting the power to Congress, permission was given to the states to impose duties, with consent of that body, to encourage their own manufactures; and thus in the true spirit of justice, imposing the burden on those, who were to be benefited. But giving to precedents, whatever weight may be claimed, the committee feel confident, that in this case there are none in point, previous to the adoption of the present Tariff system. Every instance which has been cited, may fairly be referred to the legitimate power of Congress to impose duties on imports for revenue. It is a necessary incident of such duties to act as an encourage-

ment to manufactures, whenever imposed on articles, which may be manufactured in our own country. In this incidental manner Congress has the power of encouraging manufactures; and the committee readily concede, that in the passage of an impost bill, that body may, in modifying the details, so arrange the provisions of the bill, as far as it may be done consistently with its proper object, as to aid manufactures. To this extent Congress may constitutionally go, and has gone from the commencement of the government, which will fully explain the precedents cited from the early stages of its operation. Beyond this, *they* never advanced until the commencement of the present system, the inequality and oppression of which, your committee will next proceed to consider.

The committee feel, on entering upon this branch of the subject, the painful character of the duty they must perform. They would desire never to speak of our country, as far as the action of the general government is concerned, but as one great whole, having a common interest, which all its parts ought zealously to promote. Previously to the adoption of the Tariff system, such was the unanimous feeling of this state; but in speaking of its operation it will be impossible to avoid the discussion of sectional interest, and the use of sectional language. On its authors however, and not on us, who are compelled to adopt this course in self-defence by the injustice and oppression of their measures—be the censure. So partial are the effects of the system, that its burdens are exclusively on one side and its benefits on the other. It imposes on the agricultural interest of the South, including the South West, and that portion of our commerce and navigation engaged in foreign trade, the burden, not only of sustaining the system itself, but that also of sustaining government. In stating the case thus strongly, it is not the intention of the committee to exaggerate. If exaggeration were not unworthy of the gravity of the subject, the reality is such as to render it unnecessary.

That the manufacturing states, even in their own opinions bear no share of the burden of the Tariff in reality—we may infer with the greatest certainty from their own conduct. The fact, that they incessantly demand an increase of duties, and consider every addition as a blessing, and a failure to obtain one, a curse, is the strongest confession, that whatever burden it imposes, in reality falls, not on them, but on others. Men ask not for burdens, but for benefits. The tax paid by the duty on imports by which, with the exception of the receipts from the sale of the public lands, the government is wholly supported, and which, in its gross amount, is annually equal to about \$ 23,000,000, is then in truth no tax on them. Whatever por-

tion of it they advance, as consumers of the articles, on which it is imposed, returns to them from the labour of others, with usurious interest, through an artfully contrived system. That such are the facts, the committee will proceed to demonstrate, by other arguments, than the confession of the party by its acts, conclusive as that ought to be considered.

If the duty were imposed upon exports, instead of imports, no one would doubt its partial operation. It would clearly fall on those engaged in rearing products for foreign markets, and as Rice, Tobacco and Cotton, constitute the great mass of our exports, such a duty would, of necessity, mainly fall on the Southern States, where they are exclusively cultivated; and to prove that the burthen of the Tariff also falls on them almost exclusively, it is only necessary to shew, that, as far as their interest is concerned, there is little or no difference between an export and an import duty. We export to import. The object is, an exchange of the fruits of our labour, for those of other countries. We have, from soil and climate, a facility in rearing certain great agricultural staples, while other and older countries, with a dense population, and capital greatly accumulated, have equal facility in manufacturing various articles suited to our use; and thus a foundation is laid for an exchange of the products of labour, mutually advantageous. A duty, whether it be laid on imports or exports, must fall upon this exchange, and on which ever laid in our country, must in reality be paid by the American producer of the articles exchanged. Such must be the operation of all taxes on sales or exchanges. The owner in reality pays it, whether laid on the vender or purchaser. It matters not in the sale of a tract of land, or any other article, if a tax be imposed on the sale, whether it be paid by him who sells or him who buys, the amount must, in both cases, be deducted from the price. Nor can it alter, in this particular, the operation of such a tax, if imposed on the exchanges of communities instead of individuals. Such exchanges are but the aggregate of sales of the individuals of the respective countries, and must, if taxed, be governed by the same rules. Not is it material whether the exchange be barter or sale, direct or circuitous; in every case it must fall on the producer. To the growers of Rice, Cotton and Tobacco, it is the same whether the government takes one third of what they raise, for the liberty of sending the other two thirds abroad; or one third of the Salt, Sugar, Iron, Coffee, Cloth, and other articles they may need in exchange, for the liberty of bringing them home; in both cases he gets a third less than he ought, a third of his labour is taken, yet the one is an import and the other an export duty. It is true, that a tax on the imports, by raising the price

of the articles imported, may, in time, produce the supply at home, and thus give a new direction to the exchanges of a country, but it is also true, that a tax on the exports, by diminishing at home the price of the raw material, may have the same effect, and with no greater burden to the grower. Whether the situation of the South will be materially benefitted by this new direction to its exchanges, will be considered hereafter; but whatever portion of our foreign exchanges may in fact remain in any stage of this process of changing her market, must be governed by the rule laid down. Whatever duty may be imposed to bring it about, must fall on the foreign trade which remains, and be paid by the *South almost exclusively*; as much so as an equal amount of duty on their exports.

Let us now trace the operation of the system in some of its prominent details, in order to understand with greater precision, the extent of the burden it imposes on us, and the benefits which it confers, at our expense, on the manufacturing states.

The committee in the discussion of this point will not aim at minute accuracy. They have neither the means nor the time requisite for that purpose, nor do they deem it necessary, if they had, to estimate the fractions of gain or loss on either side, in transactions of such great magnitude. The exports of domestic produce in round numbers, may be estimated at averaging \$ 53,000,000, annually, of which, the States growing Cotton, Rice and Tobacco, produce about \$ 35,000,000. The average value of the exports of Cotton Tobacco and Rice, for the last four years, exceed \$ 35,500,000, to which if we add Flour, Lumber, Corn, and various other articles, exported from the same States, but which cannot be distinguished on the Custom House books from exports of the same description from the other States, the amount must be equal to that stated. Taking it at that sum, the exports of the Southern or staple States, and of the other States, will then stand as \$ 37,000,000 to \$ 16,000,000, considerably exceeding the proportion of two to one, while their population, estimated in federal numbers, is the reverse, the former sending to the House of Representatives 76 members, and the latter 137. It follows that one third of the Union exports near two thirds of the domestic products. Such then is the amount of labour which our country annually exchanges with the rest of the world, and such our proportion. The government is supported almost entirely by a tax on this exchange, in the shape of an import duty, the gross amount of which is annually about \$ 23,000,000 as has been already stated. Previous to the passing of the act of the last session, this tax averaged about $37\frac{1}{2}$ per cent. on the value of the imports. What addition that has made, it is difficult with the

present data to establish with precision ; but it is certainly short of the truth to state it to be an average increase of $7\frac{1}{2}$ per cent. Thus making the present duty to average at least 45 per cent. which on \$ 37,000,000 the amount of our share of the exports will give the sum of 16,650,000 as our share of the general contributions to the Treasury.

Let us take another and perhaps more simple and striking view of this important point. Exports and imports must be equal in a series of years. This is a principle universally conceded. Let it then be supposed for the purpose of illustration, that the United States were organized, into two separate and distinct Custom House establishments; one for the staple states, and the other for the rest of the Union; and that all commercial intercourse between the two sections were taxed, in the same manner and to the same extent with that now imposed on the commerce with the rest of the world. The foreign commerce under the circumstances supposed, would be carried on from each section, direct with the rest of the world ; and the imports of the Southern Custom House establishment, on the principle, that imports and exports must be equal, would amount annually to \$ 37,000,000, which at 45 per cent. the average amount of the impost duty would give an annual revenue of \$ 16,650,000, without increasing the burden on the people of these states one cent. This would be the amount of the revenue on the exchange of that portion of their products, which go abroad ; but if we take into the estimate the duty which would accrue on the exchange of the products with the manufacturing states, which now in reality is paid by the southern states in the shape of increased prices, as a bounty to the manufactories, but which on the supposition would be paid, as a part of their revenue at the Custom House, many millions more would have to be added.

