REPORT

Of Committee appointed to inquire how much of the legislation of Congress is abrogated by the secession of the State.

The Committee to whom was assigned the duty of inquiring how much of the legislation of Congress is *ipso facto* abrogated, so far as this State is concerned, by the secession of the State from the Federal Union, and how much of it may remain of force notwithstanding the act of secession, have given some consideration to the subject, and respectfully ask leave to submit the following Report:

A thorough examination, in detail, of all the Acts of Congress in force at the time when the State seceded from the Confederacy, would have required much more time and labor than the Committee were able to command, nor did it appear to them that any such minute investigation was necessary to the proper performance of the duty with which they were charged.

Every law of the United States must have been enacted in pursuance and by virtue of some one or more of the powers of Congress expressly enumerated in the Constitution, or necessarily implied in some Constitutional obligation imposed on the Government, which it would be unable to discharge without the possession of such power. The nature and object of all the laws passed by the Federal Legislature must correspond essentially with the character and design of the powers which they were intended to carry into effect. A careful consideration of the several powers vested by the Constitution in the Congress of the United States may, therefore, enable us to educe some general principles which will serve to determine, by reference to the power in pursuance of which any particular law

was enacted, whether its obligatory effect upon the people of South Carolina was annulled by the withdrawal of the State from the Confederacy, or survives that event.

Taking them in the order of their enumeration, the first which presents itself is the power "to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States." The object of this power was to enable the Federal Government to draw from the people of the several States the pecuniary means necessary for paying the debts of the United States and defraying the expenses incident to the execution of its various functions. While South Carolina was a member of the Confederacy, assenting to the compact of union as a part of the fundamental law of the State, the people of the State were bound by all laws of the United States, laying duties or other imposts constitutionally passed and actually in force. The obligation to which they were subject was to contribute towards the support of the Federal Government to the extent and in the manner prescribed by such laws. Their obligation to pay was co-existent and correlative with the authority of the Government to exact and collect the duties or other imposts. But when the State withdrew from the Union and retracted its assent to the Constitution, the authority of the Federal Government to collect duties and other imposts from her people or within her limits, was revoked, and with the authority to collect, the obligation to pay them was at once extinguished. In other words, all such laws were essentially abrogated by the act of secession. The laws regulating the collection and payment of duties, being merely ancillary to those by which the duties were imposed and depending entirely for their vitality upon the obligation to pay, and the authority to collect such duties, must also be annulled by the extinction of the power of the Federal Government over the people and territory of the State.

Next in order is the power "to borrow money on the credit of the United States." Acts of Congress passed in

pursuance of this power, are warrants of authority and instructions to certain functionaries of the Federal Government to borrow money for the use of the United States, and to issue in their name securities for such loans, pledging the faith of the Confederacy for the payment of the stipulated interest and the ultimate repayment of the principal. The obligations incurred by such law, and the loans effected under them, engage only the public faith of the Confederated States. They are not, properly speaking, legal obligations, for the parties bound by them being Sovereign States, they cannot be enforced by any legal process The security of the creditors rests entirely upon the good faith of the States, but a State certainly cannot, by withdrawing from the Confederacy, absolve itself from high moral and political obligations which it had contracted, in common with the other States, while they were united.

We come now to the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

During the existence of the Federal Union, the Congress of the United States was the legislative organ of this State for the regulation of its external commerce. Commerce consists of transactions between individuals concerning private rights and interests; and in the exercise of its power to regulate the commerce of the people of this State with those of other Nations and States, Congress might have enacted laws affecting the mutual rights and obligations of individuals in their private relations with each other. If any such laws had been passed, it does not appear to the Committee that they would lose their obligatory force in consequence of the withdrawal of the State from the Union. Being expressions of the public will of the State, promulgated by an agent, duly appointed for that purpose, the subsequent revocation of the authority of the agent would not, of itself, operate to rescind them The public will of the State, expressed in the form of law, may remain unchanged, notwithstanding the deposition of the special organ, through whom it was announced. But

the laws made in pursuance of the power to regulate commerce, are not, so far as the researches of the Committee have discovered, of the character just suggested. They embrace a great multitude and variety of provisions, designating what places shall be ports of entry and delivery; prescribing in what vessels goods may be imported, how vessels shall be entered and cleared, what vessels shall be admitted to registry as vessels of the United States, and the terms and conditions on which they shall be so admitted; what vessels may be employed in the coasting trade, and many other particulars of the like nature.

