Rights of the People

The people of the United States are divided into two great political parties; the policy of the one leading to consolidation that of the other to the preservation of State Rights — These parties are not of recent origin — they are coeval with our Government — Though assuming different names at different periods their doctrines have remained the same — their policy unchanged — At the formation of our constitution they were known as Federalists & Republicans — It was the favourite theory of the one that the people were the greatest enemies to themselves whilst it was contended by the latter that they were fully competent to self government — Hence the Federalists cherishing a predilection for the ancient institutions of Europe were the advocates of adopting in this Country a splendid and energetic Government possessing undefined powers not to be controlled by the States and virtually & practically independent of the people themselves — But the Republicans friendly to national simplicity and economy sought the erection of a limited government to be composed of an Union of several independent States and to be allowed no other powers than what were indispensible to the accomplishment of the object of its erection — And what was the object? It was mainly the management of our Foreign relations leaving the regulation of our Internal domestic policy to the legislation of the States severally — These were the leading views of the two contending parties — a bitter strife ensued between them each endeavouring to incorporate in the new Constitution as much of their respective creeds as possible — Fortunately for ourselves and we hope it may prove fortunate to a distant posterity — The Republicans succeeded in framing a constitution on their own principles of limited government which was solemnly accepted & ratified by the States seperately — And it is under the Banner of this Constitution that the American People are now called upon to rally — They owe to it their

their allegiance and their affection for it has sustained them in every trial with honour & success! it has commanded national respect abroad and so far as it has been administered in its purity has afforded individual security at home; it has borne them triumphantly in War and with the exception of those evils springing from ~~the~~ violations of its spirit prosperously in peace and if they never depart from its plain and simple principles their happiness and Freedom will endure and the Federal Union will be preserved —

But who can curb the restless spirit of Ambition and cupidity? It was for a long time believed that the hostility of the Federal party to the restraining principles of the Constitution arose from a candid difference of opinion merely, and that so soon as experience should test the ~~expe~~ stability of a Government of defined and limited powers all opposition to those restraining principles would cease — Has this hope been realized? A fair trial of 40 years has proven the adequacy of our ~~Constitution~~ to all the fair and legitimate ends of Government and yet it is assailed by its thousand enemies — and yet there are a combination of narrow minded men and lawless aspirants who seek their own enrichment and political advancement in the extirpation of the salutary restriction of that instrument — The same spirit that opposed their restrictions in the Convention still wars for their destruction; that spirit of the Federal party — the love of power and of hatred of political equality — has been abroad in our land working sometimes openly but mostly like a pestilence in darkness from the closing of the Revolution down to the present period — and if it be not speedily arrested in its progress — it will triumph in the total obliteration of every republican feature of our Government

The sages and patriots who framed our Constitution flatter=ed themselves that they had by a compact so clearly expressed

and so solemnly ratified forever secured the rights of the States and the people from all Federal encroachments — But behold not a half a century has elapsed before we witness the violation of some of the most sacred principles it contains and shamelessly attempts at usurpation of some of the most important powers withheld — The Federalists have gained by construction what was expressly denied them and the Republicans have yielded to these encroachments as readily as to legitimate authority — It is time that the warning voice against the usurpation should be heard — Every violation of the constitution is an invasion upon the rights of the States and the freedom of the People — And when that instrument shall be effectually undermined — and when its restraints shall be disregarded — and when it shall be no longer looked upon as the paramount authority of our country I take the liberty of admonishing the People that they have departed from their freedom and forever — They may "drop some natural tears when all is lost" but an ocean of repentant tears will not regain their inestimable heritage — never restore their "Paradise Lost"

Never were the free institutions of our country in greater jeopardy than at the present crisis — Do you ask for evidence? Mark the ambition and rapidity of our aspiring statesmen — Witness the rapid departure of our government from its original purity simplicity & economy — Witness the strides of Congress over the Rubicon of legitimate authority and above all witness that unhallowed system of partial & corrupt legislation called the "American System" but a system of the most unparalleled robbery adopted to build up the fortunes of a few on the ruins of thousands — These things prove the downward tendency of our government which if not arrested must ere long lead to the necessity of throwing additional safeguards around the rights of the People — If Congress be not reclaimed from its guilty aberrations — if it continue unchecked in its march to supremacy — If it continues to make the lust of power and plunder the groundwork of its legislative enactments the inevitable

consequence will be that the states by its oppression will be placed in the same attitude to that body that the Colonies were to the mother country

