[*In senate, 5th December* 1827—*Read and ordered to be printed*] *Report by judge Clayton, on the tariff and internal improvement*.

The committee on the state of the republic, to whom was referred so much of the governor's communication as relates to the powers of the general government, claimed and exercised for the purposes of encouraging domestic manufactures, and effecting a system of internal improvement, beg leave to make the following report:

The committee are aware that it is assumed by the general government, as expressed in the decisions of the federal court, that state legislatures have no right to complain of its usurpations, however formidable or fatal. That the general government is said to be "truly and emphatically a government of the people," and therefore entirely out of the reach of representative bodies, whose sole duty it is to keep within the sphere of their own delegated trust. It would seem, that if even such a pretension were admissable, it should be considered no great breach of decorum for a sovereign state, through its highest known authority, to approach a government it had contributed to establish, with a subject of complaint, especially when it is perceived that much inferior bodies are patiently listened to, and listened to with effect. While manufacturing companies and self-created delegates, pretending to represent whole states, assembled for the purpose of directing the congress what measures they must adopt, surely the legislature of a state, without much violence to any known rule of modesty, may respectfully offer a counter-remonstrance to such a growing temper of dictation. But it is not in this humble manner that your committee would recommend the legislature to prefer their just complaints to the general government. They claim it as a right to remonstrate with that government on all measures which they may conceive violative of the fundamental principles of its institution. They affirm that those who create a delegated government have lawfully the power to restrain it within its proper bounds, and maintain the doctrine asserted by Luther Martin, in his address to the legislature of Maryland, at the time of the adoption of the federal constitution, that "the proper constituents of the general government are the states, and the states are to that government what the people are to the states; that this is entirely within the spirit and intention of the federal union."

In support of this as well as other principles which will hereafter be presented in this report, the committee will frankly own that they can offer nothing new to the legislature, for it is a subject that has been so much discussed, all must be familiar with its details; nevertheless, with the above acknowledgment, to embody some of the leading objections to the course pursued against the rights of the states, will not, it is hoped, be considered improper. The people cannot be too well enlightened on this subject.

First, then—The committee contend that the states through their legislatures, have a right to complain of and redress, if they can, all usurpations of the general government. They maintain, "that the terms of the grant, in the federal constitution, did not convey sovereign power generally, but sovereign power limited to particular cases, and with *restricted means* for executing such powers;" and further, that the powers "were delegated, not by the people of the United States, at *large*, but by the people of the *respective states*, and that, therefore, it was a compact between the different *states*." Composed as the states were at the close of the revolution, being independent then of each other as they were previous to that event, and in the exclusive possession of self-government,

it will readily be admitted there could be but two ways to form the general government, either by "compounding the American people into one common mass," giving up their state governments, and suffering the majority to govern; or, by continuing their state governments, and delegating a part of their power to the general government for the protection of the whole. Under one or the other of these methods has the general government come into existence. Now no one will pretend to say that it was under the first named method: the power was not delegated by the people, composing one great *consolidated community*, but by the people of *each state* unconnected with, and independent of the people of the *other states*, in their *corporate capacity*.

If the history of this transaction is attended to, every one must be convinced that, from first to last, it was a procedure of the *states*, and not of the people composing *one great* political society. They were separate and distinct before the revolution; they *confederated* as states for the purpose of more effectually conducting them through that struggle; they remained independent, and were so acknowledged, with all their rights, territorial and municipal, at the close of it. By *states* the proposition was made to enlarge the powers of the confederation. The states appoint delegates for that purpose; they assemble, make and submit to the *states* a constitution, expressly declaring, that when the same is ratified by nine out of thirteen states, the same shall be binding; and the states are still found exercising independent and sovereign control over their ungranted powers. Now, if the assent of a *majority* of *all the people* of the U. States was necessary to ratify this instrument, was it not as easy as to have so declared, as to say that nine out of thirteen states should effect that object. Would it not have been more intelligible, and have better answered the purpose, if such was intended, than the mode adopted? But that this was not intended was obvious from the fact, that according to the plan pointed out for the ratification of the constitution, more than two-thirds of the states might have received the instrument, and yet a majority of the whole people would have rejected it For instance at the first census in 1790, Massachusetts, New York, Pennsylvania and Virginia, had 56 members out of 105 in congress; at the second census in 1800, they had 74 out of 141, and in 1810, they had exactly one-half of twenty three states —Now, every one must perceive, if these four states had alone voted against the constitution in opposition to all the rest, the instrument would, nevertheless, have been adopted, and clearly adopted against a *majority* of the *whole people* of the United States