The due observance of all these regulations is provided for by means of fines, penalties and forfeitures, which, upon their violation, are to accrue to the United States, and for the enforcement of which exclusive jurisdiction is given to the District Courts of the United States. Our secession from the Union, has swept away both the right of the United States to exact these penalties and forfeitures from the people of this State, and the only tribunals by which they could have been enforced, and if the laws themselves can now be regarded as in any sense remaining unrepealed, they are certainly deprived of the sanctions, without which they are destitute of any practical efficacy.

The power "to establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States," follows next in order. Before the Constitution of the United States was established, the naturalization of aliens was under the exclusive control of the several States. Each State treated the subject in its own way. In this State there was no general law making provision for the naturalization of aliens. They were occasionally naturalized, but it was always done by a special Act of the Legislature. The Congress of the United States were empowered by the Constitution "to establish an uniform rule of naturalization. There is nothing in this language which can be properly understood to mean that the naturalization of aliens was to be taken out of the hands of the several States. On the contrary, the words seem

rather to imply that aliens were to be naturalized by the several States according to a "uniform rule," to be established by Congress. If citizenship was to be conferred by many States, each acting for itself independently of the others, it was manifestly proper that there should be a uniform rule of naturalization established by an authority common to them all, but it could scarcely have been necessary to provide for a uniform mode of doing what was to be done by the Federal Government alone. The unity of the agent would have been sufficient to secure uniformity in the mode of action. The purpose of the Constitution appears to have been that Congress should prescribe a rule, by which each State of the Confederacy should be governed in admitting aliens to become its citizens. And it was just and reasonable that the rule of naturalization should be uniform, because by another provision of the Constitution, the citizens of each State were to be entitled to all privileges and immunities of citizens in the several States. But Congress, in legislating under this power, seems from the first to have understood it in a different sense. Instead of establishing a uniform rule by which aliens might be made citizens of the several States, they have prescribed a mode in which aliens might become *citizens of the United States*. The earliest Act on the subject was passed in March, 1790. It provides "that any alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof, on application to any common law Court of record, in any one of the States wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such Court that he is a person of good character, and taking the oath or affirmation prescribed by law, to support the Constitution of the United States, which oath or affirmation such Court shall administer; and the Clerk of such Court shall record such application, and the proceedings thereon, and thereupon such person shall be considered as *a citizen of the United States*."

This Act, and all other Acts on the same subject, passed prior to the 14th of April, 1802, have been repealed, and as the law stood at the time of our secession, it may be stated with sufficient fulness and accuracy for the present purpose, as follows: "Any alien being a free white person, may be admitted to become a citizen of the United States, or any of them," on certain conditions, which are different in different cases. In some cases, it is necessary that the applicant shall have declared on oath or affirmation, before the Supreme, Superior, District or Circuit Court of some one of the States, or of the territorial districts of the United States, or a Circuit or District Court of the United States, two years at least before his admission, that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty whatever, and particularly by name, the prince, potentate, State or sovereignty whereof such alien may at the time be a citizen or subject. In some cases this condition is dispensed with, but in all it is required that the applicant shall declare on oath or affirmation, that he will support the Constitution of the United States, and that he abjures all allegiance to every foreign sovereignty whatever. It is not easy to understand what is meant by *a citizen of the United States*, unless it be a citizen of one of the States. Taken in its most literal sense, it would seem to mean a citizen of all the States; but this no man can well be. A citizen of Massachusetts certainly is not a citizen of New York; much less of all the other States; yet Congress must be supposed to have regarded a native citizen of Massachusetts quite as much a citizen of the United States as an alien naturalized in that State, and surely could not have intended to put the naturalized alien upon a different footing from that of the native citizen. It is, therefore, reasonable to presume that when they speak of an alien being "admitted to become a citizen of the United States, or any of them," they really mean nothing more or less than being admitted to become a citizen of one of the States. Understood in this sense,

if there was nothing in the law itself inconsistent with the present position of the State, there would be no reason why it should not continue to be the rule of naturalization, notwithstanding the secession of the State from the Union; but it is impossible to resist the conclusion, that when the Convention set aside the Constitution of the United States, and withdrew the State from the Union with the other States, they did by that act abrogate a law which makes it one of the necessary conditions on which an alien shall be naturalized as a citizen of the State, that he shall declare on oath that he will support the Constitution of the United States, which is the Constitution of a government foreign to the State, and which no citizen could support consistently with his allegiance and fidelity to the State.

There are now no subsisting Acts of Congress passed in pursuance of the power "to establish uniform laws on the subject of bankruptcies throughout the United States." Such laws have been enacted on several occasions, but they were speedily repealed.

