EVERETT ALEXANDER HILL

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The discontents on the subject of the Tariff, which have so long existed in several of the Southern States, and particularly in South Carolina, have at length reached a crisis. As soon as it was ascertained that the party in favor of Nullification had prevailed in that State at the late elections, the Governor immediately summoned an extraordinary session of the Legislature, which was held accordingly at Columbia, on the 22d of October. In calling together the new Legislature before the end of the current political year, as generally understood, the Governor exercised an authority, which may perhaps be fairly considered as doubtful, although it appears to have been sanctioned by the highest judicial authority of the State. This, however, is a secondary question, upon which we shall not enlarge. In the message which he transmitted to the Legislature at the opening of the extraordinary session, the Governor recommended to them to pass an act authorizing the meeting of a Convention, to deliberate upon the measures to be taken by the State for the purpose of obtaining relief from the operation of the Tariff. The act was accordingly passed by large majorities, – two thirds being required by the Constitution; – and the Convention, which was chosen in pursuance of it, opened its session at Columbia on the 19th of November.

This body proceeded at once and without much discussion to adopt what they call an 'Ordinance to nullify' the Revenue laws of the country, which we propose to copy in the course of our remarks. Having published this act, with an accompanying exposition of their motives in passing it, and addresses to the people of the United States and of South Carolina, the Convention adjourned without delay, leaving it in charge to a committee appointed for that purpose to summon another meeting, if it should appear expedient. The composition of the Ordinance is attributed to Chancellor Harper; that of the exposition accompanying it to Mr. McDuffie; and that of the addresses to the people of the United States and of South Carolina respectively to General Hayne and Mr. Turnbull. The Legislature of the State have since assembled, and, agreeably to the tenor of the Ordinance, will doubtless pass such laws as may be thought necessary for carrying the measure into full effect.

These proceedings constitute a very serious crisis, – the most serious that has occurred in the history of our country since the establishment of the Government, with the exception of that which attended the close of the last war with Great Britain, and from which, by the fortunate intervention of the Peace, we escaped without injury. In the present instance, there seems to be no prospect of evading the difficulty in any such way. We must meet it in front, and either overcome it, or submit to all its consequences.

The general principles by which the statesmen of South

Carolina undertake to support their views, have been already very fully discussed in various quarters. But, considering the great importance and urgent interest of the subject, it may not be wholly superfluous to take, once more, a calm, and as far as may be, impartial survey of the ground in dispute. In doing this, we shall of course leave out of view the topics of the constitutionality and expediency of the measures of the General Government, which are the motive or pretext for the present proceedings in Carolina. Believing, as we do, that the Protecting Policy is founded in a correct understanding of the principles of the Constitution, and of the true interest of the country, we still very cheerfully recognise in our fellow-citizens of all the States, the right to entertain a different opinion, and to act upon it in a legal and constitutional way. The precise question now before us is, whether the present proceedings in South Carolina are legal and constitutional. The most authentic and elaborate exposition of the arguments that are urged in defence of them, is to be found in the letter of the Vice-President of the United States to Governor Hamilton, of August 28, 1832, to which we shall accordingly refer as the leading authority in their favor.

In the course of our remarks, we shall generally employ the term *annul*, in preference to the new-fashioned word *nullify*. The meaning of the two, as given in the dictionaries, is exactly the same, but the former is in better use, and presents to most minds a more distinct idea than the latter. It is well known that one of the most frequent sources of obscurity and confusion in