But it is contended that the consumers really pay the impost, and, as the manufacturing states consume a full share, in proportion to their population, of the articles imported, they must also contribute their full share to the Treasury of the Union. The committee will not deny that the consumers pay the duties, and will take it for granted that the consumption of imported articles is in proportion to population. The manufacturing states however, indemnify themselves, and more than indemnify themselves for the increased price, they pay on the articles they consume, as has already been proved, by their confession, in a form which cannot deceive, by their own acts. Nor is it difficult to trace the operation by which it is effected. The very acts of Congress imposing burdens on them, as consumers, give them the means, through the monopoly which it affords the manufacturers in the home market, not only of indemnifying themselves

for the increased price on the imported articles, which they consume, but in a great measure of commanding the industry of the rest of the Union. The argument urged by them for the adoption of the system, and with much success is, that the price of property and products in the manufacturing states must be thereby increased, which clearly proves the beneficial operation of the system on them. It is by this very increase of price, which must be paid by their fellow citizens of the South, that the indemnity to the manufacturers, is effected; and by means of this the fruits of our toil and labour, which on every principle of justice, ought to belong to ourselves, are transferred from us to them. The maxim that the consumers pay, strictly applies to us. We are mere consumers, and destitute of all means of transferring the burden from ourselves to others. We may be assured, that the large amount paid into the Treasury, under the duties on imports, is really derived from the labor of some portion of our citizens. The government has no mines. Some one must bear the burden of its support. This unequal lot is ours. We are the serfs of the system, out of whose labor is raised, not only the money that is paid into the Treasury, but the funds out of which are drawn the rich reward of the manufacturer and his associates in interest. Their encouragement is our discouragement. The duty on imports which is mainly paid out of our labour gives them the means of selling to us at a higher price, while we cannot, to compensate the loss, dispose of our products at the least advance. It is then not a subject of wonder, when properly understood, that one section of country though blessed by a kind Providence with a genial sun and prolific soil, from which spring the richest products, should languish in poverty and sink into decay; while the rest of the Union though less fortunate in natural advantages is flourishing in prosperity beyond example.

The assertion, that the encouragement of the industry of the manufacturing states, is in fact discouragement to ours, was not made without due deliberation. It is susceptible of the clearest proof.

We cultivate certain great staples for the supply of the general market of the world; and they manufacture almost exclusively for the home market. Their object in the Tariff is to keep down foreign competition, in order to obtain a monopoly of the domestic market. The effect on us is to compel us to purchase at a higher price, both what we purchase from them and from others, without receiving a corresponding increase of price for what we sell. The price, at which we can afford to cultivate, must depend on the price at which we receive our supplies. The lower the latter, the

lower we may dispose of our products with profit ; and in the same degree our capacity of meeting competition is increased ; on the contrary, the higher the price of our supplies, the less the profit at the same price, and the less consequently the capacity for meeting competition. If, for instance, Cotton can be cultivated at ten cents a pound, under an increase of 45 per cent. for what is purchased in return, it is clear, we could cultivate it as profitably at $5\frac{1}{2}$ cents, if the 45 per cent. were not added, and our capacity of meeting the competition of foreigners in the general market of the world would be increased in the same proportion. If we can now, with the increased prices under the Tariff, retain our commerce, we would be able with a reduction of 45 per cent. in the prices of our supplies, to drive out all competition, and thus add annually to the consumption of our cotton at least 300,000 bales, with a corresponding increase of our annual income. The case then, fairly stated between us and the manufacturing states, is, that the Tariff gives them a prohibition against foreign competition in our own market, in the sale of their goods, and deprives us of the benefit of a competition of purchasers for our raw material. They who say, that they cannot compete with foreigners at their own doors without an advantage of nearly fifty per cent, expect us to meet them abroad, under a disadvantage equal to their encouragement. But the oppression, great as it is to us, will not stop at this point. The trade between us and Europe, has heretofore been a mutual exchange of products. Under the existing duties, the consumption of European fabrics must in a great measure cease in our country, and the trade must become, on their part a cash transaction. But he must be ignorant of the principles of commerce, and the policy of Europe, particularly England, who does not see, that it is impossible to carry on a trade of such vast extent on any other basis but that of mutual exchange of product ; and if it were not impossible, such a trade would not long be tolerated. We already see indications of the commencement of a commercial warfare, the termination of which cannot be conjectured, though *our* fate may easily be. The last remains of our great and once flourishing agriculture, must be annihilated in the conflict. In the first instance we will be thrown on the home market, which cannot consume a fourth of our products ; and instead of supplying the world, as we should with a free trade, we shall be compelled to abandon the cultivation of three fourths of what we now raise, and receive for the residue, whatever the manufacturers, (who will then have their policy consummated, by the entire possession of their market, both exports and imports,) may choose to give. Forced with an immense sacrifice of capital to

abandon our ancient and favorite pursuit, to which our soil, climate, habits and peculiar labor are adapted, we should be compelled without experience or skill, and with a population untried in such pursuits, to attempt to become the rivals instead of the customers of the manufacturing states. The result is not doubtful. If they, by superior capital and skill, should keep down successful competition on our part, we should be doomed to toil at our unprofitable agriculture, selling at the prices, which a single and limited market might give. But on the other hand, if our necessity should triumph over their capital and skill, if, instead of raw cotton, we should ship to the manufacturing states, cotton yarn, and cotton goods, the thoughtful must see, that it would immediately bring about a state of things, which could not long continue. Those who now make war on our gains would then make it on our labour. They would not tolerate, that those, who now cultivate our plantations and furnish them with the material and the market for the products of their arts, should, by becoming their rivals, take bread out of the mouths of their wives and children. The committee will not pursue this painful subject, but as they clearly see, that the system if not arrested, must bring the country to this hazardous extremity, neither prudence nor patriotism would permit them to pass it by, without giving warning of an event so full of danger.

It has been admitted in the argument that the consumption of the manufacturing states, in proportion to population, was as great as ours. How they with their limited means of payment, if estimated by the exports of their own products, could consume as much as we, with our ample exports, has been partially explained, but it demands a fuller consideration: Their population in round numbers may be estimated at 8,000,000 and ours at 4,000,000, while the value of their products exported compared to ours is as sixteen to thirty seven millions of dollars. If to the aggregate of these sums, be added the profits of our foreign trade and navigation, it will give the amount of the fund out of which is annually paid the price of foreign articles consumed in this country. This profit at least so far as it constitutes a portion of the fund out of which the price of foreign articles is paid, is represented by the difference between the value of the exports and imports, both estimated at our own ports, and, taking the average of the last five years, amount to about \$4,000,000. The foreign trade of the country being principally in the hands of the manufacturing states, we will add this sum to their means of consumption, which will raise theirs to \$20,000,000, and will place the relative means of consumption of the two sections, as twenty, to 37,000,000 of dollars;

while on the supposition of equal consumption according to population estimated in *federal* numbers, their consumption would amount to thirty eight and ours to nineteen millions of dollars. Their consumption would thus exceed their capacity to consume, if judged by the value of their exports, and the profits of their foreign commerce, by eighteen millions; while ours judged the same way would fall short by the same sum. The inquiry which naturally presents itself on this statement is, how is this great change in the relative condition of the parties, to our disadvantage, effected. The committee will proceed to explain this. It obviously grows out of their connection with us. If they were entirely separate, without political or commercial connection, it is manifest, that the consumption of the manufacturing states of foreign articles could not exceed twenty millions, the sum at which the value of their exports, of domestic products, and the profit of their foreign trade is estimated. It would in fact be much less as the profits of foreign navigation and commerce which have been added to their means, depend almost exclusively on the great staples of the south, and would be deducted from their means if no connection existed. On the contrary it is equally manifest, that the means of the south to consume the products of other countries, would not be materially effected, in the state supposed. Let us then inquire, what are the causes growing out of this connexion, by which so great a change is made. They may be comprehended under three, the custom house, the appropriations, and the monopoly of the manufacturers, under the Tariff system, all which are so intimately blended, as to constitute one system, which its advocates, by a perversion of all that is associated with the name, call the American System. The Tariff is the soul of the system. It has already been proved that our contribution through the Custom House to the Treasury of the Union, amounts annually to \$16,650,000. which leads to the inquiry, what becomes of the amount of the products of our labour, placed, by the operation of the system at the disposal of Congress. One point is certain, a very small share returns to us, out of whose labor it is extracted. It would require much investigation to state with precision, the proportion of the public revenue disbursed annually in the southern and other states respectively; but the committee feel a thorough conviction on an examination of the annual appropriation acts, that a sum much less than two millions of dollars falls to our share of the disbursements, and that it would be a moderate estimate to place our contribution, above what we receive back, through all the appropriations at fifteen millions; constituting to that great amount an annual, continued and uncompensated draft on the

industry of the southern states, through the Custom House alone. This sum deducted from the \$ 37,000,000, the amount of our products annually exported and added to the 20,000,000, the amount of the exports of the other states, with the profit of foreign trade and navigation, would reduce our means of consumption to \$ 22,000,000 and raise theirs to \$ 35,000,000, still leaving \$ 3,000,000 to be accounted for; this may be readily explained, by the operation of the remaining branch of the system, the monopoly, afforded to the manufacturers in our own market, *which* empowers them to force their goods on us at a price equal to the foreign article of the same description, with the addition of the duty, thus receiving in exchange, our products to be shipped on their account, and thereby increasing their means and diminishing ours in the same proportion. But this constitutes but a small part of our loss under this branch. In addition to the \$ 37,000,000 of our products, which are shipped to foreign markets, a very large amount is annually sent to the other states for their own use and consumption. The article of cotton alone is estimated at 150,000 bales, which valued at \$ 30 per bale, would amount to \$ 4,500,000 and constitutes a part of this forced exchange.