And what was this attitude? It was this - "Feeling might and forgetting right" the mother country sought by imposing taxes in various shapes to appropriate to her own purposes the honest earnings of the Citizens of those Colonies - When asked by what authority she presumed to extort money in this country without the consent of the People to be disbursed in another she modestly replied that the majority of her Parliament had a right to bind the Colonies in all cases whatsoever - A power so unlimited and absolute as this was no sooner claimed than denied - it was as promptly repelled as it was audaciously asserted - and if the first attempts to exercise unwarranted authority were always to be as readily discerned and as firmly resisted we should no more of the bowing down of People to the despotism of Rulers - Too proud to recede from the high ground she had assumed and still less willing to lose the tribute she exacted the infatuated mother Country attempted to enforce her arbitrary & unjust mandate by the sword - the result is familiar to us all - Unconditional submission belonged not to the American Colonies - they knew no such doctrines as passive obedience and the Government that attempted to drive into it by force was made to rue in bitterness the unhallowed endeavour - Let us profit by the example - What were colonies then are States now each possessing the unalienated right of self government and self protection - Who shall abridge these rights? Who shall circumscribe that liberty which but a few years ago our fathers defended at the price of the best blood of the world - Let lawless invaders of others rights stand admonished by the History of that Revolution and if not reclaimed to a sense of justice they may at ~~least~~ learn their destiny -

Now who is there enjoying the right of common sense whose mental vision is not dimmed by low and selfish passions, that cannot perceive the striking similarity between the policy of Grenville and North and that pursued by the present despotic majority in Congress? In what respect should the Tariff act be considered less odious or dangerous to the Southern people than the Stamp act or the Tea Tax – all originating in the most inhuman selfishness, based upon the same claim of political power and differing in their operations in this regard that the Tariff brings fourfold ruin to those on whom the burden is made to fall – And shall we be told that this is the settled policy of the Government – and that it is treason to oppose it – No – When it shall become the settled policy of this country there will be a rupture in it – The sincere devotion of the South to the Union has made her patient under many wrongs in hopes that a returning sense of justice in Congress would ere long slacken the hand of oppression – But let these hopes be destroyed let the American System of Tariff and Internal improvement be obstinately persevered in until the People become fully convinced that it is not to be abandoned until its rampage operations have drawn the last cent from their pockets then will those party divisions which now distract and weaken them have an end and the states which are the victims of the flagitious policy will have done with all parleying – And is it sneeringly asked what will they do? I answer whatever may be rendered necessary to rid them of their burden or of those who impose them – Gladly would they avoid the painful necessity of choosing between perpetual seperation or unconditional submission to arbitrary selfish & unconstitutional legislation – But if driven by intolerable burthens into the dreadful dilemma there can be no uncertainty as to the choice that will be made – Either will be bad enough – Both may be avoided by a little more unanimity on the part of the Southern States – a unanimity which common sufferings will bring them into after a while – It is their divisions

that enables their enemies to trample over their rights — let them become as one people and their voice will be heard their complaints attended to and their wrongs redressed —

Much may be expected from the Free Trade meeting to be held in Philadelphia — It is to be hoped that this convention in behalf of the citizens of the States they represent will be able to present their grievances in that true and forcible light — and address to that body such an argument to the understanding and such an appeal to the honest feelings of the heart as cannot fail to awaken them to a sense of their injustice and not only procure the re-peal of that odious enactment that sits like an incubus upon the Country — but also convince them ~~that~~ how absolutely important it is to the preservation of peace and the perpetuity of the Union to abstain for the future from all legislation that overleaps the barriers of Constitution — But if very peacable and friendly effort prove unavailing if the despotic majority of Congress impervious to reason and callous to every principle but selfishness continue obstinate and obdurate heedless of our complaints and regardless of our rights the enquiry necessarily presents itself "What then is to be done"? This is a question which the people who are the sufferers must answer themselves — Surely there must be some remedy for enormous evils — evils which no intreaties can abate and submission but increases — Failing in all others they can in the last resort interpose the shield of their sovereignty —

It is not my intention to enter into an elaborate investigation of the American System for as its principles and tendancy are familiar to all such a course at present would be a profitless expenditure of labour and a useless consumption of time — But if any of my readers are satisfied as to its disastrous operations on the South I would entreat them to bear in mind the undisputed and important fact that more than one