reasoning, is the use of terms which, from whatever cause, are in any degree vague; and we have very little doubt that in the present controversy, the error of the Carolina statesmen may be attributed in part to the unfortunate substitution of the new-fangled terms *nullify* and *nullification*, for the corresponding good old English words *annul* and *annulling*. Many a professed *nullifier* would, we suspect, shrink from the assertion that a State has a right to *annul* an act of the General Government. Mr. Calhoun seldom employs the latter term, and states expressly, that he does 'not claim for a State the right to *abrogate*' an act of the General Government. Now, according to Johnson, the meaning of *abrogate* is to *take away from a law its force*, to *repeal*, to *annul*. To *annul*, according to the same authority, is to *make void*, to *nullify*, to *reduce to nothing*: and finally, to *nullify* is to *annul*, to *make void*. The meaning of the three words, in correct usage, is exactly the same; and Mr. Calhoun, in disclaiming the right of a State to *abrogate* an act of the General Government, really disclaims the right to *annul* or *nullify* such an act, in any proper sense of those terms, and abandons in a single sentence the doctrine which he is at so much pains to establish in the rest of his exposition. In disclaiming the use of the word *abrogate*, abstaining generally from that of *annul*, and taking refuge in what Governor Lumpkin very properly calls the *mystical* terms *nullify* and *nullification*, the Vice President has, we think, betrayed a secret consciousness of the weak point in his cause.

The controversy is, however, not about words, but things. The right which the Vice-President disclaims under the name of *abrogating*, but claims for a State under that of *nullifying* an act of the General Government, is thus stated by himself in the letter alluded to above.

1. 'A State has a right, in her sovereign capacity in Convention, to declare an unconstitutional act of Congress to be null and void; and such declaration is obligatory on her citizens, and conclusive against the General Government; which would have no right to enforce its construction of its powers against that of the State.'

2. Upon the exercise of this right by a State, 'it would be the duty of the General Government to abandon the power, at least as far as the nullifying State is concerned, and to apply to the States themselves, according to the form prescribed by the Constitution, to obtain it by a grant.'

3. If the power thus applied for be 'granted, acquiescence then would be a duty on the part of the State; and in that event, the contest would terminate in converting a doubtful constructive power into one positively granted: but should it not be granted, no alternative would remain for the General Government but its permanent abandonment.'

Such are the three leading points in the *doctrine of nullification*, as laid down by its principal champion. It will be perceived that they contemplate not a single act, but a long and complex course of proceedings, involving the agency not only of the nullifying State, but of the General Government and of all the

other States. The discontented State *nullifies* an obnoxious act: it then becomes the duty of the General Government to cease to execute the act within that State, and to apply to the States for the power in dispute: if the power be obtained, it is the duty of the nullifying State to acquiesce: if not, the act is definitively annulled.

Now, if all this be legal and constitutional, why do we find no mention or hint of any part of it in the Constitution or the laws? As respects the first and third steps in the proceedings, it may be urged, with some plausibility, that the Constitution is silent, because it does not undertake to regulate in any way the action of the States, as bodies politic, or of their Governments. But what account can be given of the silence of the Constitution upon the second step in the proceedings? When a State has exercised the power of annulling an act of Congress, it then becomes 'the duty of the General Government to abandon the power, (by which Mr. Calhoun doubtless means to discontinue executing the act) at least within the limits of the nullifying State, and to apply to the States themselves in the form prescribed by the Constitution, to obtain it by a grant.' Here is a two-fold duty of great delicacy and importance, which, according to the Vice-President, devolves, in a certain contingency, upon the General Government. The General Government is bound to discontinue the execution of one of its laws within a particular State, and the General Government is bound to apply to the States, in the form prescribed in the Constitution, for a grant

of the power to pass such a law. Of all this the Constitution says not one word. If the passage which we have quoted from the exposition stood alone, we should, in fact, be entirely at a loss to know what the Vice-President means in this place by *the form prescribed in the Constitution*, as that in which the General Government is to apply to the States for a grant of new powers: but from other parts of the document, we gather that he alludes to the clause which prescribes a form for amending that instrument. Now it is undoubtedly true that the General Government might, if they should by constitutional majorities deem it expedient, recommend to the States an amendment, which, if carried, would have the effect of augmenting their powers; but it is equally certain that the clause, which provides a form for amending the Constitution, does not make it the duty of the General Government to recommend an amendment of this description in the case supposed by the Vice-President, or in any other. In this as in all its other parts, the Constitution is entirely silent upon the important duties which are supposed by the Vice-President to devolve upon the General Government, in consequence of the exercise by a State of its supposed right to annul an act of that Government. Are these duties to be imposed, and the rights and powers necessary to their execution conferred upon the General Government, by mere construction? Is it not a little singular, that the advocates of this very liberal construction are precisely the persons who are most decidedly opposed to all constructive powers, and whose principal object in all their

present proceedings is to reduce, if necessary by main force, the constructive powers of the General Government to the narrowest possible compass?