Such is the process with the amount in part of the transfer of our property annually to other sections of the country, estimated on the supposition, that each section consumes of imported articles an amount in proportion to its population; but the committee are aware that they have rated our share of the consumption far higher, than the advocates of the system have placed it. Some of them rate it as low as \$ 5,000,000 annually, not perceiving by thus reducing ours and adding to that of the manufacturing states, in the same proportion, they demonstrably prove how oppressive the system is to us and gainful to them, instead of showing, as they suppose, how little we are affected by its operation. Our very complaint is, that we are not permitted to consume the fruits of our labour; but that through an artful and complex system, in violation of every principle of justice they are transferred from us to others. It is indeed wonderful, that those who profit by our loss, (blinded as they are by self-interest,) never thought to enquire, when reducing our consumption as low as they have, what became of the immense amount of the product of our industry, which was annually sent out in exchange with the rest of the world; and if *we* did not consume its proceeds, *who* did, and by what means. If, in the ardent pursuit of gain, such a thought had occurred it would seem impossible, that all the sophistry of self-interest, delusive as it is, could disguise from their view our deep oppression, under the operation of the system. Your committee do

not intend to represent, that the commercial connexion between us and the manufacturing states is wholly sustained by the Tariff system. A great, natural, and profitable commercial communication would exist between us without the aid of monopoly on their part, which with mutual advantage, would transfer a large amount of their products to us, and an equal amount of ours to them, as the means of carrying on their commercial operations with other countries. But even this legitimate commerce, is made unequal and burthensome by the Tariff system, which by raising the price of capital and labour in the manufacturing states, raises in a corresponding degree the price of all articles in the same quarter, as well those protected as those not protected. That such would be the effect, we know has been much urged, in argument to reconcile all classes in those states to the system, and with such success, as to leave us no room to doubt its correctness; and yet, such is the strange contradictions in which the advocates of an unjust cause must ever involve themselves, when they attempt to sustain it by reason, that, the very persons who urge the adoption of the system in one quarter by holding out the temptation of high prices for *all* they make, turn round and gravely inform us that its tendency is to depress and not to advance prices. The capitalist, the farmer, the wool grower, the mechanic and labourer in the manufacturing states are all to receive higher rates, while we who consume, are to pay less for the products of their labour and capital. The obvious absurdity of these arguments leaves no room to doubt that those who advance them, are conscious that the proof of the partial and oppressive operation of the system, is unanswerable, if it be conceded that we pay in consequence of it higher prices for what we consume. If it were possible to meet that conclusion on other grounds, it could not be, that men of sense would venture to encounter such palpable contradictions; for so long as the wages of labour and the rate of interest, constitute the principal elements of price as they ever must, the one or the other argument, that addressed to us or that to the manufacturing states must be false. But in order to have a clear conception of this important point, the committee propose to consider more fully the assertion, that it is the tendency of high duties, by affording protection to reduce instead of increasing prices; and if they are not greatly mistaken, it will prove, on examination, to be utterly erroneous. Before entering into the discussion, and in order to avoid misapprehension, the committee will admit that it is perhaps possible for a country to find itself in such a situation in regard to its manufacturing capacities, that the interposition of the Legislature, by encouraging their developement, may effect a perma-

ment reduction of prices—but a comparison of the elements which constitute price here and, in England, will demonstrate, that such a result cannot take place in this country.

In the United States, the wages of labor are one hundred and fifty per cent. higher than in England. The profits of capital are one hundred per cent. higher—while the price of the raw material is higher in England only by the cost of the freight, which is certainly not above twenty five per cent. Combining these elements in their due proportion, and making every plausible allowance in favor of our own manufacturers, and the result will be, that the manufactured article here must cost more than eighty per cent. higher than the same article in England. The circumstances of the country, therefore, are not such as to permit us to calculate on a reduction of prices, as the result of the protecting system—but an enhancement of them by the erection of an artificial monopoly. It is therefore clearly our interest that such a monopoly should not be created, and that our market should afford a free and open competition to all the world. The effect would be a reduction of price on all we consume.

Having answered the argument in the abstract, the committee will not swell their report by considering the various instances which have been quoted to shew that prices have not advanced since the commencement of the system. We know that they would instantly fall nearly fifty per cent. if the duties were removed, and that is sufficient for us to know. Many and conclusive reasons might be urged to shew why prices have declined, since the period referred to; the fall of the price of the raw materials; the increase of capital and competition; the effects of the return of peace; the immense reduction in the circulating medium by subtracting from circulation a vast amount of paper, both in this country and in Europe; the improvements in the mechanical arts; and the great improvements in the use of steam, and in the art of spinning and weaving.

We are told by those who pretend to understand our interests better than we do ourselves, that excess of production, and not the tariff, is the evil that afflicts us; and that our true remedy is a reduction of the quantity of cotton, rice, and tobacco which we raise, and not a repeal of the tariff. They assert that low prices are necessary consequences of excess of supply, and that the only proper correction is in diminishing the quantity. We should feel more disposed to respect the spirit in which the advice is offered, if those from whom it comes, accompanied it with the weight of their example. They also complained much of low prices, but instead of diminishing the

supply as a remedy, they demanded an enlargement of their market by the exclusion of all competition in the home market. *Our market is the world*; and as we cannot imitate their example by enlarging it for our products to the exclusion of others, we must decline to follow their advice; which in truth instead of alleviating, would greatly increase our embarrassment. We have no monopoly in the supply of our products. Three fourths of the globe may produce them. Should we reduce our production to raise prices, others stand ready, by increasing theirs, to take our place; and instead of raising prices, we should only diminish our share of the supply. We are thus compelled to produce, be the price what it may, under the penalty of losing our market. Once lost, it may be lost forever. And lose it we must, if we continue to be compelled as we now are, on the one hand by the general competition of the world to sell low, and on the other, by the tariff to buy high. We cannot withstand this double action. Our ruin must follow. In fact our only permanent and safe remedy is, not the rise in the price of what we sell, from which we can receive no aid from our government; but in a reduction in the price of what we buy; which is prevented by the interference of the government. Give us a free and open competition in our own market, and we fear not to encounter like competition in the general markets of the world. If, under all our discouragements, by the acts of our own government, we are still able to contend with these against the world, can it be doubted if the impediment were removed we should force out all competitors, and thus also enlarge our market, not by the oppressions of our fellow citizens of the other states, but by our industry, enterprize and natural advantages.

But while the system prevents this great enlargement of our foreign market, and endangers what we have left, its advocates attempt to console us by the growth of the home market for our products, which, according to their calculation, is to compensate us amply for all our losses; though in the leading article of our products, cotton, the home market now consumes but a sixth, and with an absolute prohibition would not consume more than a fifth. In the other articles, rice and tobacco, it is even much less.

But brilliant prospects are held out of a great export trade in cotton goods, which we are told is to demand an immense amount of the raw material. To what countries are the goods to be shipped? Not to Europe, for there we will meet prohibition for prohibition; not to the southern portion of this continent, for already they have been taught to imitate our prohibitory policy. The most sanguine will not expect extensive or profitable markets in the other portions of the globe. But admit-

ting that no other impediment existed, our system itself is an effectual barrier against extensive exports of our manufactured articles. The very means which secures the domestic market, must lose the foreign. High prices are an effectual stimulus, when enforced by a monopoly, as in our own market, but they are fatal to competition in the open and free market of the world. Besides, when manufactured articles are exported, they must follow the same law, to which the products of the soil are subject, when they are also exported. They will be sent out in order to be exchanged with the products of other countries; and if these products be taxed on their introduction, as a back return, it has been demonstrated that like all other taxes on exchange, it must be paid by the producer. The nature of the operation will be seen, if it be supposed, in their exchange with us, instead of receiving our products free of duty, the manufacturer had to pay forty five per cent. on the back return of the cotton and other products, which they receive from us in exchange. If to these insuperable impediments to a large export trade, be added, that our country rears the products of almost every soil and climate, and that scarcely an article that can be imported, but what may come in competition with some of the products of our arts or our soil, and consequently ought to be excluded on the principles of the system, it must be apparent that the system itself, when perfected, will essentially exclude all exports, unless we should charitably export for the supply of the wants of others, without the expectation of a return. The loss of the exports, and with it the imports also, must in truth be the end of the system. If we export, we must import, and the most simple and efficient system to secure the home market, would in fact be to prohibit exports; and as the constitution only prohibits *duties* on exports, and as *duties are not prohibition*, we may yet witness this modification of the American system.