third of the whole staple productions of the country is surrendered in submission to that system without any return of benefit or the least possible remuneration whatever. Out of every hundred bales of Cotton sixty only cost the planter claims — the remaining forty are taken as a bounty to be given to others — And to whom? It would be some consolation under the burdens to know that the fruits of our labour went to the extinguishment of the National Debt but instead of this it is divided one half to the rapacious manufacturer the other disbursed among such states as may be bribed by appropriations for Internal Improvements to the support of the iniquitous system — No State however great its resources can bear up under policy long — the wealthiest must sink under its operations & hasten into premature decay — Already are the signs of ruin visible — it will soon be upon the country — The people are not free of debt — the staple commodity of our country bears no price — the value of slave labour is becoming as nothing — our luxuriant fields will be turned into waste and commerce utterly destroyed — A few more years and the south the flower of the continent and home of Chivalry — stripped of its wealth insulted for its weakness will be but as the "empty skins of an immolated victim" — And all this is the result of Patriotic equitable and constitutional legislation — What an insult upon injury — Surely the Southern People can want no other argument against the constitutionality of such legislation than that it is a system of robbery upon them — that money is extorted from them without their consent to be disbursed in other sections — that those who impose the burdens whilst free from our responsibility are the sole beneficiary of the robbery — that they are compelled to pay tribute not only to their friends but their enemies not to government but individuals and communities who traduce our character are opposed to our institutions and at war with our political doctrines — Can this be a legitimate

exercise of power? — Is it not a perversion of all the just ends of government? What is the object of government? The imposition of equal burdens for an equal protection of rights. Is not the American System subversive of this? Let the defenders of its constitutionality turn to the compact and lay a ~~finger~~ finger upon that portion which gives the right to an interested majority in Congress to legislate for their exclusive benefit and not with a view to the benefit of all — to plunder thousands in one section an build up a few in another? Who denies that this is the design and such the effect of the Tariff? And yet there are those affecting to deprecate this flagitious policy who say that it is constitutional — But believing myself that every measure combining selfishness in its origin — oppression in its aim and ruin in its operations is violative of our National Compact I leave those who think differently to the enjoyment of their opinions hoping the people will duly appreciate their penetration into the principles of our Government whilst I proceed to the great and material matter of present consid=eration which is an examination into the principles & policy of a certain remedy against not only this National curse but against all such glaring abuses of Federal power

Among the various modes of redress proposed for oppressions growing out of flagrant violations of the constitution there is one which has been zealously defended and as warmly opposed known to our readers under the odious appellation of Nullification — It is the doctrine contained in that odious term that I propose to consider — I enter upon the task with no overweening self-sufficiency — But whilst I would communicate my views with becoming modesty I hope to be indulged in that confidence which springs from a strong conviction in the truth and justice of the cause — Aware of the "hue and cry" against the term I might avoid much of the prejudice of weak minds by substituting some synonymous word but this I

care not to do, for I prefer leaving such policy to those who pursue truth when it is fashionable and forsake it when in Country — To me the rose smells as sweet with one name as another and if the doctrines I advocate be sound & just they are not the less accept=able because latitudinary gentlemen have laboured to associate the idea of treason and rebellion with the word Nullification — It is not a word that I defend for I am no Philologist — but it is certain doctrines which I shall presently state that I am about to contend for And well would it be for the people before joining with the Federal Politicians in their vague and random denunciation of a mere solitary word, to enquire into the nature and extent of the all dangerous and alarming power comprehended in this terrific term! What is Nullification? It is nothing more or less than a right, which I am persuaded the people on mature deliberation will never be willing to surrender — a right of the citizen of a State in their Sovereign Capacity to judge of and protect their assumed rights — When these shall be grossly and tyrannically invaded by Congress — the people have the right after having failed in every other mean of redress to hold a Convention and free themselves from the oppressive operation of such unconstitutional legislation by declaring it null and void within their territorial limits — "

"The very head and front of its offending
Hath this extent — no more"

And this power in the people I hold to be as essential in our government to the preservation of our liberty as a Jury is to the attainment of justice in a court as a bayonet to victory in the field — And is it asked when did the people obtain this right? I would ask in reply when did they ever surrender it? They derived it not from the Talmud nor the ~~[illegible]~~ Koran but from God himself — it is an inherent principle of sovereignty — and a State can be divested of it but in two ways

by voluntary surrender or surrender to superior force — The States of this Union have never parted with it in one way and whether doomed to loose it in the other is a matter yet to be decided — Such is Nullification — Terrific sound — hear it despotism for it is the knell of thy departed power —

Overlooking an extensive variety of argument which might be pertinently and profitably introduced in the discussion I shall invite attention to a few only by which I wish to show most conclusively that the power thus claimed doth rightfully belong to the States and that their very existence and the liberties of the people depend upon the interposition of that power on important and dangerous occasions — Whether the Tariff is one which calls for the exercise of it is a point which I propose to consider in the sequel