The Constitution, we repeat, is totally silent in regard to the powers attributed by the theory of nullification to the States and to the General Government. This fact might, perhaps, fairly be considered as of itself a sufficient and decisive objection to the whole system. Let us next inquire, how far these powers are in themselves susceptible of being exercised. If it shall appear that the duties which, according to this system, devolve respectively upon the States and the General Government are not only not prescribed in the Constitution, but are also physically and morally impracticable, there will arise a pretty strong presumption that it could not have been the intention of the framers of the Constitution that any such acts should be performed.

The first step in the process is, as we have said, the annulling by the discontented State of the obnoxious act of the General Government. The State declares the act to be null and void, and takes measures to prevent the execution of it within its limits. How far this will be found a practicable operation we shall be better able to judge when we are informed of the proceedings of the Carolina Legislature. For the present, it may be sufficient to say that the various projects which have been successively recommended in the newspapers have been so obviously chimerical and visionary, as to render it altogether probable that no satisfactory scheme had suggested itself to the

leaders, and very doubtful whether it would be possible to hit upon one. Without, however, anticipating what the wisdom of the Legislature may bring forth, let us proceed at once to the second step in the process; viz. the duties which devolve upon the General Government. This part of the theory, we may observe, though it has been less adverted to, is, in the opinion of the Vice-President, not less important and valuable than the other, and equally essential to the completeness of the system. If it be found impracticable, the whole theory must be given up.

A State having nullified an act of the General Government, it then becomes the duty of the General Government to abandon the power (of passing such an act), and to apply to the States, in the form of proposing an amendment of the Constitution, for the grant of such a power. Let us see how far these duties are practicable.

The General Government consists of three branches, the Executive, the Legislative, and the Judiciary, to each of which its peculiar and appropriate functions are assigned by the Constitution and the laws. What then is meant, when it is said that it becomes the duty of the General Government to abandon the power to pass a certain act, at least within the limits of a particular State? Is it meant that the Legislative department of the General Government is bound to repeal the obnoxious law, as respects that State or the Union at large? This is obviously impossible, because by the supposition the majority of the Legislature believe the act to be constitutional and expedient, –

and therefore cannot conscientiously, in the ordinary exercise of the Legislative power, repeal it.

Is it meant, that the Executive and Judiciary departments of the General Government shall suspend the execution of the law within the limits of the State in question? This again is equally impossible. The functions of the Executive and Judiciary departments are entirely administrative. The persons entrusted with them have no discretionary power. They are bound by their oaths of office to execute the laws that are given to them by the Legislature, and have no more right to augment or diminish them by one jot or tittle, than they have to declare themselves dictators of the country. The abandonment by the General Government of the power to pass the act complained of by the nullifying State is therefore a thing in itself entirely impracticable. Even the omnipotent Parliament of England, which, according to Lord Coke, can do any thing but convert a man into a woman, could not repeal a law which was sustained by a majority of its members; nor could even the hereditary executive power of England or any other constitutional monarchy suspend for a moment the execution of a law, which is still in force. The thing is in its nature a moral impossibility.

So much for the first part of the two-fold duty, which, according to the Vice-President, devolves upon the General Government, in the event of the nullification by a State of a law of the United States. But the General Government is not only bound to abandon the disputed power, but also to apply to

the States, in the form provided for amending the Constitution, for a grant of that power. We have seen that the first of these supposed duties is in its nature impracticable. It is obvious to the slightest reflection, that the other is not less so. By the General Government the Vice-President must of course intend, in this connexion, the Legislative department of the Government, the Executive, as such, having nothing to do with the process of amendment. Now, independently of the objection to which we have already adverted, viz. that the Constitution imposes no such duty on the Legislature, it is plain that the operation is in itself impracticable, for the same reason which would prevent the repeal of the obnoxious act. The Legislature cannot recommend an amendment of the Constitution, giving to itself the power to pass such an act, for the plain reason, that by the supposition a majority of the members believe that the Legislature already possess the power, and that it is consequently impracticable for them to adopt, on their official responsibility, a measure which implies that they believe the contrary.