The committee deemed it more satisfactory to explain the operation of the system on the southern states generally, than its peculiar operation on this. In fact they had not the data, had they the inclination, to separate the oppression under which this state labors, from that of the other staple states. The fate of one must be that of all.

The committee have considered the question in its relative effects on the staple and manufacturing states, comprehending under the latter all the states who advocate the Tariff system. It is not for them to determine whether all those states have equal interest in its continuance. It is manifest that their situation is very different. While in some the manufacturing interest wholly prevails, others are divided between that and the com-

mercial and navigating interest, and in a third, the agricultural interest greatly predominates ; as is the case with all the western states. It is difficult to conceive what real interest the last can have in the system. They manufacture but little and must consequently draw their supplies principally from abroad or from the manufacturing states, and, in either case, must pay the increased price in consequence of the duties, while at the same time the tariff must necessarily diminish, if not destroy, their trade with us. From the nature of our commercial connexion with them our loss must precede theirs, but theirs will with certainty follow, unless compensation for the loss of our trade can be found somewhere in the system. Its authors have informed us that it consists of two parts, of which *prohibition* is the essence of one, and *appropriation* of the other. In both capacities, it impoverishes us, and in both, enriches the manufacturing states. The agricultural states of the west are differently affected. As a protective system, they lose in common with us ; and it will remain for them to determine, whether an adequate compensation can be found in *appropriation*, for the steady and rich return which a free exchange of the produce of their fertile soil with the staple states must give, provided the latter be left in full possession of their natural advantages.

It remains to be considered, in tracing the effects of the system, whether the gains of one section of the country will be equal to the loss of the other. If such were the fact—if all we lose be gained by the citizens of the other section, we would at least have the satisfaction of thinking, that however unjust and oppressive, it was but a transfer of property, without diminishing the wealth of the community. Such, however, is not the fact, and to its other mischievous consequences, we must add, that it destroys much more than it transfers. Industry cannot be forced out of its natural channel, without loss. The exact amount of loss, from such intermeddling, may be difficult to ascertain, but it is not therefore the less certain. The committee will not undertake to estimate the millions which are annually lost to our country under the existing system ; but some idea may be formed of its magnitude, by stating that it is at least equal to the difference between the profits of our manufactures and the duty imposed for their protection, when it is not prohibitory.—The lower the profit the higher the duty, if not prohibitory, the greater the loss. If, with these certain data, the evidence reported by the committee on manufactures at the last session of congress, be examined, a correct opinion may be formed of the extent of the loss of the country, provided the manufacturers have fairly stated the case. With a duty of almost fifty per cent. on the leading articles of consumption (if we are to credit the testimo-

ny reported,) the manufacturers did not receive generally a profit equal to the legal rate of interest, which would give a loss of about forty per cent. on their products. It is different with the foreign articles of the same description. On such, at least, the country loses nothing. There the duty passes into the treasury, lost indeed to the Southern planters, out of whose labor directly or indirectly it must for the most part be paid; but transferred through appropriations; and well may its advocates affirm, that *they* constitute an essential feature of the American system. Let this conduit, through which it is so profusely supplied be intercepted, and we feel confident, that scarcely a state, except those really manufacturing, would tolerate its burden. A total prohibition of importation by destroying the revenue and thereby the means of making appropriations, would in a short period destroy it. But the excess of its loss over its gains, leads to the consolatory reflection, that its abolition would relieve us much more than it would embarrass the manufacturing states. We have suffered too much to desire to see others afflicted, even for our relief, when it can possibly be avoided. We should rejoice to see our manufactures flourish on any constitutional principle consistent with justice and the public liberty. It is not against them, but the means by which they have been forced to our ruin, that we object. As far as a moderate system, founded on import for revenue, goes, we are willing to afford protection, though we clearly see that even under such a system, the national revenue would be based on our labours, and be paid by our industry. With such constitutional and moderate protection the manufacturer ought to be satisfied. His loss would not be so great as might be supposed. If low duties would be followed by low prices, they would also diminish the cost of manufacturing, and thus the reduction of profit would be less in proportion than the reduction on the prices of the article. Be that, however, as it may, the general government cannot proceed beyond this point of protection, consistently with its powers, and with justice to the whole. If the manufacturing states deem farther protection necessary, it is in their power to afford it to their citizens within their own limits, against foreign competition to any extent; that they may judge expedient. The constitution authorises them to lay an impost duty, with the consent of congress, which doubtless would be given; and if this be not sufficient, they have the additional power of giving a direct bounty for their encouragement, which the ablest writers on the subject concede to be the least burdensome and most efficient mode, if indeed encouragement be in any case expedient. Thus those who are to be benefitted will bear the burden as they ought; and those who believe that it is

wise and just to protect manufactures by legislation, may have the satisfaction of doing it at their own expense, and not at the expense of the citizens of other states, who entertain precisely the opposite opinion.

The committee having presented its views on the partial and oppressive operation of the system, will now proceed to discuss the next position which they proposed. That its tendency is to corrupt the government and destroy the liberties of the country.

If there be a political proposition universally true, one which springs directly from the nature of man, and is independent of circumstances, it is, that irresponsible power is inconsistent with liberty and must corrupt those who exercise it. On this great principle our political system rests. We consider all powers as delegated from the people and to be controlled by those who are interested in their just and proper exercise; and our governments, both state and general, are but a system of judicious contrivances to bring this fundamental principle into fair practical operation. Among the most permanent of these is the responsibility of representatives to their constituents, through frequent periodical elections. Without such a check in their powers, however clearly they may be defined and distinctly prescribed, our liberty would be but a mockery. The government, instead of being devoted to the general good, would speedily become but the instrument to oppress and tyrannize those who might be entrusted with its administration. On the other hand, if laws were uniform in their operation; if that which imposed a burden on one, imposed it alike on all; or that which acted beneficially for one, should act so for all, the responsibility of representatives to their constituents, would alone be sufficient to guard against abuse and tyranny, provided the people be sufficiently intelligent to understand their interests, and the motives and conduct of their public agents. But if it be supposed that from diversity of interest in the several classes of the people and sections of the country, laws act differently, so that the same law, though couched in general terms and apparently fair, shall in reality transfer the power and prosperity of one class or section to another; in such case responsibility to constituents, which is but the means of enforcing the fidelity of representatives to them, must prove wholly insufficient to preserve the purity of public agents, or the liberty of the country. It would in fact be inapplicable to the evil. The disease would be in the community itself; in the constituents, not in the representatives. The opposing interest of the community would engender necessarily opposing hostile parties, organized in this very diversity of interest; the stronger of which, if the gov-

ernment provided no efficient check, would exercise unlimited and unrestrained power over the weaker. The relations of equality between them would thus be destroyed, and in its place there would be substituted the relation of sovereign and subject, between the stronger and the weaker interest, in its most odious and oppressive form. That this is a possible state of society even when the representative system prevails, we have high authority. Mr. Hamilton, in the 51st No. of the *Federalist*, says, "It is of the greatest importance in a republic not only to guard society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure." Again, "In a society under the forms of which, the stronger faction can readily unite and oppress the weaker, anarchy may be said as truly to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger." We have still higher authority, the unhappy existing examples, of which we are the victims. The committee have labored to little purpose if they have not demonstrated, that the very case which Mr. Hamilton so forcibly describes, does now exist in our country, under the name of the "*American System*;" which if not speedily arrested must be followed by all the consequences that never fail to spring from the exercise of irresponsible power. On the great and vital point, the industry of the country, which comprehends nearly all the other interests, two great sections of the Union are opposed. We want free trade; they, restrictions. We want moderate taxes, frugality in the government, economy, accountability, and a rigid application of the public money, to the payment of the public debt, and the objects authorized by the constitution; in all these particulars, if we may judge by experience, their views of their interest are the opposite.—They act and feel on all questions connected with the American System, as sovereigns; as those always do who impose burdens on others for their own benefit; and we, on the contrary, like those on whom such burdens are imposed. In a word, to the extent stated, the country is divided and organized into two great opposing parties, one sovereign and the other subject; marked by all the characteristics which must ever accompany that relation, under whatever form it may exist. That our industry is controlled by the many, instead of one, by a majority in congress elected by a majority in the community having an opposing interest, instead of hereditary rulers, forms not the slightest mitigation of the evil. In fact, instead of mitigating, it aggravates. In our case one opposing branch of industry