It is admitted I believe on all hands that the citizens of a State owe no allegiance to an unconstitutional law — But who are to be the interpreters of the Constitution? to whom belongs the right of deciding when that instrument is infracted and when it is not? Whatever tribunal shall be invested with this high authority will have absolute dominion over the destiny of this Government — It can by its constructions of the National compact augment or diminish power encourage or repress usurpation and oppression at its pleasure and discretion — Hence it becomes a matter of the first importance to the American People to deliberate seriously and solemnly upon the enquiry "In whom does the right of final decision on all Constitutional points reside" — The Republicans of the Jeffersonian school contend that the people of the States seperately have this right of ultimate decision — whilst the Federalists or consolidation politicians claim the prerogative for the Supreme Court — Either then the power resides in the States or in the Federal

Judiciary — That it belongs not to the latter will appear obvious when the reader duly reflects — that there may be abuses of Power that that tribunal cannot check — that many dangerous infractions of the Constitution cannot fall within its Province to act upon — that it may itself be guilty of usurpations as well as other departments of Government — that no such power is found delegated in the Constitution — These considerations dispassionately examined will serve to convince the candid mind that the Federal Court is both incompetent and unauthorized to act as umpire between a State and any part of the General Government in their conflicting interpretations of the Constitution —

Suffer me to illustrate these points by the statement of a few not improbable cases — Let the Judiciary decree that the Cherokees are a sovereign & independent people and that Georgia shall not extend her jurisdiction over that part of her territory lying within her chartered limits — The Executive of the United States may view the matter in quite different light from the Court and not feel himself authorized by the constitution to arrest the State by Military force in the exercise of this her obvious right — How will the Court enforce its mandate? It determines one way the President another — Who shall decide when Doctors disagree? Does not this evidently show that there are at least some cases wherein the Court is not constituted the Sole expounder and sentinel of the Constitution —

Again — How can the court control the President when he shall place too wide a construction upon his own Power? Suppose the President by the latitudinary process was to construe the present excited opposition to the Tariff in South Carolina into rebellion and prompted by a high sense of imperious duty should attempt to quiet the disturbance by chastising the disaffected party into a peaceable submission

to the Law? Though the step might be sanctioned by a few infatuated partizans yet a large majority of the State would be apt to look upon it as a very high handed measure — Here would be an issue at once between the Executive and the People — Who shall be the Umpire? It is said the Supreme Court shall settle all such differences — if so it follows as a matter of course that if the Court decide the President to be out the pale of the Constitution he is immediately to desist and call off his forces — But suppose the Court decide in favour of the Executive then as a matter of course the Chastisement becomes constitutional and the People must submit to its infliction until the President concludes he has restored order — Surely it never was the design of the framers of our Government to clothe 7 Federal judges with such absolute power over the lives and opinions of the People — But let us continue the supposition — The Execution dragoonning might be going on during the whole time the case referred was pending in Court without any right on the part of the people to resist — for all acts of the General Government (according to the consolidation doctrine are to be held as constitutional until otherwise determined by the Federal Judiciary — and when the decision of the Court shall be obtained if adverse to the latitudinary notions of the President his oath of office and other considerations "higher than human authority" might not allow him to obey the decision — Where then is the power of the Court to enforce respect, and what becomes of the liberty and lives of the people. Can any more be wanted to establish the absurdity and danger of the Federal Doctrine! It calls upon the people writhing under the infliction of the greatest despotism to await patiently the tardy movements of a tribunal whose decree if even favorable to their rights can promise no certain security — How insulting to freemen — How Baneful to liberty — And the case is not altogether an improbable one — Once at least has a basil ammious despot at the head of our nation threatened —

Georgia with military chastisement because her Governor would not suffer him and his Partizans to defraud the State of a portion of her territory? And suppose this Chronomhotonthologos of war — this terrific wielder of the sword and purse of Government had actually attempted to put his threat into execution — It is probable that Georgia would have patiently submitted to the plebotomizing operation until its constitutionality could be adjudicated by the Supreme Court — No. the voice of the people would have been —

"Let us rise at once gird on our swords
"Attack the foe; break thro the thick array
"Of their thronged legions and charge home upon them"

A different language would be very decent and becoming in the advocates of passive obedience and non resistance! but never may lawful invaders expect to find such submission in a people with wisdom to discern and firmness to defend their rights — Georgia in her sovereign capacity will be herself the judge of the Constitution in all such cases and declaring them to be out the pale of that instrument she will nullify them accordingly

Thus we discover that the Federal judges from the nature of our Government cannot be the exclusive interpreters of the articles of our Union! neither can they arrest executive usurpations — Though they may decide particular to be unconstitutional yet they are wanting in the means to check the evil — What signifies their decreeing against usurpation unless they have the ability to extend protection? It is substantial protection against wrongs not paper decisions against them they are wanting —