The absurdity of this result, to wit, to have a government founded upon the *will* of a *minority*, is so extravagant as to refute altogether the idea that the federal government is "truly and emphatically a government of the people." But it is contended that the constitution was ratified by the states assembled in convention, and that, therefore, the people of each state adopted it. This is granted; and in what other way could it have been ratified? This is the only way that the sovereignty of the state could act. It was the sovereign consent of the state that was asked: this could not have been expressed by any one branch of the government of the state, for the sovereignty does not lie in any one branch alone. But after the people of each state had in their sovereign capacity, delegated a portion of their sovereign power to the general government, and that government received it as a *trust*, every one must perceive, that as the people of each state cannot always remain in convention for the purpose of taking care of their reserved, and guarding the exercise of granted powers: and as they have in their state constitution granted the residue of the power not previously conferred upon the general government to their own legislature, except such

as are specially given to the executive and judicial branches of the government, in no manner partaking of a *representative* nature, it follows that the care of this *trust*, as well as every other interest of the people of each state, not granted to the co-ordinate branches of the state, government, belongs to their legislature To make this idea clearly understood: all power is in the people—they are obliged to exercise it by representatives—they grant a portion of it to the general government—the residue is distributed among their own legislative, executive and judicial branches of the government. The watching and superintending of the power granted to the general government so as to keep it within its proper limits, must remain somewhere. The people act alone by their state authorities: this right is not with the executive or judicial authorities of the state: the conclusion is irresistible, that their representatives in general assembly met, have the right to protect the states from the usurpations of the general government, and to remonstrate against any act that shall *encroach* upon the *powers* reserved by the people and *granted* to their *own government*. Under this firm conviction, the committee claim for the legislature the right to protest and earnestly remonstrate against the exercise, on the part of the general government, of any undue powers, and especially, a power assumed by them to encourage domestic manufactures, and to effect a system of internal improvement within the states. We know that all complaints are listened to with jealousy, and sometimes with contempt, and unfortunately, this state has had stronger evidence of this than the general truth of the remark. But we likewise know, and, if it were necessary, we could produce more instances of the fact than is furnished by the American revolution, that a long course of abuse, encroachment and oppression, followed up after repeated warnings and respectful expostulations, have terminated in a convulsion fatal to the affections which generally bind together either men or nations. We do most solemnly deprecate such an issue of the attachment which we bear to the general government, and if that government entertains a faithful recollection of all history on this subject, and is not borne away by the pride of superior power and strength which usually closes the ear to just remonstrance, there is yet no danger of such a result. But if, reckless of the fact that the only true cement of the union is a generous and high-minded affection of its members for each other, and that no sordid motives of speculation or selfish desire to prosper upon each other's injuries or misfortunes, has brought them together, it must be obvious to every understanding, that an uncompromising course of self-willed legislation upon subjects so long and so often objected to, must inevitably end in the worst of consequences.

If the subjects of domestic manufactures and internal improvement depended upon the question of expediency, we should have nothing to say, for that is a matter purely within the power of congress: and although we should greatly deplore the adoption and continued prosecution of a policy obviously grinding down the resources of one class of the states to build up and advance the prosperity of another of the same confederacy, yet it would be ours to submit under the terms of our compact. All argument is vain against interest supported by power. But we do most solemnly believe, that such policy is contrary to the letter and spirit of the federal constitution.