cannot prevail without associating others, and thus instead of a single act of oppression we must bear many. The history of the woollens' bill will illustrate the truth of this position. The woollen manufacturers found they were too feeble to enforce their exactions alone, and of necessity resorted to the expedient, (which will ever be adopted in such cases,) of associating their interests till a majority was formed; the result of which was in this case, that instead of increased duties on woollens alone, which would have been the case if that interest alone governed us, we have to bear increased duties on more than a dozen of the leading articles of consumption. It would be weakness to attempt to disguise the fact, on a full knowledge of which, and of the danger which it threatens, the hope of deriving some means of security depends; that different and opposing interests do, and must ever exist in this country, against the danger of which *representation* affords not the slightest protection.—Laws so far from being uniform in their operation, are scarcely ever so. It requires the greatest wisdom and moderation to form over any country, a system of equal laws; and it is this very opposition of interest, which in all associations of men for common purposes, be they public or private, constitutes the main difficulty in forming and administering free and just governments. Liberty comprehends the idea of *responsible power*, that those who make and execute the laws should be controlled by those on whom they operate; that the governed should govern. Thus to prevent rulers from abusing their trust, constituents must controul them through elections; and so to prevent the major from oppressing the minor interests of society, the constitution must provide (as the committee hope to prove it does,) a check founded on the same principle, and equally efficacious. In fact the abuse of delegated power, and the tyranny of the greater over the less interests of society, are the two great dangers, and the only two, to be guarded against; and if *they* be effectually guarded liberty must be *eternal*. Of the two, the latter is the greater danger, and most difficult to check. It is less perceptible. Every circumstance of life teaches us the liability of delegated power to abuse. We cannot appoint an agent without being admonished of the fact; and therefore it has become well understood, and is sufficiently guarded against in our political institutions. Not so with the other and greater danger. Though it exists in all associations, the law, the courts, and the government itself, are checks to its extreme abuse in most cases of private and subordinate companies, which prevents them from displaying their real tendency. But let it be supposed that there was no paramount authority, no court, no government to control, what sober individual, who

intended to act honestly, would place his property in joint stock with any number of individuals however respectable, to be disposed of by the unchecked will of the majority, whether acting in a body as stockholders, or through representation by a direction? Who does not see, that sooner or later, a major and a minor interest would spring up, and that the former would in a short time monopolize all the advantages of the concern. And what is government itself but a joint stock company, which comprehends every interest, and which as there can be no higher power to restrain its natural operation, if not checked by its peculiar organization, must follow the same law? The actual condition of man in every country at this and all preceding periods, attests the truth of the remark. No government based on the naked principle, that the majority ought to govern, however true the maxim in its proper sense and under proper restrictions, ever preserved its liberty, even for a single generation. The history of all has been the same, injustice, violence and anarchy, succeeded by the government of one, or a few, under which the people seek refuge, from the more oppressive despotism of the majority. Those governments only, which provide checks, which limit and restrain within proper bounds the power of the majority, have had a prolonged existence, and been distinguished for virtue, power and happiness. Constitutional government, and the government of a majority, are utterly incompatible, it being the sole purpose of a constitution to impose limitations and checks upon the majority. An unchecked majority, is a despotism—and government is free, and will be permanent in proportion to the number, complexity and efficiency of the checks, by which its powers are controlled.

The committee entertain no doubt, that the present disorderly state of our political system, originated in the diversity of the interests of the several sections of the country. This very diversity the Constitution itself recognizes; and to it owes one of its most distinguished and peculiar features, the division of the sovereign power between the state and general government. Our short experience before the formation of the present government had conclusively shewn, that while there were powers which were in their nature local and peculiar, and which could not be exercised by all, without oppression to some of the parts; so also there were those which in their operation necessarily affected the whole and could not therefore be exercised by any one of the parts, without affecting injuriously the others. To a certain extent we have a community of interest which can only be justly and fairly supervised by concentrating the will and authority of the whole in one general government; while at the same time the states have distinct and separate interests, which can

not be consolidated in the general power, without injustice and oppression. Thence the division of the sovereign power; and it is upon this distribution of power, that the whole system of our government rests. In drawing the line between the general and state governments, the great difficulty consisted in determining correctly to which the various political powers belonged. This difficult duty was however performed with so much success, that to this day there is an almost uniform acquiescence in the correctness with which it was executed. It would be extraordinary if a system thus based, with profound wisdom, on the diversity of geographical interest, should make no provision against the danger of their conflict. The framers of our constitutions have not exposed themselves to the imputations of such weakness. When their work is fairly examined it will be found, that they have provided, with admirable skill, the most effective remedy, and that if it has not prevented the approach of the dangers, the fault is not theirs, but ours, in neglecting to make the proper application of it. The powers of the general government are particularly enumerated, and specifically delegated; all others are expressly reserved to the states and the people. Those of the general government are intended to act uniformly on all the parts, the residue are left to the states, by whom alone from the nature of these powers, they can be justly and fairly exercised.

Our system, then consists of two distinct and independent sovereignties. The general powers conferred on the general government, are subject to its sole and separate control, and the states cannot, without violating the constitution, interpose their authority to check, or in any manner counteract its movements, so long, as they are confined to its proper sphere; so also the peculiar and local powers, reserved to the states, are subject to their exclusive control, nor can the general government interfere with them, without on its part, also violating the constitution. In order to have a full and clear conception of our institutions, it will be proper to remark, that there is in our system a striking distinction between the government and the sovereign power. Whatever may be the true doctrine in regard to the sovereignty of the states individually, it is unquestionably clear that while the government of the union is vested in its legislative, executive and political departments, the actual sovereign power, resides in the several states, who created it, in their separate and distinct political character. But by an express provision of the constitution it may be amended or changed, by three fourths of the states; and each state by assenting to the constitution with this provision, has surrendered its original rights as a sovereign, which made its individual consent neces-

sary to any change in its political condition, and has placed this important power in the hands of three fourths of the states; in which the sovereignty of the union under the constitution does now actually reside. Not the least portion of this high sovereign authority, resides in Congress or any of the departments of the general government. They are but the creatures of the constitution, appointed, but to execute its provisions, and therefore, any attempt in all or any of the departments to exercise any power definitely, which in its consequences may alter the nature of the instrument or change the condition of the parties to it, would be an act of the highest political usurpation. It is thus, that our political system, recognizing the opposition of geographical interests in the community, has provided the most efficient check against its dangers. Looking to facts and not mere hypothesis, the constitution has made us a community only to the extent of our common interest, leaving the states distinct and independent, as to their peculiar interests, and has drawn the line of separation with consummate skill. The great question however is, what means are provided by our system for the purpose of enforcing this fundamental provision: If we look to the practical operation of the system, we will find, on the side of the states, not a solitary constitutional means resorted to, in order to protect their reserved rights, against the encroachment of the general government, while the latter has from the beginning, adopted the most efficient, to prevent that of the states on their authority. The 25th section of the Judiciary Act, passed in 1789, provides an appeal from the States Courts to the Supreme Court of the United States, in all cases in the decision of which the construction of the Constitution, the laws of Congress, or treaties of the United States may be involved; thus giving to that high tribunal the right of final interpretation, and the power in reality of nullifying the Acts of the State Legislatures, whenever in their opinion they may conflict with the power delegated to the general government. A more ample and complete protection against the encroachments of the States by their Legislatures cannot be imagined; and for this purpose, this high power may be considered indispensable and constitutional; but by a strange misconception of the nature of our system, in fact, of the nature of government, it has been regarded, not only as affording protection to the general government against the states, but also to the states against the general government; and as the only means provided by the Constitution of restraining the state and general government within their respective spheres; and consequently of deciding on the extent of the powers of each, even where a state in its highest sovereign capacity, is at issue with the general government on the

question, whether a particular power be delegated, or not. Such a construction of the powers of the Federal Court, which would raise one of the departments of the general government, above the sovereign parties, who created the Constitution, would enable it in practice to alter at pleasure the relative powers of the states and general government. This most erroneous and dangerous doctrine, in regard to the powers of the Federal Court, has been so ably refuted by Mr. Madison in his report to the Virginia Legislature, in 1800, that the committee avail themselves at once of his argument and authority. Speaking of the rights of the state to interpret the constitution for itself in the last resort he says: that it has been objected that the judicial authority is to be regarded, as the sole expositor of the Constitution; on this objection it might be observed—1st. That there may be instances of usurped power;” (the case of the Tariff is a striking illustration of its truth,) “which the forms of the Constitution could never draw within the control of the judicial department: *secondly*, that if the decision of the judiciary, be raised above the authority of the sovereign parties to the Constitution, the decisions of the other departments, not carried by the forms of the constitution before the judiciary, must be equally authoritative and final with the decision of that department. But the proper answer to the objection is, that the resolution of the General Assembly, relates to those, great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions, dangerous to the essential rights of the parties to it. The resolution supposes, that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the judicial department also may exercise, or sanction dangerous powers beyond the grant of the Constitution, and consequently, that the ultimate right of the parties to the Constitution, to judge, whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another—by the judiciary as well by the Executive, or the Legislature.