Next in order is the power "to coin money; regulate the value thereof, and of foreign coin; and fix the standard of weights and measures."

During the existence of the Union, the Congress of the United States was authorized to coin money for the people of all and each of the States, and to regulate the value of the money so coined, and also that of foreign coins. The money coined in pursuance of that authority, while it was held with the assent of South Carolina, as well as the other States, is still the legal money of the State, and the values fixed upon such coin, and also upon foreign coins, by the laws of the United States, as they were at the time of our secession, continue to be the legal values at which they are to be paid and received in transactions between individuals. There is certainly no reason in the nature of such acts and regulations, why they should expire with the authority of the agent by whom they were done or promulgated.

The legislation of Congress on the subject of weights

and measures, is confined to a provision in one of the revenue Acts defining the weight to be understood by the word "ton," as employed in that Act, and the establishment of a standard of weights, to be used at the mint for the regulation of the coinage. As both the customs and mint of the United States are now foreign to this State, these regulations can have no force here.

Next follows the power "to provide for the punishment of counterfeiting the securities and current coin of the United States."

Exclusive jurisdiction of offences against all the Acts of Congress passed in pursuance of this power, is vested in the Courts of the United States; and as there are now no such Courts in this State, nor can be any, the laws themselves are in effect practically abrogated. But there is no doubt that to counterfeit the securities or current coin of the United States within this State, is an offence against the State, punishable by the common law.

The Power to Establish Post-Offices and Post-Roads.—The Post-office establishment of the United States is one of the departments of the Government, and the purpose of all the laws passed in pursuance of this power, is to organize the department, to direct its operations, and to protect it in the exercise of its functions. With the authority of the Government, that of the Post-office department, and all the legislation on which it depended for its existence and operations, were terminated in South Carolina by the withdrawal of the State from the Union.

The Power "to Promote the Progress of Science and Useful Arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."—The laws of the United States concerning copyright, provide that no person shall be entitled to their benefit, unless he shall, before publication, deposit a printed copy of the title of the book or other work, the exclusive right to which is sought to be secured, in the office of the District Court of the district wherein the author or proprietor resides. A copyright can therefore be obtained only by a person resid-

ing in some district of the United States, so that the law is practically abrogated in this State. The granting of patents for new and useful discoveries, inventions and improvements, is assigned to the Commissioner of Patents, whose office is attached to the Department of the Interior, and being a part of the machinery of the Government of the United States, certainly can have no longer any authority to grant patents for this State.

As to patents and copyrights issued during the existence of the Union, they were granted by the authority of South Carolina as well as the other States, and therefore the parties entitled to their benefit have the same exclusive right in this State to their writings or discoveries that they had before the Union was dissolved. The Acts of Congress give original cognizance of suits, controversies and cases arising under the laws relative to patents and copyrights to the Circuit Courts of the United States, but this jurisdiction is not expressly made exclusive, and there seems to be no reason in the nature of things why it should be so. Any violation of a patent or copyright having validity and effect in this State, would be an injury to property for which the party aggrieved might obtain adequate redress in the Courts of the State.

The Courts of the United States established in this State in pursuance of the power "to constitute tribunals inferior to the Supreme Court," with all the laws by which they were constituted and regulated, were of course set aside by the withdrawal of the State from the Union, which at once deposed the authority of the Federal Government over the people and territory of the State in all its departments, and in every form.

"*To define and punish Piracies and Felonies committed on the high seas, and offences against the law of Nations.*"—Exclusive cognizance of offences against all the Acts of Congress purporting to define and provide punishments for piracies and felonies committed on the high seas, is given to the Courts of the United States, and therefore the Acts themselves can have no practical efficacy in this State. Except

so far as piracies and felonies, and other offences committed on the high seas may be deemed offences against the law of nations, there are no Acts of Congress professing in terms to define and punish offences against the law of nations. Some of the acts define and prescribe the punishment of offences, which are neither piracies nor felonies, nor offences against the law of nations, and therefore cannot be referred to this power. The authority for these enactments must be found in some other part of the Constitution; either in the power to "regulate commerce," or perhaps in the provision which extends the judicial power "to all cases of admiralty and maritime jurisdiction," regarding them as laws necessary and proper for carrying that power into execution. Such offences are only cognizable by the Courts of the United States, and therefore stand upon the same legal footing in this State as those which have been before considered.