It is only necessary to consider for a moment how the plan would work in detail, in order to be convinced that it is utterly impracticable. It becomes the duty of the General Government, by which we will suppose the Vice-President to mean the Legislature, to apply to the States for a grant of the disputed power. But what is the Legislature? The Legislature is a complex being, composed of the President and two elective assemblies, comprehending two hundred and eighty-

five persons. It is the duty, it seems, of these two hundred and eighty-five persons, in their political capacity, to apply to the States for a grant of new powers. But who is to move? What is the business of every body is the business of nobody. Shall it be the President? The Constitution makes it the duty of the President to recommend from time to time to the consideration of Congress such measures, as he shall judge necessary and expedient. But the President, by the supposition, believes that the General Government already possess the power in question. It is impossible, therefore, that he should recommend to Congress to propose an amendment conferring this power. For the same reason, the proposition cannot be made in Congress by a member of the majority of either House. The duty, such as it is, of making the proposition, might no doubt be performed by some member of the minority of one of the two branches. But how are the majority to vote for a proposition which they do not approve? How is the President to approve a law which he does not approve? Individuals occasionally support or oppose measures for particular reasons, which have no reference to their own opinion upon their merits; but in arguing on general principles, it must of course be assumed that the members of the Government can only act on principle. The operation supposed is therefore in its nature essentially impracticable.

Indeed the supposition that it can in any case be the duty of one or more individuals to do an act which, if done by them at all, must be done in pursuance of their own free and unbiased

belief in its expediency, is so obviously incongruous, that we really wonder how an acute logician, as the Vice-President unquestionably is, could have been led by any prepossession or political hallucination to admit it for a moment. If it be really the duty, under the Constitution, of the Legislature or of any branch or member of it to perform a particular act, there is no room for the exercise of discretion. The thing must be done. Thus it is the duty of the House to choose their speaker and other officers. This is accordingly done at the opening of every new Congress, as a matter of course, and it would be unconstitutional even to debate upon the propriety of so doing. But a proposition to amend the Constitution or any act performed in the ordinary exercise of the Legislative power, must be, from its nature, the result of the free and conscientious judgment of the President and a majority of the two Houses of Congress upon its merits; and it is impossible that it can be their duty, in any case, to decide in favor of a particular measure without reference to its merits, when their own free and conscientious judgment upon its merits is the precise and only rule which they are bound to follow, in the decision of every question that is brought before them.

The process of nullification is therefore, in its most important points, absolutely impracticable. This being the case, any consideration of its constitutionality or expediency is superfluous. It is unnecessary to inquire whether a plan, which cannot in the nature of things be carried into execution, would or would not be constitutional or expedient if it could. But the

respect which we sincerely entertain for the talents and character of many of the citizens who are engaged in this project, seems to render it proper that it should be viewed under all its different aspects. Let us therefore suppose, for the sake of argument, that the project is practicable, and look at it in reference to its expediency. Passing over as before the first step in the process, the effect of which is less certain because the precise form in which it will be taken is not yet known, let us as before proceed at once to the second, and inquire how it will operate in the case immediately in question.

Let us suppose, then, that the State of South Carolina annuls the Tariff. On the theory of the Vice-President, it will then become the duty of the General Government to refrain from enforcing the Tariff within the limits of South Carolina, and to apply to the States for a grant of power to pass laws for the protection of domestic industry. We have shown that both parts of this duty are wholly impracticable; but let us imagine that they could be performed, and see what would be the result. Let us suppose that the General Government, at the present session of Congress, in defiance of their own opinion of the constitutionality and expediency of the Protecting Policy and of the express provision of the Constitution that all duties, imposts and excises shall be uniform throughout the United States, suspend the execution of the Tariff law within the limits of South Carolina. – Let us also suppose that the General Government, conscientiously believing, as they do, that they possess the power

to pass laws for the protection of domestic industry, shall yet assure the people that they believe they do not possess it, and recommend an amendment of the Constitution which shall give it to them. What will be the result?