I have said there may be legislative violations of the Constitution which the court cannot take cognizance of and of course cannot arrest — Surely if it be the only tribunal

to check Federal usurpation it ought to have competent authority to protect the National compact from every species of dangerous infraction — insidious as well as open — Has it this authority? Certainly not. A Power delegated for one end may be perverted to another and yet the Court cannot say the power is not a valid one neither can it sit in judgment upon an indiscreet of it — It has no supervisory right over the legislation of the country — If Congress openly assumes a power not named in the Constitution the Court may nullify all laws passed under that power; But it cannot nullify a law passed under a power clearly granted and clothed in a legal garb although the law may be intended by its operation to accomplish an unconstitutional end — The Court cannot reach this perversion of power — Its powers are exclusively judicial and not political; so that when it has to decide on the constitutionality of any legislative enactment it can only turn to the Constitution and see whether the power under which the law was passed was granted or not — if granted it cannot determine the law to be out of the pale of the compact merely because the Court may deprecate its policy and tendency for this would be exercising political and not judicial power — Hence Congress by artfully conforming to the letter and forms of the Constitution may essentially violate its spirit and still without the jurisdiction of the Court — But because the Court cannot take cognizance of the infraction are the Willing for Congress to triumph in the usurpation? The Tariff upon this system of perverting a constitutional right to an unconstitutional purpose — Congress has no power to grant [redacted] bounties to domestic manufactures and yet this object unknown to the Constitution is accomplished under a false colour of enacting revenue laws — In common morality I say that so to use a power as to effect a design foreign, to the purpose for which the power was delegated is in private transactions

Villainy — In public affairs whatever gentlemen may choose to make it — But if congress in passing the Tariff was acting in good faith with perfect confidence in the justice and constitutionality of the design and with no wish to exercise undelegated power why did it so pertinaciously refuse to style the law in conformity with its spirit and intention? Why entitle it an act to raise Revenue when that was not the object of it — Why not call it a law to encourage manufactures by giving bounties such being its design and intended effect — Then might the constitutionality of the measure — the principle upon which it is based be brought within the jurisdiction of the Court and as little confidence as I have in that tribunal in all questions involving Federal supremacy yet in so obvious a matter as this I would not utterly despair of a fair decision for I cannot readily conceive how a set of judges in the least degree mindful of character as men or tenacious of reputation as jurists could so far sacrifice both and prostitute the Bench as to sustain the usurpation of a power so hostile to justice and so foreign to the constitution. Congress seems to have had a similar belief — Though the Court has always kept pace with that body in the enlargement of its powers yet in so manifest and palpable a violation it was doubted whether the conscience of the Court might be sufficiently pliable to suit the case and apprehensive of a righteous verdict its jurisdiction was very prudently evaded — Framed as the Tariff act is no set of judges could do otherwise than determine that it was a revenue law — Passed under a power clearly granted & hedged in with with all the formalities of the constitution they could not avoid this decision yet it is very evident that the law was never intended for Revenue purposes —

What then was the object of its passage? It was to operate as bounties to domestic manufactures — But this latent design of congress cannot come before the Court — the court can attribute no other design that what is disclosed in the act itself neither can it sit in judgment upon the excess of the duties and scale them down to the necessities of government — To do either of these the Court would be stretching its authority and travelling out of its judicial character — and yet without taking cognizance of the real and true intention of the Tariff or without exercising the power of reducing the duties I know of no way that the court can check this abuse of legislative power arrest the practice of perverting a constitutional right to an unconstitutional end and shield the people from the manifold oppressions arising from this corrupt system of legislation — And because the court is wanting in authority adequate to the evil do the abuses become legitimatized? I would earnestly enquire of the national politicians what remedy do they propose for all such bold violations of the spirit of the compact? I allude to those abuses so artfully contrived as above described as to evade the jurisdiction of the Court — This species of infraction is as fatal to liberty as any other kind — as fruitful a source of oppression as the open exercise of undelegated powers — and since the court by reason of its organization cannot reach the evil to what tribunal will they refer the people for redress? They are surely entitled to redress and if it cannot be obtained through any of the departments of the General Government I contend they have the right to seek it in their sovereign capacity — Those who

denying this right in effect say to the people that for wrongs openly committed by Congress you may obtain redress — but for those insidiously inflicted you are left without remedy — This is the kind of Government contended for by the advocates of the Tariff — Against this obnoxious measure I make no argument at present its unjust and ruinous operation on the South has been fully developed — yet never would a murmur be heard from this quarter against any duties which public exigences might require — I firmly believe that in war or any of the legitimate acts of the Governments their patriotism would sustain burdens fourfold greater than would be borne by an other people of the Union But they cannot consent that a power which was intended to enable congress to defray public expenses and meet the exigences the government should be exercised with a view of extorting tribute from them for the private purpose of building of the fortunes of Manufacturing Gentlemen — This is their complaint — And when they ask for redress they are dispersed to a tribunal which cannot take cognizance of the case — Do they talk of taking cognizance themselves? they are immediately threatened as traitors and rebels and by whom the very people who inflicted the wrongs — But what would be the language of these people if matters were reversed? Let Congress in the exercise of the undisputed right to regulate commerce among the several states pass a law that each State should consume its own manufactured articles — This would be destroying internal commerce instead of regulating it but it would not be a greater abuse than to destroy foreign commerce under the power regulate it — But who would suppose for a moment that the manufacturing States would submit to have a