However true therefore it may be, that the judicial department is in all questions submitted to it, by the forms of the Constitution to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government, not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert for ever and beyond the possible reach of any rightful remedy, the very constitution which all were constituted to preserve.”

Although this constitutional mode of restraining the encroachments of the general government, was thus early and clearly pointed out by Mr. Madison, an effort has been made to substitute for it what has been called a rigid rule of construction, which would inhibit the exercise of all powers not plainly delegated, or that were not obviously necessary and proper as means, to their execution. A government like ours of divided powers, must necessarily give great importance to a proper system of construction, but it is perfectly clear that no system of the kind, however perfect, can prescribe bounds to the encroachment of power. They constitute in fact, but an appeal by the minority to the justice of the majority, and if such appeals were sufficient to restrain the avarice, and ambition of those, who are invested with power, then would a system of technical construction be sufficient. But on such a supposition, reason and justice might alone be relied on, without the aid of any constitutional or artificial restraint whatever. Universal experience, in all ages and countries however, teaches that power can only be met by power, and not by reason and justice, and that all restrictions on authority, unsustained by an equal antagonist power, must forever prove wholly insufficient in practice. Such also has been the decisive proof of our own short experience. From the beginning, a great and powerful minority gave every force, of which it was susceptible, to construction, as a means of restraining a majority of Congress to the exercise of its proper powers; and though that original minority, through the force of circumstances, has had the advantage of becoming a majority; and to possess, in consequence, the administration of the general government, during the greater portion of its existence, yet we this day witness, under these most favourable circumstances, an extension of the powers of the general government in spite of mere construction, to a point so extreme as to leave few powers to the state worth possessing. In fact, that very power of construction, on which reliance is placed, to preserve the rights of the states, has been wielded, as it ever will and must be if not checked, to destroy those rights. If the minority has a right to select *its* rule of construction, a majority will exercise the same, but with this striking difference, that the power of the former will be a mere nullity, against that of the latter. But that protection, which the minor interest ever fails to find, in any technical system of construction, where alone in practice it has heretofore been sought, it may find in the reserved rights of the states themselves, if they be properly called into action; and there only will it ever be found of sufficient efficacy. The constitutional power to protect their rights as members of the

confederacy, results necessarily, by the most simple and demonstrable arguments, from the very nature of the relation subsisting between the states and general government. If it be conceded, as it must by every one who is the least conversant with our institutions, that the sovereign power is divided between the states and general government, and that the former holds its reserved rights, in the same high sovereign capacity, which the latter does its delegated rights; it will be impossible to deny to the states the right of deciding on the infraction of their rights, and the proper remedy to be applied for the correction. The right of judging, in such cases, is an essential attribute of sovereignty of which the states cannot be divested, without losing their sovereignty itself; and being reduced to a subordinate corporate condition. In fact, to divide power, and to give to one of the parties the exclusive right of judging of the portion allotted to each, is in reality not to divide at all; and to reserve such exclusive right to the general government, (it matters not by what department it be exercised,) is in fact to constitute it one great consolidated government, with unlimited powers, and to reduce the states to mere corporations. It is impossible to understand the force of terms, and to deny these conclusions. The opposite opinion can be embraced only on hasty and imperfect views of the relation existing between the states and the general government. But the existence of the right of judging of their powers, clearly established from the sovereignty of the states, as clearly implies a veto, or controul on the action of the general government on contested points of authority; and this very controul is the remedy, which the constitution has provided to prevent the encroachment of the general government on the reserved right of the states; and by the exercise of which, the distribution of power between the general and state governments, may be preserved forever inviolate, as is established by the constitution; and thus afford effectual protection to the great minor interest of the community, against the oppression of the majority.

Nor does this important conclusion stand on the deduction of reason alone, it is sustained by the highest cotemporary authority.—Mr. Hamilton in the number of the *Federalist*, already cited, remarks, “that in a single republic all the powers surrendered by the people, are submitted to the administration of a single government; and usurpations are guarded against by a division of the government into districts and separate departments. In the compound republic of America, the power surrendered by the people, is first divided between two distinct governments; and then the portion allotted to each, sub-divided among districts and separate departments. Hence a double se-

curity arises to the rights of the people. The different governments will controul each other; at the same time that each will be controlled by itself."

He thus clearly affirms the control of the states over the general government, which he traces to the division of the sovereign power under our political system, and by comparing this control to the veto, which the several departments in most of our constitutions respectively exercised over the acts of each other, clearly indicates it as his opinion, that the control between the state and general government is of the same character. Mr. Madison is still more explicit in his report already alluded to, he says: "The resolution having taken this view of the federal compact, proceeds to infer, 'that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, and liberties appertaining to them.' It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that where resort can be had to no tribunal superior to the authority of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The Constitution of the United States, was formed by the sanction of the states, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the constitution, that it rests on this legitimate and solid foundation. The states then being parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority to decide in the last resort, whether the compact made by them be violated, and, consequently that as the parties to it, they must themselves decide in the last resort, such questions as may be of sufficient magnitude to regain their interposition." To these the no less explicit opinion of Mr. Jefferson may be added, who in the Kentucky resolutions on the same subject, states that, "the government created by this compact was not made the exclusive, or final judge of the extent of the powers delegated to itself, since that would have made its discretion and not the constitution the measure of its powers: but that as in all other cases of compact among parties, having no common judge, each party has one equal right to judge for itself, as well of infractions as of the mode and measure of redress."

Time and experience confirmed his opinion on this all important point. This illustrious citizen, nearly a quarter of a

century afterwards, in the year 1821, expressed himself in this emphatic manner. "It is a fatal heresy," he says, "to suppose that either our state governments are superior to the federal, or the federal to the state; neither is authorised, literally, to decide what belongs to itself, or its co-partner in government;" "in differences of opinion between their different sets of public servants, the appeal is to neither, but to their employers, peaceably assembled by their representatives in Convention." If to these authorities, which so explicitly affirm the right of the states in their sovereign capacity, to decide both on the infraction of their rights, and the remedy, there be added the solemn decisions of the Legislatures of two leading states, Virginia and Kentucky, and the implied sanction of a majority of the states in the important political revolution, which shortly followed, and brought Mr. Jefferson into power on this very ground, it will be scarcely possible to add to the weight of authority, by which this fundamental principle in our system is sustained.

The committee having thus established the constitutional right of the states to interpose in order to protect their powers, it cannot be necessary to bestow, much time, in order to meet possible objections; particularly as they must be raised, not against the soundness of the argument by which the position is sustained, which they deem unanswerable, but against apprehended consequences, which, even if true, would not be so much an objection to the conclusion of the committee, as to the constitution itself, but which they are persuaded, will be found, on investigation, destitute of solidity. Under these impressions the committee propose to discuss the objections with all possible brevity.

It is objected in the first place, that the rights of the state, to interpose, rests on mere inference without any express provision in the constitution, and that it is not to be supposed if the constitution contemplated the exercise of a power of such high importance, that it would have been left to inference alone. In answer, the committee would ask those, who raise the objection, if the power of the Supreme Court to declare a law unconstitutional, is not among the very highest and most important, that can be exercised by any department of the government, and where they can find any express provision to justify its exercise? Like the power in question, *it* also rests on mere inference, but an inference so clear, that no express provision could render it more certain. The simple facts, that the Judges must decide according to Law, and that the Constitution is paramount to the Law, imposes a necessity on the Court to declare the latter void, whenever it comes into conflict with the former; so from the fact, that the sovereign power is divided, and

that the states hold their portion in the same sovereign capacity with the general government, by like necessity, then is the right of judging of the infraction of their sovereignty, as well as of the remedy. The deduction in the one case is not clearer than the other; but if we refer to the nature of our constitution, the right of the state stands on stronger grounds than that of the court.

In the distribution of powers between the general and state governments, the constitution professes to enumerate those assigned to the former, in whatever department they may be vested; while the powers of the latter are reserved in general terms, without an attempt at enumeration. It therefore raises a presumption against the powers of the court to declare a law unconstitutional, that the power is not enumerated among those belonging to the judiciary. While the omission to enumerate amongst the powers of the states, that, to interfere and protect their rights, being strictly in accord with the principles on which the framers formed the constitution, raises not the slightest presumption against its existence.

It is next objected to the power that it places the minority over the majority, in opposition to the whole theory of our government, and that its consequences must be feebleness, anarchy, and finally disunion.