The suspension of the Tariff law, within the limits of South Carolina, would of course render the ports of that State entirely free. As soon as this fact became generally known at home and abroad, the whole foreign commerce of the country would centre in these ports, and the receipts of the custom-houses, which constitute nearly the whole revenue of the country, would be reduced at once to nothing. In the mean time, the process of amending the Constitution is notoriously a very slow one. We have supposed that the General Government, at the same session of Congress, at which they suspend the execution of the Tariff law in Carolina, propose to the States to adopt the amendment in question. The recommendation goes out to the Governors of the States, and is laid by them before their several Legislatures, as they come into session at various times in the course of the following year. Some of these Legislatures act upon it at once; some lay it on their tables never to take it up again; others refer it, as they habitually do all questions of an embarrassing description, to their next following session. In this way the affair drags along for a number of years, and it is even very doubtful whether any returns at all would ever be received from half the States. Let us suppose, however, that in process of time, say in five years from the date of the proposal by the General Government,

returns are received from all the States, and let it be granted for argument's sake, that the proposed amendment is not sanctioned by the number of States necessary under the Constitution to give it effect, which is three-fourths of the whole: – this is the supposition most favorable to the views of the Vice-President. What follows? Is the great object of settling the construction of the Constitution attained? Quite the contrary. Not a single step has been yet taken towards the attainment of it. The refusal of the States to sanction the proposed amendment, far from proving that the General Government does not, according to their construction of the Constitution, possess the disputed power, might be, and in many cases undoubtedly would be, the result of their belief that the General Government already possesses it. How, for example, could Pennsylvania, where the Legislature unanimously believe that the General Government possesses the power to protect domestic industry, sanction the proposal of an amendment intended to confer that power? The refusal of the States to sanction the amendment would therefore prove nothing at all as to their opinion upon the meaning of the Constitution, and would leave the whole subject exactly as it stood before. The Vice-President tells us, it is true, that if the proposed amendment were not sanctioned by the requisite number of States, no alternative would remain for the General Government, but the permanent abandonment of the disputed power. But, with all due deference to the judgment of Mr. Calhoun, we must be permitted to say that this is a conclusion entirely without premises, or, in

less technical language, a naked assertion without proof, and we may add without even the appearance of plausibility. If the States refuse to amend the Constitution, it remains of course as it was before; and it is the duty of the General Government, as it was before, to act upon their own construction of its meaning, which is, by the supposition, in favor of the reality of the contested power. As honest men, acting on their official responsibility, they cannot possibly do otherwise; they would be obliged to re-enact the law which, by the supposition, had been repealed in reference to the nullifying State, and things would proceed exactly as they did before. At the end of the process, therefore, – supposing it even to result in the manner most favorable to the Vice-President's view, – the whole subject would remain precisely as it stood at the beginning. The affair would afford a new example of what a foreign writer has called the system of *All Action and No Go*.

In the mean time, what would have been the state of the country during the five years which have been devoted to this tedious, complicated and ineffectual attempt to settle the construction of the Constitution? The revenue would have declined almost to nothing, and there would have been of course an annual deficit of nearly the whole amount necessary to defray the expenses of the Government, and pay the interest and principal of the debt. How would this have been covered? The ordinary resource in cases of deficit is a loan, but it may well be doubted whether, under the circumstances supposed, the credit

of the Government would be particularly good. If loans could be obtained, which is the most favorable supposition, we should be saddled with a debt of about a hundred millions, probably at exorbitant interest, as the cost of this political experiment. Were this the only inconvenience, most judicious citizens would be disposed to say, with the Grecian philosopher who was offered, at a pretty high price, the favors of a frail beauty of some celebrity, – that they did not choose to buy repentance so dear. But this debt of a hundred millions would be the least part of the mischief. The importation of foreign goods free of duty for five years would of course destroy all our domestic manufactures, and ruin that part of our population which is employed in them. The value of the manufactures annually produced in this country is estimated by Mr. Gallatin at about $150,000,000, – probably a very low computation. Supposing the ordinary rate of profit in this branch of industry to be at from six to seven per cent., this amount of annual products represents a capital of a thousand million dollars, which would be swept at once into nothing. This is another trifling item to be added to the cost and charges of nullification. Omitting all consideration of the effect upon the happiness of the six or seven hundred thousand persons who depend for subsistence upon these manufactures, and looking merely at the financial results, we must needs say that this is a most expensive, as well as in our opinion unsatisfactory, mode of expounding the Constitution. And these, as we have said, are the results of the process on the most favorable supposition;