All must agree, that the best method of ascertaining the intention of the framers of the constitution, wherever the power is doubtful, is first to get the *letter* of the power, and then to the history of its origin, as contained in the journal of the convention.—This is the method we propose to pursue in relation to the two subjects just above expressed.

When we ask for the *letter* of the above powers in the constitution, there is a diversity of opinion on the subject, and we are pointed to various passages in that instrument, by various advocates of the general government's right, not uniformly agreeing among themselves on the different clauses conferring this right. Now this uncertainty of itself ought to create great doubt, and in all free governments, doubt and forbearance in relation to the exercise of power ought to be synonymous. But most persons refer to that particular clause of the constitution which gives to congress the power "to regulate commerce with foreign nations and among the states."

Before we examine this point with reference to its particular import, it will be proper to lay down some general principles which made the *establishment* of the federal government at all necessary. If the intelligence and moral character of the states were altogether sufficient for their own internal police, (and that it has been, stands fortified by the most ample experience), wherefore the necessity of general government? Every body perceives that the laws which would do for the municipal regulation and internal affairs of Massachusetts would not do for Georgia; and therefore a government to legislate for both, in those particulars, would be absurd and ridiculous. What then was it that made these two states *unite* in what is called a *general* government? Does any one believe it was that *both states* should legislate for the *particular* interest of one, and against the *particular* interest of the other? Or, to come more to the point, that *both* should legislate for the promotion of the *manufactures* of the one, and directly against the *agriculture* of the other! No one can believe this, unless he is prepared to say that the weaker state was utterly destitute of all sense of self preservation. The exclusive inducement and sole motive then to the UNION was, first, "COMMERCE, and secondly, the COMMON DEFENCE." Every one must at once perceive, who has any knowledge of the history of the times, that at the close of the revolution, the states were left in the most ruinous condition, as to their public *debt* and *credit*; that to COMMERCE, every state looked as the only efficient source to relieve them from their burthens; and as each state had exclusively the right to regulate its own trade, the utmost perplexity and confusion must have resulted from the great diversity of interest which existed among them. *Commerce* too is the fruitful source of *war*. To regulate then a matter so essential to the welfare and peace of the states, considered as neighbors, who had just come out from a most disastrous conflict, the common dangers and sufferings of which had greatly endeared them to each other; and to DEFEND this interest from internal and external aggression, was the true and only ground of the confederation: Or, in the language of an able writer, all that was desired, "was a FEDERAL HEAD to regulate commerce, and a *federal arm* to protect us." To secure those objects, all the powers granted in the constitution, are entirely referable. It is a general government, and therefore the powers are *general*. The states never intended to give up one particle of power that related to their *internal police;* all the powers of the general government are *national;* that is to say, they are suited to the *whole confederation* as one nation; they are not to operate partially so as to effect one state and not another. All the powers granted by the general government, with the exception of taxation, the states cannot legislate upon, so that when it is necessary to ascertain the powers which belong to each, it is alone tested by this principle—If the general government can legislate upon it, *the states cannot* and *vice versa*. The two governments do not possess *concurrent* power of legislation on the same subjects. The federal court has declared that "it is the genius and character of the whole government, that its actions is to be applied to all the *external and internal concerns which affect the states generally and equally; but not to those which are completely within a particular state, which do not effect other states, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government.*"

With these general reflections, let us proceed to consider the right of the general government to encourage domestic manufactures, under the right to regulate com-

merce. It is readily conceded, that any law regulating commerce for its sole *advantage*, or for the purpose of *revenue*, which shall incidentally promote the interest of manufactures, will be perfectly reconcilable with the power to regulate commerce; but the moment it loses sight of either of those objects, then it is a departure from the spirit and true intent of the constitution; and a breach in that regard, according to all interpretation of law, is not less illegal, than a violation of the most express provision in the instrument. If COMMERCE was one of the prime causes of the UNION: if it was the source to which *each* state looked for its prosperity, it surely was the *intent* and *interest* of the whole to have it so regulated by the general government, as to be productive of the greatest possible advantage to the confederation. In giving up their great source of wealth to the union, no one can believe it was for any other object than to be encouraged, fostered and promoted, by all the means which the united energies of all the states could exert.—In the power to regulate commerce, no one could possibly conceive there was contained a lurking principle to destroy it; yet every one must admit that the direct tendency of encouraging manufactures, is to produce that effect. And in proof of this assertion, commercial men, commercial cities, from one end of the union to the other, raise their hands and voices in the most earnest opposition to this singular method of regulating commerce by promoting manufactures.