"To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

The only subsisting enactments on either of the subjects of this power, are certain provisions of the laws for the regulation of the Navy, prescribing in what cases captures made by armed vessels of the United States shall belong wholly to the captors, or be divided between them and the United States, and the proportions in which prize money shall be distributed among the officers and crews of the vessels making the captures; and one of the articles for the government of the Army, which directs, that public stores taken from an enemy, shall be secured for the service of the United States. As these relate exclusively to establishments now foreign to this State, they can have no validity here.

In the same manner, we may dispose of all the laws passed in pursuance of the several powers: "To raise and support armies," "To provide and maintain a navy," and "To make rules for the government and regulation of the land and naval forces."

The Acts of Congress, passed by virtue of the power,

"to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion," are laws made for the purpose of regulating the manner in which that power should be exercised, and must, therefore, have expired with the power itself, so far as this State is concerned, upon the secession of the State from the Union.

The power "to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States," embraces two distinct objects, as to which, the legislation of Congress may be differently affected, by the withdrawal of the State from the Union. All laws for governing such part of the militia of the State as may be employed in the service of the United States, must necessarily be abrogated, because such laws assume and imply the authority of the United States to call into their service and govern the militia of the State, and that authority has been revoked. But laws passed by the Congress of the United States, for organizing and disciplining the militia of the State, while they were the constituted organ of the State to legislate for that purpose, may continue to be of force, though the authority of the legislative agent has been annulled, if there is nothing in them inconsistent with the changed position of the State.

We come now to the power "to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

It is needless to consider the legislation of Congress concerning the District of Columbia, because, being necessarily local, and relating to a small territory ceded by another State,

and wholly foreign to this State, it never had, nor could have any effect here.

But there is the power "to exercise like authority, (that is exclusive legislation in all cases whatsoever,) over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, &c."

It does not appear that this power has ever been exercised; at least there are no subsisting Acts of Congress on the subject. The question then reverts to the power itself. Does it survive the dissolution of the Union in a State which has seceded? The power to exercise exclusive legislation over any particular part of the territory, of either of the States, is derived from and dependent upon the consent of the State. It could not be derived from any other State or States, because it never was theirs, and they had no right or power to grant it. It is one of the political powers of Congress, delegated by the Constitution, operating as the act of the State; it rests upon the same foundation with the other powers, and has the same claim to perpetuity, and no more. If they may be revoked, so may this; and if this is irrevocable, so are the others. The whole ground upon which the right of a State to secede from the Union is asserted, must be utterly abandoned, or the political power of the Federal Government over the forts and other military establishments in the State is extinguished, by the act of secession, as well as the other powers.

It is reduced then, to a question, not of political power, but merely of property. The forts and other military establishments in the State, are said to be the property of the Federal Government, and they maintain their right, as proprietors, to hold possession of them, without or against the consent of the State. According to the theory of our Federative system, which we have long maintained, and which best comports with reason and the history of the system itself, the authority of the Federal Government in each of the States is founded entirely upon the consent of the people of that State alone, and depends upon their

consent not only for its original establishment, but for its continued existence. It is, in fact, a government of the State for certain specific purposes, being also, at the same time, a government of the other States for the same purposes, and in each State it is subordinate to the power from which it derives and holds its authority, that of the people of the State, just in the same way that their peculiar local government is subordinate to their power, and dependent upon their will. One of the trusts confided to it, is that of providing for the military defence of the State; and, in order to enable it to perform that trust, it is put in possession of certain small portions of the territory of the State, which are the sites of forts and other military establishments. These places are held by the Federal Government, not for its own benefit, but for that of the State. They are, in fact, public property entrusted to an agent of the State for the use of the State; and, when the agency is abolished, they revert to the State in the same manner, and for the same reason that public property, in the possession of the State Government, would revert to the State if that government were abolished. If they had ever been private property, and had been purchased for a price towards which other States had contributed, that might give them an equitable claim to be reimbursed, which would be a proper subject of negotiation and mutual adjustment: but it could not impair the supremacy of the State over every part of her territory, nor constitute a right in other States to hold any portion of it for public uses of their own against her consent. But, in this aspect of the question, there is a remarkable peculiarity connected with the site of the only fort in the State which is held by persons professing to act under the authority of the government of the United States. It never was the subject of private property, nor was it *purchased* by the Federal Government, understanding that word in its ordinary sense, and that in which it is used in the Constitution. It was part of an open bay or inlet of the sea, and, though shoal, it was always covered with water, even in the lowest state of the

tide. It appertained to the public domain, and if the government of the State, charged with the general care and control of the public domain, permitted it to be used by the Federal Government—another public agent, entrusted with the military defence of the State, for the construction of a fort—it is, nevertheless, still a part of the public domain, and all the rights and powers of the Federal Government within the State having been revoked, it cannot be regarded as belonging in any sense to that government.