power clearly granted for a particular purpose abused, in a manner so overwhelming to their interests? They would not bear it a single day - they would shake off the oppression "like dew drops from the lions mane" - That which they will not allow us to do for the love of liberty they would do for the love of gain - But as the matter stands however it is their bull that is goading our ox and when we knock at the door of their infallible tribunal to which we are directed for redress we find that there is no admittance -

Let us proceed to another point - But first I wish the reader to bear in mind that the reserved rights of the States and the people are to be secured only by adhering to the Constitution - Every violation of that instrument is a trespass upon those rights, and every infringement of those rights is a violation of the compact - Hence the tribunal invested with exclusive or final interpretation of the Constitution becomes the guardian & protector of the reserved rights - Protection of those rights will always be in proportion to the fidelity with which the Constitution is adhered to - Therefore when the Court is spoken of as the final expounder of that instrument and when it is called the sole judge of the reserved rights one and the same thing is necessarily meant - This short explanation is offered only for the convenience of plain and ostentatious minds like my own and doubtless many of my readers have discerned from my manner that it is to minds of that character that I particularly address myself - I have already shown the insufficiency of the Court as a shield to the reserved rights by pointing out its inability to arrest some of the most flagrant abuses of the Constitution - I would enquire now where is the shield of the people against judi

=cial abused? Whilst the Supreme Court is important as a check upon other departments of the Government it may itself be guilty of usurpation of the most fatal character to liberty = Like a faithless sentinel on the watch tower it may invade those very rights which it is appointed to defend; and who are to arrest its encroachments upon the rights of the people? If the people in their sovereign capacity have no right to question the acts and opinions of the Court then they have no safety against its selfishness and ambition — let its decrees be ever so ruinous and unjust yet the people must submit for the Court being the paramount authority is judge of its own acts! Such a doctrine is at variance with reason and hostile to the principles of freedom = The people of the State of Georgia never consented that the Federal Judiciary should be the sole depository of their rights — they never yielded to that tribunal the power to say what degree of liberty they are entitled to what rights they may be permitted to enjoy and what rights it is prudent for the Court to withhold from them — This is not the nature of our government = The people of the several and seperate States know what rights they have voluntarily parted with and what they have retained to themselves — Deny them the right to judge in the matter at once are they stripped of every privilege except such as the Court in its abundant liberality and moderation may deem judicious and safe to indulge them in — Now if the people tired of having their liberties in their own safe keeping may think proper to surrender into the custody of the Court to be dealt out by that tribunal at its own discretion I say let them do it for they have the unquestioned right to act — But I assert that they never have made such a total and foolish sur-

=render; I contend that they have parted with a few only of their rights which they have distinctly enumerated reserving all others in their own hands — Does the read=er want evidence of this? Let him look to the Constitution where the rights parted with are especial=ly set forth and where it is expressly declared that all others not named are retained by the People of the States — Now I put the question when the Federal Judiciary shall trespass upon these reserved and undelegated rights who shall arrest the progress of the usurpation? If the people are not allowed to do it themselves then they are destitute of remedy — Despotism becomes legalized and they the victims —

Congress is not allowed to extend its powers to the limits of its discretion; why then make discretion the only bounds of another department which is equally ob=noxious to the influence of interest? what is the reason of this distinction — Isit not as important to the people to have redress of grievances inflicted by one branch of Government as those committed by another — If Congress pass a law confiscating the property of the South it is said that the people would find protection in the Supreme Court which would certainly ~~find~~ decide the law to be uncon=stitutional — this it might or might not do — but suppose the Court itself by its decrees open the door of emancipation to our black population where then is our redress if the Federal judges and not the people themselves are the final and sovereign arbiters upon the reserved and undelegated rights — Are the judges "more wise more learned more every thing" than the members of Congress that whilst the latter are to be restricted ~~in their powers~~ the others are to be unlimited in their powers —