But there is another view of the question which is worthy of peculiar notice. It is a principle which no one will deny, that what is *directly* forbidden, cannot be *indirectly* effected. Now the federal constitution, in granting the power to regulate commerce, was so fearful that the regulation might be made to operate partially upon the states, to the benefit of some and injury of others, that it declared "no tax or duty shall be laid on articles exported from any state. No *preference* shall be given by any regulation of *commerce* or REVENUE to the ports of one state over those of another." If then no regulation of commerce or REVENUE could directly be made to act unequally upon the states how happens it that a regulation concerning manufactures, bottomed upon the power to regulate commerce, can lawfully have that effect. In other words, if a law compelling Georgia to pay duties to Massachusetts for the protection of her commerce would be unconstitutional, how does it happen that a precisely similar law to protect manufactures, derived from the right to regulate commerce, is not equally so?

In carefully consulting the journal of the convention, nothing appears on the subject of manufactures until the 18th of Aug. On that day this power was proposed to be given, to wit: "to establish public institutions, rewards and immunities for the promotion of agriculture, commerce and MANUFACTURES." On the 20th of the same month, another proposition "to assist the president in conducting the public affairs, there shall be a council of state of the following officers: among others, the secretary of domestic affairs, who shall be appointed by the president, and hold his office during pleasure. It shall be his duty to attend to matters of general police, the state of agriculture and MANUFACTURES, the *opening of roads and navigation, and the facilitating communications through the United States.* And he shall, from time to time, *recommend such measures and establishments as may tend to promote those objects.*" These propositions were referred to what was called the committee of detail; and afterwards, on the 31st of August, was referred, together with some other reports, which this same committee had partially made, to a grand committee, composed of one member from each state. On the 5th of September this committee reported, among other things, the following proposition, which is now found standing in the constitution, to wit: "to promote the progress of SCIENCE and the USEFUL ARTS, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." This clause then is all that could be produced from the unequivocal propositions to grant the power to the general government, of encouraging manufactures—and what is it? The right to promote science and the *useful arts*. Under the first, no one will contend that the power to protect manufactures will result. It must be, then, under the last. And there is no doubt, under the expression of *useful arts*, as distin-

guished from the term *fine arts*, both *agriculture* and *manufactures* would properly fall.

All persons will agree that no *arts* can be more *useful* than agriculture and manufactures. Every one must, at the first glance, perceive that if the clause had stopped at the word "*useful arts*," the power to promote *manufactures* would have been full and complete beyond all cavil. But does it stop there? Is it a general or limited power? And if a limited power, how is it limited? Let common candor answer the question—not by protecting duties, not by imports on foreign exports, not by premiums and bounties—but "by securing, for limited times, to authors and inventors, the exclusive right to their respective writings (in SCIENCE) and discoveries," (in the USEFUL ARTS.) Now, says an able advocate of state rights, "If a power to promote a specific object, by a prescribed mode, does not exclude the power to promote it by a different, or other mode, then there is no truth in a universal maxim, (in law and logic,) that the expression of one *thing* is the exclusion of *another*." The restrictive words upon the power to promote the useful arts, must have meant something, and is any one so uncandid as not to own that it was merely to, "*secure to ingenious men patents for their inventions*." *Writings* and *inventions* would alike benefit all the states; being *general* they would have an equal and impartial operation over the *whole union*. Not so by encouraging the *fabrics* that resulted from these inventions; for some states might possess greater means, both moral and physical to produce them. The *inventor* of the plough might be rewarded, but no one will contend that it should entitle the *ploughman* to an exclusive privilege over the *weaver*—nor would a *patent* for the *steam loom* authorize a peculiar indulgence to its *cloth* over the hard-earned *bread* of the planter. These being all local and partial operations, would subject the states, if submitted to the legislation of the general government, to the most unequal effects and wholly subversive of that principle which we have already mentioned, that the "action of the general government is to be applied to all the external and internal concerns which effect the states generally and equally; but not to those which are completely within a particular state." Manufactures had been proposed in the convention, and so had the sciences, and all that could be possibly obtained for them, was the provision we have just explained. Every one must believe if more had been intended, more could have been given; for never was a subject so entirely before a deliberative body, than was that of manufactures before the federal convention.