for if loans could not be obtained, which is a more probable one, the immediate consequence would be a national bankruptcy, which would of course be followed instantaneously by domestic convulsions, a complete breaking up of the Government, and a dissolution of the Union.

Such, if the process of nullification, which, as we have seen, would be found utterly impracticable at every step, could be carried into effect, would be its practical results. Such would be its results, supposing it to proceed without opposition from any quarter, and to operate throughout in the manner most agreeable to the views set forth in Mr. Calhoun's exposition. Is it possible that a statesman of distinguished talents and patriotic feelings, – that a large majority of the citizens of a high-minded, generous and intelligent State, can look forward to such results with satisfaction? – that they can consider a course of measures which, waving any question of its constitutionality or practicability, and supposing it to go into quiet operation without opposition in any quarter, and to work to their heart's content in every particular, could still produce nothing better than the results which we have described, – as *expedient*? – Is it not more probable that the Vice-President and his political friends, by confining their attention exclusively to one partial view of the subject, and employing with fanatical earnestness all their energies in recommending this one view to the public favor, have entirely lost sight of all others, and are rushing forward, without even realizing its existence, to a precipice which is accurately and distinctly laid down by

themselves in their own political charts?

However this may be, it is plain from the most cursory survey of the doctrine of nullification, that it is wholly unsanctioned by the Constitution, although it contemplates important proceedings, not only by the States but by the General Government, which of course can only act under constitutional authority: that it is in all its important points utterly impracticable, and that could it even be carried into effect, and that in the manner most agreeable to the views of its partisans, it would at once break up the Government, and spread desolation and ruin through the country. We now proceed to examine some of the arguments, by which this enormous political heresy is supported in the document before us. We have already quoted the passages containing the statement of the doctrine in Mr. Calhoun's own language. The leading argument by which he sustains it is as follows.

1. The General Government is an agent with limited powers, constituted by the States as principals to execute their joint will, expressed in the Constitution.

2. But in private affairs, a principal has a right to revoke or modify the powers of his agent at discretion, to put his own construction upon them, and to disavow and annul any acts done by the agent upon a mistaken construction of his powers; while the agent, on his part, has no right to enforce his construction against that of his principal.

3. In the same way, *any one State* has a right to put its own

construction upon the Constitution, by which the States create the General Government their common agent, and to disavow and annul any acts done by the General Government upon a mistaken construction of these powers, while the General Government, on its part, has no right to enforce its own construction of the Constitution against that of its principal.

The correctness of this reasoning, says the Vice-President, in its application 'to the ordinary transactions of life, no one will doubt, *nor can it be possible to assign a reason, why it is not as applicable to the case of a Government as to that of individuals*.' Not anticipating the nature of the objections that may be made to his reasoning, the Vice-President of course does not attempt to refute them, nor does he think it necessary to illustrate, explain or enforce his own theory, but, under the comfortable assurance that in its application to the ordinary transactions of life *no one will doubt it*, and that it *cannot be possible* to assign a reason why it should not be applied in the case of Governments, he jumps at once to his conclusion, that it is and ought to be applicable to that of the United States. Now it is obvious to us, that this reasoning, far from commanding the universal assent which the Vice-President seems to expect for it, will be considered by most intelligent and unprejudiced readers as open to various weighty and decisive objections. Admitting that the General Government may, in a certain sense of the term, be properly described as the agent of the States, the other proposition, that a principal has an unlimited right to construe the powers and disavow the acts of

his agent is, even in private affairs, far from being equally clear; and were this even true in private affairs, it would by no means follow that *any one State* has an equally good right to annul at discretion the acts of the General Government. We shall enlarge a little upon each of these points.