The power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," has necessarily been considered in connection with the foregoing powers themselves; but there remains to be considered that portion of this clause which embraces "all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

The first section of the fourth article of the Constitution declares, that "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

By this clause of the Constitution, each State bound itself to the others, "to give full faith and credit to their public acts, records and judicial proceedings." The Constitution itself and all the obligations it involves, including this, being renounced by the secession of a State from the Union, it would seem that the Acts of Congress, "prescribing the manner in which the public acts, records and judicial proceedings of the other States shall be proved, and the effect thereof," which are merely regulations as to the form in which the obligation shall be carried into effect, must be abrogated with the obligation itself. The public acts and records of the United States, and the judicial proceedings of the Federal Courts during the existence of the Union, being the acts of a government in which this State participated, are, in effect, the acts of the State, and are

entitled to the same respect as if the Union had not been dissolved.

The second and third clauses of the second section of the same article, are those which relate to fugitives from justice and fugitive slaves. They are as follows:

"A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."

It has been contended that these clauses are mere stipulations on the part of the States with each other, depending for their observance upon the mutual good faith of the parties, and to be enforced against recusants in the same manner as in other cases of contract between sovereign States. But it appears to have been the pervading design of the Constitution, to establish a government common to all the States, by which the objects of the confederation might be carried into effect, avoiding and removing, as far as possible, all occasions of discord and dispute between States. The surrender of fugitives from justice, and the restoration of fugitive slaves, were certainly two of the objects expressly provided for by the Constitution, and it is a reasonable conclusion that they, like the rest, were to be effected through the agency of the common government, rather than left to the caprice and partiality of the separate States; more especially, when it is considered that the States are precluded from making war, or using any other effectual means of coercing each other to the fulfilment of their mutual engagements. The language is the same in both cases: "shall be delivered up," without designating expressly by whom it is to be done. Congress have legis-

lated on both these subjects, thereby assuming that they were authorized to deal with them.

With respect to fugitives from justice, it is made the duty of the Executive of the State to which they may have fled, to cause them to be arrested and delivered up, on demand made by the Executive of the State in which the offence is charged to have been committed; while it is made the duty of certain functionaries of the Federal Government to deliver up fugitive slaves. The reason of this difference is, probably, to be found in the fact, that there may be fugitives from the criminal justice of all the States, and therefore, they are all equally interested in the enforcement of the constitutional provision as to them: but there can be no fugitive slaves from States in which there are no slaves, and they have, therefore, no interest in the observance of the obligation to deliver up such fugitives. But it is obvious that if Congress may, constitutionally, enact laws requiring the Executives of the States to deliver up fugitives from justice, they may *a fortiori* require their own functionaries to do the same thing.

For the purpose for which we are considering the question, it is of no practical importance whether the Constitution intended that fugitives of either description should be delivered up by the authorities of the several States, or by those of the United States. Regarded as an obligation to be fulfilled by the States themselves, it must, as to a seceding State, together with all the other obligations of the Constitution, be extinguished by the act of secession; and if it be regarded as one of the powers of the Federal Government, it expires, of course, with the Government itself. In either view, the laws intended to carry it into effect, being merely ancillary, cannot survive the obligation or power of which they are accessories.

The Constitution declares that "all treaties made under the authority of the United States, shall be the supreme law of the land;" and the question is presented, how are treaties made under the authority of the United States, while this State was in the Union, affected by its dissolution?

While South Carolina was a member of the Confederacy, the President of the United States, acting by and with the advice and consent of two-thirds of the Senate, was the organ and agent of the State for making treaties with foreign nations. Treaties so made, in the name of the United States, were treaties made by and for each of the States, as well as all the States, and each State was just as much bound by them, and entitled to their benefits, as if they had been made exclusively in behalf of the State, and by a government or agent exclusively its own. Treaties bind, not governments merely, but the States of which they are the organs; and a State does not, by changing its government, divest itself of the obligations which it has contracted by treaty with other States, nor forfeit the obligations which they have assumed towards it. It follows, that treaties between the United States and foreign nations, made during the existence of the Union, are still subsisting treaties between this State and those nations, notwithstanding the Government of the United States has ceased to be a Government of the State.

The Committee are conscious that they have performed their task very imperfectly, and, in a manner, signally unequal to the extent and importance of the subject; but they venture to hope that what they have done will at least serve to furnish some hints, upon which others may hereafter improve.

A. MAZYCK, *Chairman.*