But there is another section of the constitution, which, when taken in connection with the history of its adoption, places this question beyond all doubt, and for the exposition of which, the committee are indebted to an able southern writer on the subject of federal powers. It is the following:—"No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress." Those who will consult the structure of this clause, in the journals of the convention, will find that perhaps none other was more disputed; and that a very different object was intended, from that of levying a trifling duty to execute inspection laws. What was that object? It cannot be discovered from the clause itself; and, perhaps, none in the constitution has been so often read without a knowledge of its true intent and meaning. To grant the state the privilege of imposing duties beyond what is necessary for inspection laws, merely to go into the national treasury, seems to be perfectly idle. What benefit is it to be to the states? Some was certainly intended, and fortunately, there is at hand a key to this mystery. It was to enable the states within themselves, if they desired it, to protect their own manufactures, by the imposition of export duties on the raw materials, or imports upon foreign fabrics. Without this construction, every body must at once perceive that the clause is useless and ridiculous, and is the only feature of the constitution without meaning or motive. But happily for the interest of the agricultural states, we have a

cotemporaneous and complete explanation of the object and intention of this clause.

Mr. Luther Martin, a delegate of the convention from the state of Maryland, in giving to his state an exposition of the constitution, on this particular clause, indignantly remarks—"Every state, is also prohibited from laying any imposts or duties on imports and exports, without the permission of the general government. It was urged by us, that there might be cases, in which it would be proper, for the purpose of encouraging manufactures, to lay duties, to prohibit the exportation of raw materials; and even in addition to the duties laid by congress, on imports for the sake of revenue, to lay a duty, to discourage the importation of particular articles into a state, or to enable the manufacturer here, to supply us on as good terms as they could be obtained, from a foreign market. But the most that could be obtained, was, that this power might be exercised by the states, with, and only with the consent of congress, and subject to its control; and so anxious were they to seize on every shilling of our money for the general government, that they insisted even the little revenue that might thus arise, should not be appropriated to the use of the respective states where it was collected, but should be paid into the treasury of the United States, and accordingly it was so determined." Besides fully accounting for the clause in question, what are the rational inferences from the foregoing quotation. In the first place, we see that the power of congress itself to lay duties on imports, was for "the sake of revenue" alone. In the next place, aside from the fact, that the subject of manufactures had been before the covention and settled to be promoted only by *patent;* if there had been any power reserved to the general government to encourage that object, Mr. Martin would not have asked for that right to the states, seeing that the only manner in which it could be done was forestalled by the constitution, in conferring upon congress the exclusive right to impose duties on imports. The states being engaged in different pursuits, all subject to clashing interests, a general power could not be given to the federal government to regulate such a local concern. Accordingly, it was placed, as it should be, at the discretion of each state, who might protect its own manufactures, if it should choose to do so, without calling upon its sister states to bear the burthen.