1. It is not true that a principal has, in the ordinary transactions of life, an unlimited right to construe the powers and disavow the acts of his agent. Although an agent may have construed his powers in a different manner from that in which his principal intended that they should be understood, yet if he can make it appear that he has exercised ordinary diligence and acted with good faith, he has a right to enforce his construction against that of his principal, and the law will sustain him in it. A merchant, for example, addresses a letter of instructions to a shipmaster or supercargo, and the latter in consequence makes contracts which the principal did not intend that he should make; the principal will nevertheless be bound by them, unless he can show that the agent has been guilty of neglect or fraud; for it is his own fault if he has not made his instructions intelligible, or has chosen his agent so badly that he cannot understand plain language.

The argument from analogy, and it is the only one by which the Vice-President undertakes to support his main position, therefore fails entirely. If the attitude of the General Government toward the States be the same as that of an agent in relation to his principal, it then follows that the General Government has a right to enforce its construction of the Constitution against that of the

States, provided always that it act with good faith, and in the exercise of all the diligence and attention which the case requires.

2. But admitting even that, in private affairs, a principal has an unlimited right to construe the powers and disavow the acts of his agent, we cannot agree with the Vice-President, that it is impossible to assign a reason why *any single State* has not an equally good right to annul at discretion the acts of the General Government. We think that at least two very sufficient reasons may be given, why this conclusion would not follow.

The first reason is that the General Government, if it be regarded as an agency, is an agency for a joint concern, comprehending four and twenty principals. Now if we admit that principals have an unlimited right to construe the powers and disavow the acts of their agents, it is quite obvious that, in the case of a joint concern, this right cannot belong to any one of the partners acting separately from the others, but must belong to the whole firm, expressing their intentions for this purpose through the organs and in the form which they habitually employ for all other purposes. But the proposition of the Vice-President is, that any one State has a right, without consulting the other States, to nullify at discretion any act of the General Government. That is, that any one partner in the joint concern has a right, without even consulting his co-partners, to construe the powers of the common agent in his own way, and to assume or avoid, at discretion, his share of responsibility for the acts which an agent may have performed in the name of the firm.

It is almost needless to say that this is not the principle on which partnership concerns are generally managed, and that a partnership concern, which should be managed on this principle, would not be likely to possess unlimited credit or to carry on for any length of time a very lucrative business.

The Vice-President anticipates this objection, and for the purpose of meeting it has introduced the second and third points in his theory, as stated at the commencement of this article. As the manner in which he treats this part of the subject is quite curious, we shall quote his own words.

> 'It may, however, be proper to notice a distinction between the case of a single principal and his agent, and that of several principals and their joint agent, which might otherwise cause some confusion. In both cases, as between the agent and a principal, the construction of the principal, whether he be a single principal, or one of several, is equally conclusive; but, in the latter case, both the principal and the agent bear a relation to the other principals, which must be taken into the estimate, in order to understand fully all the results which may grow out of the contest for power between them. Though the construction of the principal is conclusive against the joint agent, as between them, such is not the case between him and his associates. They both have an equal right of construction, and it would be the duty of the agent to bring the subject before the principal to be adjusted according to the terms of the instrument of association; and of the principal to submit to such adjustment. In such cases, the contract itself is the

law, which must determine the relative rights and powers of the parties to it. The General Government is a case of joint agency, – the joint agent of the twenty-four sovereign States. It would be its duty, according to the principles established in such cases, instead of attempting to enforce its construction of its powers against that of the State, to bring the subject before the States themselves, in the only form in which, according to the provisions of the Constitution, it can be, by a proposition to amend, in the manner prescribed in the instrument, to be acted on by them in the only mode they can rightfully pursue, by expressly granting or withholding the contested power. Against this conclusion there can be raised but one objection, that the States have surrendered or transferred the right in question. If such be the fact, there ought to be no difficulty in establishing it.'