It is impossible to impose any limitation on sovereign power, without encountering from its supporters this very objection; and we accordingly find that the history of every country which has attempted to establish free institutions, proves, that on this point the opposing parties, the advocates of power and of freedom, have ever separated. It constitutes the essence of the controversy between the Patricians and Plebeans of the Roman republic; of the Tories and Whigs in England; of the Ultras and Liberals in France; and finally of the Federalists and Republicans in our own country, as illustrated by Mr. Madison's Report; and if it were proposed to give to Russia or Austria a representation of the people, it would form the point of controversy, between the imperial and popular parties. It is in fact not at all surprising, that to a people unacquainted with the nature of liberty, and inexperienced in its blessings, all limitation on the supreme power should appear incompatible with its nature, and as tending to feebleness and anarchy.

Nature has not permitted us to doubt the necessity of supreme power in every community. All see and feel it, and are instinctively impelled to its support; but it requires some effort of reason to perceive, that if not controlled, such power must necessarily lead to abuse; and still higher efforts to understand that it may be checked without destroying its supremacy.

With us however who know from our own experience and that of other free nations, the truth of both these positions; and also that power can be rendered useful and secure by being properly checked, it is indeed strange that any intelligent citizen should consider limitation in sovereignty, as incompatible with its nature; or should fear danger from any check properly lodged, which may be necessary to secure any distinct and important interest. That there are such interests represented by the states, and that on principle the state alone can protect them has been proved; and it only remains in order to meet the objection to prove, that for this purpose the states may be safely entrusted with the power. If the committee do not greatly mistake, it never has in any country, or under any institutions, been lodged, where it was less liable to abuse. The great number by whom it must be exercised, a majority of the people of one of the states, the solemnity of the mode, the delay, the deliberation, are all calculated to allay excitement, to impress on the people of the state, a deep and solemn tone, highly favorable to calm investigation. Under such circumstances, it would be impossible for a party to preserve a majority in the state, unless the violation of its rights be "palpable, deliberate, and dangerous." The attitude in which the state would be placed, in relation to a majority of the states; the force of public opinion which would be brought to bear on her, the deep reverence for the general government, the strong influence of that portion of her citizens, who aspire to office or distinction in the Union, and above all the local parties which must ever exist in the states, and which in this case must ever throw the powerful influence of the minority in the state, on the side of the general government; and would stand ready to take advantage of an error in the side of the majority. So powerful are these causes, that nothing but the *truth* and a *deep sense of oppression* on the part of the people of the state, will ever authorize the exercise of the power; and, if it should be attempted under other circumstances, those in power would be speedily replaced by others, who would make a merit of closing the controversy, by yielding the point in dispute. But in order to understand more fully, what its operation would be, we must take into the estimate, the effect which a recognition of the power, would have on the administration both of the general and state governments. On the former, it would necessarily produce, in the exercise of doubtful power, the most marked moderation. On the latter a feeling of conscious security would effectually prevent jealousy, animosity and hatred, and thus give scope to the natural attachment to our institutions. But withhold this protective power from the state, and the reverse of all these happy consequences must follow,

which however the committee will not undertake to describe, as the living example of discord, hatred, and jealousy, threatening anarchy and dissolution, must impress on every beholder a more vivid picture, than what they could possibly draw. The continuance of this unhappy state must end in the loss of all affection, leaving the government to be sustained by force instead of patriotism. In fact to him who will duly reflect, it must be apparent, that where there are important, separate interests to preserve, there is no alternative but a veto or military force. If these deductions be correct as cannot be doubted, then under that state of moderation and security, followed by mutual kindness which must accompany the acknowledgment of the right, the necessity of exercising a veto would rarely exist; and the possibility of abuse on the part of the state, would almost be wholly removed. Its acknowledged existence would thus supercede its exercise. But suppose in this the committee to be mistaken, still there exists a sufficient remedy for the disease. As high as is the power of the states in their individual sovereign capacity, it is not the highest power known to our system. There is a still higher power, placed above all, by the express consent of all, the creating and preserving power, deposited in the hands of three fourths of the United States, which under the character of the amending power, can modify the whole system at pleasure, and to the final decision of which, it would be political heresy to object. Give then the veto to the states and admit its liability to abuse by them; and what is the effect, but to create the presumption against the constitutionality of the disputed powers exercised by the general government, which if the presumption be well founded must compel them to abandon it, but if not, the general government may remove it by invoking this high power to decide the question in the form of an amendment to the constitution. If the decision be favourable to the general government, a disputed constructive power, will be converted into a certain and express grant. On the other hand, if it be adverse, the refusing to grant will be tantamount to inhibiting its exercise; and thus in either case the controversy will be peaceably determined. Such is the sum of its effects. And ought not a sovereign state in protecting the minor and local interests of the country, to have a power to compel a decision? Without it, can the system itself exist? Let us examine the case. To compel the state to appeal against the acts of the general government, by proposing an amendment to the constitution, would be perfectly idle. The very complaint is that a majority of the states, through the general government by force of construction urge powers not delegated, and by their exercise, increase their wealth and power at

the expense of a minority. How absurd then to compel one of the injured states, to attempt a remedy by proposing an amendment to be ratified by three fourths of the states, when there is by supposition a majority opposed to it. Nor would it be less absurd to expect the general government to propose an amendment, in order to settle the point disputed, unless compelled to that course by the state. On their part there can be no inducement. They have a more summary mode of assuming the power by construction. The consequence is clear. Neither would appeal to the amending power; the one because it would be useless; and the other because it could effect its object without it. Under the operation of this supreme controlling power to whose interposition no one can object, all controversy between the states and general government would be thus adjusted; and the constitution would gradually acquire by its constant interposition in important cases, all the perfection of which the work of men is susceptible. It is thus that the creative will become the preserving power; and we may rest assured, that it is no less true in politics, than in divinity that the power which creates can alone preserve, and that preservation is perpetual creation. Such will be the operation of the veto of the state.

If indeed it had the effect of placing the state over the general government the objection would be fatal. For if the majority cannot be trusted with the supreme power, neither can the minority; and to transfer it from the former to the latter, would be but the repetition of the old error of taking shelter under a monarchy or aristocracy, against the more oppressive tyranny of a majority in an ill constructed republic. But it is not the consequence of proper checks to change places between the majority and the minority. It leaves the power controlled still supreme as is exemplified in our political institutions, by the operation of acknowledged checks. The powers of the judiciary to declare an act of Congress, or of a state legislature unconstitutional, is a powerful, and for its appropriate purpose an efficient one; but who acquainted with the nature of our government, ever supposed it really vested (when confined to its proper object,) a Supreme power in the Court over Congress or the State Legislatures? Such could be neither the intention nor its proper effect. The check was given to the Judiciary to protect the supremacy of the Constitution over the acts of Legislation, and not to set up a supreme power in the Courts. The Constitution has provided another check, which will still further illustrate the nature of its operation. Among the various interests which exist under our complex system, that of large and small states are among the most prominent and among the most care-

fully guarded in the organization of our government. To settle the relative weight of the states in the system; and to secure to each the means of maintaining its proper political consequence in its operation, were amongst the most difficult duties in framing the Constitution. No one subject occupied greater space in the proceedings of the Convention. In its final adjustment, the large states had assigned to them a preponderating influence in the House of Representatives, by having there a weight proportioned to their members, but to compensate which, and to secure their political rights against this preponderance, the small states had an equality assigned them in the senate, while in the Constitution of the Executive branch, the two were blended. To secure the consequence allotted to each, as well as to insure due deliberation in legislation, a veto is allowed to each in the passage of bills; but it would be absurd to suppose, that this veto placed either above the other; or was incompatible with the portion of the sovereign power allotted to the House, the Senate or the President.

It is thus that our system has provided appropriate checks, with a veto to ensure the supremacy of the Constitution over the laws; and to preserve the due importance of the states, considered in reference to large and small, without creating discord or weakening the beneficent energy of the government, and so in the division of sovereign authority between the general and state governments, and in granting an efficient power to the latter, to protect by a veto the minor against the major interests of the community, the framers of the Constitution acted in strict conformity with the principle which invariably prevails, throughout the whole system whenever separate interests exist. They were in truth no ordinary men. They were wise and practical men, enlightened by history and their own enlarged experience, acquired in conducting our country through a most important revolution; and understood profoundly the nature of man and of government. They saw and felt that there existed in our nature the necessity of a government, which to effect the object of government must have adequate powers. They saw the selfish predominate over the social feelings, and that without a government with such powers, universal conflict and anarchy must prevail among the component parts of society: but they also clearly saw, that our nature remaining unchanged by change of condition, that unchecked power from this very predominance of the selfish over the social feeling, which rendered government necessary, would of necessity lead to corruption and oppression on the part of those invested with its exercise. Thus the necessity of government and of checks originate in the same great principle of our na-