Adopting the ideas of a profound writer on this subject, surely a state does not wish greater advantages by the union, than would be enjoyed by her confederates. Surely she does not desire more, at the expense of her sister states, than she would possess if she remain free and independent. Surely, if sovereign and independent of the whole world, she would not lay duties to encourage her own domestic manufactures, because it would oppress her commerce and agriculture; she will not wish their prosperity at the sacrifice of the very same interests of her neighbors? If there is any state that desires her manufactures to be promoted, why does she not avail herself of the express provision intended for that purpose? Is it because it will injure her other great concerns? And have other states no interests to effect? If a state has the power, by the constitution, to do exactly what she might do it alone, and it is her interest to do so, why does she not proceed to encourage her manufactures by the appointed means? No—the fact is, such a state wants the profit without the burthen of such a measure; and as long as she can tax her associates to answer her purpose, her own community will never be made to bear any of the sufferings of such an unequal system. If other states are obliged to pay the cost, or even divide it with the states seeking to establish her manufacturing institutions, if their exports and imports are to contribute to the welfare of northern money-making projects, and to advance the schemes of private capitalists, depend upon it the only method that will be pursued, is the one found in the increasing exactions of the tariff laws of 1816, 20, and 24.

With regard to the question of internal improvement, independent of the fact that there is not a solitary expression to be found in the constitution, in the remotest degree connected with that subject, we have already shown that on the 18th and 20th of August, a distinct and full proposition to grant that power, was rejected by the convention: and the committee would here observe, that

many of the remarks which they have made on the subject of manufactures, will be strictly applicable to this branch of the subject. But in addition to what has been submitted, we have to state, that the following facts are to be found on the journal of the convention—to wit: On the 18th of August it was specially proposed to vest in congress the power.

"*To grant charters of incorporation*, in cases where the public good may require them, and the authority of a single state may be incompetent.

To establish a university.

To encourage, by proper premiums and provisions, the advancement of useful knowledge and discoveries.

To establish seminaries for the promotion of literature and the arts and sciences.

To grant charters of incorporation.

To establish public institutions, rewards and immunities for the promotion of agriculture, commerce, trades and *manufactures;* and to regulate stages on the post roads."

Now, where are any of these powers to be found in the federal constitution—and what course of reasoning can entitle them to a place in an instrument purporting to contain nothing but expressly defined powers? But this is not all. On the 14th of September, only three days before the final passage of the constitution, some, still anxious to enlarge the powers of the general government, after the instrument was presented for the adoption of the convention, proposed "*to grant letters of incorporation for canals,*" &c. which was rejected.

The committee are aware that the subject is far from being exhausted, but time would fail them to present all the objections which could be justly preferred against the course of the general government. Less could not be said, for the subject is of such growing magnitude, and is producing sensations of such just inquietude among the people of the south, that they ought to be made thoroughly acquainted with all its bearings, and certainly can never be too often admonished to be prepared for the worst events. The committee are fully sensible that every degree of moderation is due to the question, upon which they have founded the present serious complaint; but they owe it to truth and sincerity to say, that it is their decided opinion an increase of tariff duties will, and ought to be *resisted* in all and every shape that can possibly avert the crying injustice of such an unconstitutional measure.

They are constrained too to say, that this state ought to *oppose* in every possible shape, the exercise of the power, on the part of the general government, to encourage domestic manufactures, or to promote internal improvement. They will not pretend at present, to recommend the mode of *opposition*; but they will recommend the peaceable course of remonstrating with congress on the subject, and of asking of that body to pause before it proceeds any further in measures that must inevitably destroy the affection of some of the states for the general government. It will detract nothing from the firmness or wisdom of the congress, to listen to the voice of state legislatures, while it is considering the memorials of *manufacturing companies.*

If to the contempt of *right*, there should be added the jealously of *partiality*, it must be obvious to all that there will be, an increased account of unmerited aggravation. How long a people shall be permitted to complain, or how much they can be made to suffer, has always been matter of dangerous experiment, or doubtful calculation, and knowledge acquired under either issue, has never been without its certain and severe regrets.—In conclusion, your committee recommend the following resolution:

Resolved, That his excellency the governor be, and he is hereby, requested to cause the foregoing report to be laid before congress at its next session. And that he forward a copy of the same to each of the other states, to be laid before their respective legislatures for the concurrence of such as may approve of the principles therein avowed; and as due notice to those who may dissent from the same, that Georgia, as one of the contracting parties to the federal constitution, and possessing equal rights with the other contracting party, will insist upon the construction of that instrument contained in said report, and will *submit* to no other.