It seems from these remarks that, according to the Vice-President's notion of the proper mode of proceeding in a joint concern, if one of the principals suspect that the common agent is exceeding his powers, it forthwith becomes the duty – not of the principal, but – of the agent to submit the doubtful question in regard to the construction of his own powers, to the consideration of the other principals. The discontented partner begins by disclaiming publicly his share of responsibility for the acts of the agent. The agent then consults the other partners: if a majority of them approve the proceedings of the agent, the discontented partner is bound to submit: if not, the agent ceases to exercise

the disputed power. Thus, when the President and Directors of the Bank of the United States employed Mr. Sergeant to perform a certain service for them at London, if one of the Directors had happened to hear that that gentleman was exceeding his powers, according to the construction put upon them by this Director, it would have been the duty of the latter to publish the fact in the newspapers, and to give notice to all the world that he, as one of the Directors, would not hold himself responsible for Mr. Sergeant's proceedings. The newspaper containing this notice would in process of time have reached London, and Mr. Sergeant on reading it would have been bound to write to the President of the Bank, informing him that he had seen a notice to a certain effect in a Philadelphia paper, and inquiring whether he had or had not mistaken the meaning of his instructions. The President, on receiving Mr. Sergeant's letter, would have been bound to call together the Board of Directors, and submit the subject to their consideration. If the Board, proceeding in the usual form of transacting business, had decided that Mr. Sergeant had not exceeded his powers, it would have been the duty of the discontented Director to withdraw his objections, and to give public notice that he was ready to resume his share of responsibility. On the other supposition, Mr. Sergeant would have ceased to exercise the disputed power.

Such is the notion entertained by the Vice-President of the proper and usual mode of proceeding in a partnership concern. Our readers, who are at all familiar with business, will, we think,

agree with us in the opinion that he has mistaken the matter entirely. In the case supposed, a Director of the Bank, who had heard of any facts which led him to suppose that Mr. Sergeant was exceeding his powers, instead of publishing the intelligence in the newspapers, and making it an occasion for open scandal, would have gone quietly to the Bank, and mentioned what he had heard in private to the President. The President would have submitted the facts to the Directors at their next meeting. If the Board, represented by the necessary number of members, were satisfied that Mr. Sergeant was in fact exceeding his powers, the President would have written to him to that effect, and the Board would have taken the proper measures for remedying any mischief that might have resulted from his mistake. In the other event, the discontented Director would have been relieved from his apprehensions. In either case, the affair would have passed off quietly, without scandal, and, according to our apprehension, in the ordinary and regular way of transacting business.

Reasoning therefore analogically, from the relation between an agent and his principal in a partnership concern, – the only semblance of an argument which the Vice-President offers in support of his main position, – we should draw a conclusion of a directly opposite character, viz. that instead of proceeding at once to *nullify* and throwing upon the General Government the responsibility of bringing the subject before the other States, it would be the duty of a discontented State to begin by addressing herself in the way of consultation to the other States, her co-

partners in the great political firm of the Union. We have already shown that it would be wholly impracticable from the nature of the case for the General Government, believing itself, as it does by the supposition, to possess the disputed power, to adopt any measure implying a contrary opinion. We have shown that the General Government has no authority under the Constitution to adopt such a measure. But admitting that it were both constitutional and practicable, what propriety would there be in it? If Carolina conceive that she has a right to complain of the proceedings of the common agent of the political partnership to which she belongs, and think that her partners ought also to attend to the subject, is she not perfectly capable of saying to them herself all that is necessary or proper on the occasion? Is it not obvious that the agent, who is supposed to be in fault, is the very last person who can be depended on to bring the question before the tribunal which is to decide upon it? Is it reasonable to expect that he will intermeddle in a matter in which he has really no concern, for the mere purpose of denouncing himself as a usurper of power, not granted by his commission? Is there not a wanton and almost ludicrous absurdity in the very idea of such a proceeding? And independently of all this, how ungraceful in the General Government to apply for an augmentation of its own powers, and this too at the very moment when it is accused of exceeding them! Is it not apparent, that such an application would come with infinitely greater propriety from any other quarter? We can hardly believe that, on cool reflection, the Vice-President

himself would sanction with his final judgment a theory pregnant with so many and such various incongruities.

Конец ознакомительного фрагмента.