ture, through which the very selfishness, which would impel those who have power, to desire more than their own, will also, with great energy impel those, on whom power may operate to demand their own; and in the balance of these opposing tendencies from different conditions, but originating in the same principle of action, the one impelling to excess, the other restraining within the bounds of moderation and justice, liberty and happiness must forever depend. This great principle guided the framers of the Constitution in constructing our political system. There is not an opposing interest, throughout the whole that is not counterpoised. Have the rulers a separate interest from the people? To check its abuse, the relation of representative and constituent is created between them, through periodical elections, by which the fidelity of rulers to their trusts is secured. Have the states as members of the Union, distinct political interests in reference to their magnitude? Their relative weight is carefully settled, and each class has its appropriate means with a veto to protect its political consequence. May there be a conflict between the Constitution and the laws, whereby the rights of citizens may be affected? To preserve the ascendancy of the Constitution, a power is vested in the Supreme Court to declare the law unconstitutional in such cases. Is there in a geographical point of view separate interests? To meet this a peculiar organization is provided in the division of the sovereign power between the state and general governments? Is there danger growing out of this division, that the state may encroach on the general powers through the acts of their legislatures? To the Supreme Court is also assigned adequate power to check such encroachment. May the general government on the other hand encroach on the rights reserved to the states? To the states in their sovereign capacity is reserved the power to arrest such encroachment. And finally may this power be abused by the states in interfering improperly with the powers delegated to the general government? There remains still higher power created supreme over all, invested with the ultimate power over all interests, to enlarge, to modify or rescind at pleasure, whose interposition the majority may invoke; and to oppose whose decision would be rebellion. On this the whole system rests.

That there exists a case which would justify the interposition of this state, and thereby compel the general government to abandon an unconstitutional power, or to make an appeal to the amending power to confer it by express grant, the committee does not in the least doubt; and they are equally clear in the existence of a necessity to justify its exercise, if the general government should continue to persist in its improper assumption of

powers, belonging to the state; which brings them to the last point which they propose to consider. When would it be proper to exercise this high power? If they were to judge only by the magnitude of the interest and urgency of the case, they would without hesitation recommend the exercise of this power without delay. But they deeply feel the obligation of respect for the other members of the confederacy, and of great moderation and forbearance in the exercise, even of the most unquestionable right, between parties who stand connected by the closest and most sacred political union. With these sentiments, they deem it advisable after presenting the views of the Legislature in this solemn manner, to allow time for further consideration and reflection, in the hope that a returning sense of justice on the part of the majority, when they come to reflect on the wrongs, which this and other staple states have suffered, and are suffering, may repeal the obnoxious and unconstitutional acts, and thereby prevent the necessity of interposing the sovereign power of this state.

The committee is further induced at this time to take this course, under the hope that the great political revolution which will displace from power on the 4th of March next, those who acquired authority by setting the will of the people at defiance; and which will bring in an eminent citizen, distinguished for his services to his country and his justice and patriotism, may be followed up under his influence with a complete restoration of the pure principles of our government.

But in thus recommending delay, the committee wish it to be distinctly understood, that neither doubts of the power of the state, nor apprehension of consequences, constitute the smallest part of their motives. They would be unworthy of the name of Freemen, of Americans, of Carolinians, if danger, however great, could cause them to shrink from the maintainance of their constitutional rights; but they deem it preposterous to anticipate danger, under a system of laws, where a sovereign party to the compact, which formed the government, exercises a power, which after the fullest investigation, she conscientiously believes belongs to her, under the guarantee of the Constitution itself, and which is essential to the preservation of her sovereignty.

The committee deem it not only the right of the state, but the duty of her representatives under the solemn sanction of an oath, to interpose if no other remedy be applied. They interpret the oath to the Constitution, not simply to impose an obligation to abstain from violation, but if possible to prevent it in others. In their opinion, he is as guilty of violating that sacred instrument, who permits an infraction, when in his power to prevent it, as he who is actually guilty of the infraction. The

one may be bolder and the other more timid, but the sense of duty must be equally weak on both.

With these views the committee are solemnly of impression if the system be persevered in, after due forbearance on the part of the state, that it will be her sacred duty to interpose her veto; a duty to herself, to the Union, to present, and to future generations, and to the cause of liberty over the world, to arrest the progress of a power, which, if not arrested, must in its consequences, corrupt the public morals, and destroy the liberty of the country.

To avert these calamities, to restore the Constitution to its original purity, and to allay the differences which have been unhappily produced between various states, and between the states and general government, we solemnly appeal to the justice and good feeling of those states heretofore opposed to us; and earnestly invoke the council and co-operation of those states, similarly situated with our own. Not doubting their good will and support; and sustained by a deep sense of the righteousness of its cause—the committee trusts that under Divine Providence the exertions of the state will be crowned with success.

PROTEST.

The Senate and House of Representatives of South Carolina, now met and sitting in general assembly, through the Honorable Wm. Smith and the Hon. Robert Y. Hayne, their Representatives in the Senate of the United States, do in the name and on behalf of the good people of the said Commonwealth, solemnly protest against the system of protecting duties, lately adopted by the Federal Government, for the following reasons:

1st. Because the good people of this Commonwealth believe, that the powers of Congress were delegated to it, in trust for the accomplishment of certain specified objects which limit and control them, and that every exercise of them, for any other purposes, is a violation of the Constitution as unwarrantable as the undisguised assumption of substantive, independent powers not granted or expressly withheld.

2nd. Because the power to lay duties on imports is and in its very nature can be only a means of effecting objects specified by the Constitution; since no free government and least of all a government of enumerated powers, can of right impose any tax, any more than a penalty which is not at once justified by public necessity and clearly within the scope and purview of the social compact, and since the right of confining appropriations of the public money, to such legitimate and constitutional objects, as is essential to the liberties of the people, as their unquestionable privilege to be taxed only by their own consent.

3rd. Because they believe that the Tariff Law passed by Congress at its last session, and all other acts of which the principal object is the protection of manufactures, or any other branch of domestic industry, if they be considered as the exercise of a supposed power in Congress to tax the people at its own good will and pleasure, and to apply the money raised to objects not specified in the Constitution, is a violation of these fundamental principles, a breach of a well defined trust and a perversion of the high powers vested in the Federal Government for federal purposes only.

4th. Because such acts considered in the light of a regulation of commerce, are equally liable to objection—since although the power to regulate commerce, may like other powers be ex-

exercised so as to protect domestic manufactures, yet it is clearly distinguishable from a power to do so *co nomine* both in the nature of the thing and in the common acceptation of the terms; and because the confounding of them would lead to the most extravagant results, since the encouragement of domestic industry implies an absolute controul over all the interests, resources and pursuits of a people, and is inconsistent with the idea of any other than a simple, consolidated government.

5th. Because from the contemporaneous exposition of the Constitution in the numbers of the Federalist, (which is cited only because the Supreme Court has recognized its authority,) it is clear that the power to regulate commerce was considered by the Convention as only incidentally connected with the encouragement of agriculture and manufactures; and because the power of laying imposts and duties on imports, was not understood to justify in any case a prohibition of foreign commodities, except as a means of extending commerce, by coercing foreign nations to a fair reciprocity in their intercourse with us, or for some other bona fide commercial purpose.

6th. Because whilst the powers to protect manufactures, is no where expressly granted to Congress, nor can be considered as necessary and proper to carry into effect any specified power, it seems to be expressly reserved to the states, by the tenth section of the first article of the Constitution.

7th. Because even admitting Congress to have a constitutional right to protect manufactures by the imposition of duties or by regulations of commerce, designed principally for that purpose, yet a Tariff of which the operation is grossly unequal and oppressive is such an abuse of power, as is incompatible with the principles of a free government and the great ends of civil society, justice, and equality of rights and protection.

8th. Finally, because South Carolina from her climate, situation, and peculiar institutions, is, and must ever continue to be, wholly dependent upon agriculture and commerce, not only for her prosperity, but for her very existence as a state—because the valuable products of her soil—the blessings by which Divine Providence seems to have designed to compensate for the great disadvantages under which she suffers in other respects—are among the very few that can be cultivated with any profit by slave labor—and if by the loss of her foreign commerce, these products should be confined to an inadequate market, the fate of this fertile state would be poverty, and utter desolation; her citizens in despair would emigrate to more fortunate regions, and the whole frame and constitution of her civil polity, be impaired and deranged if not dissolved entirely.

Deeply impressed with these considerations, the Representatives of the good people of this Commonwealth, anxiously desiring to live in peace with their fellow citizens, and to do all that in them lies to preserve and perpetuate the Union of the States and the liberties of which it is the surest pledge, but feeling it to be their bounden duty to expose and resist all encroachments upon the true spirit of the Constitution, lest an apparent acquiescence in the system of protecting duties should be drawn into precedent, do in the name of the Commonwealth of South Carolina, claim to enter upon the Journals of the Senate, their protest against it as unconstitutional, oppressive, and unjust.

Which Exposition and Protest are respectfully submitted.

J. GREGG, *Chairman.*

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