Are they not composed of the same materials and nature having like passions moved by similar motives" subject to the same skyey influences"? And may not their usurpations be as dangerous to liberty as any which Congress may be guilty of? More so — For Congress in its invasions breaks boldly at the gate of the Constitution and may alarm the people to its defence but the Court scales the ramparts with a noiseless movement exciting no suspicion or alarm until secured in power — and then like a successful Spartan burglar it receives applause for the adroitness of the theft leaving the people without a remedy for their plundered rights — Now what signifies all this pretented barring of the front portal of the Temple of Liberty whilst the back door is thrown open to the most insidious & dangerous foes? How do the Federal Politicians answer these things? What efficient security against judicial usurpation do they oppose? Their inability to meet this difficulty not unfrequently drives them to the desperate expedient of defending the Court upon the ground of infallibility — It is impossible say they that such high minded gentlemen as the Federal judges can ever profane the rights of their fellow creatures — their profound attainments — moral excellence and honorable feelings abundantly entitle them to unlimited dominion over the destiny of States — for their impartiality as a high Court of umpire is secured by reason of their being American Citizens — their independence because their salaries are permanent — their good behaviour because that is the tenure of their office — and their disinterestedness because they were chosen for especial patriotism — Wonderful reasoning admirable bulwark of freedom — But really to be serious this is an argument that I cannot delight

to answer — for if the people are satisfied with no other safe guards to their liberty than the infallibility and presumptive disinteredness of rulers they are too weak for self government and the sooner they surrender the right the better for them —

Akin to this argument is the assertion that the liberality of the judges to impeachment is an all sufficient security against their assuming unwarrantable powers — The termination of the late trial of Judge Peck ought to be a quietus to this position — After this acquittal of as flagrant abuse of power as ever added lustre to the "blasting honors" of Jeffries it requires some degree of political hardihood to refer the people to that delusive redress as the only security which they have against Judicial abuses — Too many reasons have the judges to look upon impeachment, as no rod of terror to them — They are not responsible to the people but to congress — Let them commit invasions on the rights of that body and it is highly possible that they might be held to a strict account of their stewardship but so long as they confine their aggressions upon the rights of the states I ween they may long continue in the Red Cross Congress in the holy crusade — For what inducement could two thirds of that body have to remove from office a set of men for merely amplifying their authority at the expense of State Sovereignty — a policy which Congress approves and pursues itself for the laudable purpose of concentrating all power in the central head — Think ye that that great body would dismiss with disgrace its coworkers for their fidelity to the grand design? Sitting in judgement on their acts would not "a fellow feeling make them wondrous kind"? Disguise the matter as you please yet it is true that the Supreme Court is but the representative of the majority in Congress and the

official promulgator of their feelings and opinions — The Judges nominated by the President receive their offices from him with the advice and consent of a majority of the Senatorial branch of that body — are selected for the congeniality of their sentiments and being responsible to them alone what reason have they to apprehend from that majority whose will they construct — whose policy they pursue? Congress & the Court are but branches of the same government — a government whose whole history discloses a settled and unwavering purpose of destroying the restraining principles of the constitution and assuming unlimited power — These branches must cooperate — they mutually sustain each other — They are of the same party — entertaining the same political views — placing the same construction on the constitution and recognizing in each the power to which they respectively lay claim — And yet for all this the people are told that when they experience oppression from either of these departments the other is to be its sole and only judge — If the united voice of a State says that Congress by her enactments has violated the articles of the Confederacy and oppressed the people the Supreme Court will take the matter into consideration and its decree is to be final and decisive and so when a similar voice of complaint against usurpation of the Judges Congress is to investigate their conduct and from its decision there is no appeal — Thus two tribunals identified in interest and pursuing the same policy are made the alternate judges of the acts of each other — Could human wisdom devise a more effectual mode of screening these two branches of Government from all responsibility for their conduct? could despotism ask for more power? could tyranny want greater security? And yet have the consolidation politicians the desperate courage to tell the people that this is as

great a safeguard to their liberties as they need to require — that if by mere accident they fail in attempts to obtain redress of judicial usurpation by impeachment they must in no wise think of the rights of sovereignty for that would be highest heresy and to turn to the tribunals of their own States would be treason and rebellion — Well may the advocates of national supremacy preach this doctrine of passive obedience — and knowing the utter futility of impeachments well may they point the people to that mode of redress as the only one for judicial oppression — But I would inquire of the friends of federal power how can Congress sit in judgment upon judicial constructions of the constitution? If the court is amenable to that body for its interpretations of the compact then Congress instead of the Court becomes the final setter of the Constitution — For high crimes and misdemeanours wherein corruption may be proven against the judges they may by impeachment — be dismissed from office — But it is not offences of such character that are so much to be feared — for they will occur by seldom and be temporary in their consequences — the great danger to be apprehended from the Court is its latitudinary construction of the Constitution — It may so interpret that instrument as materially to affect the reserved rights of the people and the States and so as to augment its own powers far beyond what was intended by the framers of our Government — What redress against such usurpation can Congress afford? None at all — Suppose the judges arraigned upon the charge of giving a false construction to the constitution by which serious evils have accrued to particular sections of the country — the language of Congress would be "No matter what may be our opinion as to the true meaning and spirit of the Compact we have no right to punish the judges for honestly differing with us — there always will be conflicting interpretations of that instrument

and it is the proper province of the judges to decide and settle those disputed & doubtful points — prove bribery and corruption and we will dismiss them from office !! Thus are they freed from all responsibility — neither amenable to congress nor the people — What then becomes of the argument of their liability to impeachment operating as a check upon their stretch of power?. For crimes which they are not likely to commit or repeat very frequently — they are obnoxious to impeachment, but for those dangerous misinterpretations of the national compact which they will always have the strongest inducements to indulge in they are unpunishable by Congress and still further removed from the reach of the people — There can be no greater security to liberty than a direct account-ability of Rulers to those who are exposed to their oppression — but there can be no greater despotism than to invest a few individuals who hold office for life with absolute dominion over the constitution of our country — Their well become the bounds of their power leaving the people no remedy against their usurpations but supplication at the foot stool of their mercy —

I am really at a loss to conceive how a mind seriously bent on truth can require any other than the foregoing consider-ations to satisfy it most thoroughly of the utter groundless-ness and fallacy of the claims to the high authority asser-ted for the Federal Judiciary — Grant what is claimed for that tribunal of sitting as final umpire upon all points of difference between the several departments of the General government and the sovereign parties of the national compact and at once it is inves-ted with imperial power — the constitution becomes as clay in the hands of the potter and the Court can mould our government into any form and character it pleases — If any additional argument is wanting

to prove that this power is apocryphal there is one which ought to dispel every doubt and set the question at final rest — It is that there is no such authority granted in the Constitution — Ours is a Government of enumerated powers — All are agreed upon this point — The Legislative, Executive & Judicial departments all derive their respective powers from the constitution and neither branch can exercise any other than what is specifically set forth and assigned to it — and yet when we turn to that part of the Constitution in which the duties of the Supreme Court are enumerated we find no such unlimited power alluded to as is claimed for it by the consolidation party — Let them point out that par=agraph or sentence which declares that the tribunal shall be the exclusive expounder of the compact and that Congress the president and the States shall all conform and yield to its interpretation — This is the power claimed — If the framers of our Government have ever intended this power for the Court they would in all reasonable prob=ability have alluded to three things — they would have so organized the Tribunal as to take cognizance of all the infractions — they would have enjoined obser=vance upon the other departments and insured it by clothing the Court with suitable power to enforce its mand=ates — and they would in the last place have prob=ably said something in the Constitution about the pow=er itself neither of which three things they have done — Yet in the Convention there were not wanting men of high abilities to advocate this very power — it was amply discussed and well understood — that every effort to in=corporate it in the Constitution was unavailing — one of the distinguished members moved that " The jurisdiction of the supreme court shall be extended to all contro=versies between the United States and an individual State — Surely if the convention intended to grant

this power it would not have rejected language so direct by to the purpose as this — yet we find that the proposition shared the fate of every other directed to the same object — Was it rejected merely that other language more in point might be adopted — no; for when we turn to the Constitution we discover not the slightest illusion to the Court being the sole and final expounder of that instrument and the arbitrator of all differences between a state and the General Government — With what appearance then of fair dealing and truth can the national politicians now claim a power which was sought to be conferred and positively withheld? It would be well for the people to reflect seriously upon the object designed to be affected by the usurpation of this judicial prerogative — It was originally sought by a party hostile to a Federative government and is now attempted to be usurped by the same party for the purpose of destroying the confederation — It is the archimedes lever by which the states are to be overturned and a consolidated empire to be erected upon its ruins

Let us pause a moment and view the fair and irresistable conclusions of the argument as far as we have proceeded — or as mercantile gentlemen would say let us foot the account and see the sum total — I hold that my arguments have made good the following points to wit —

1st That the Judiciary can afford no security against Executive usurpation nor force the President to an observance of its mandates —

2d That many legislative abuses of the most flagrant and oppressive character are not cognizable in that Tribunal —

3d That against judicial usurpation there is no redress other than the sovereignty of the People —

4th And lastly — That the federal judges are no where recognized in the constitution as the exclusive expounders of that instrument and of consequence the final arbiters of all difference between a state and the General Government —

If these considerations are insufficient to satisfy the reader of the insecurity and folly of looking to the supreme court as the only tribunal to arrest usurpation and shield the constitution from violation — I turn him over to a hard heart and a reprobate mind —

At some convenient season the argument will be resumed —

Patrick Henry