

States for the District of Virginia, during the progress of Burr's trial at Richmond, he writes thus: "I observe that the case of Marbury vs. Madison has been cited, and I think it material to state at the threshold, the ruling that came as authority, and to have it decided to be law. 1. Because the judges in the outset, disclaimed all cognizance of the case; although they then went on to say what would have been their opinion had they had cognizance of it. This then, was confessedly an extrajudicial opinion, and as such, of no authority. 2. Because, had it been judicially pronounced, it would have been against law; for to commission a deed, a bond, a duty is essential to give validity. 3. Hence, therefore, the commissions are delivered out of the hands of the Executive and his agents, it is not his deed. He may withhold or cancel it at pleasure, as he might his private deed in the same situation. The constitution intended that the three great branches of the government should be co-ordinate, and independent of each other. As to acts, therefore, which are to be done by either, it has given no control to another branch."

"The Executive and Senate act on the construction that until delivery from the Executive Department, a commission is in their possession and within their rightful power, and in cases of commissions not revocable at will, where, after the Senate's approbation, and the President's signing and sealing new information of the appointment of the person has come to hand before the delivery of the commissions, new nominations have been made and approved, and new commissions have issued."

"On this construction, I have hitherto acted; on this I shall ever act, and maintain it with the powers of the government against any control which may be attempted by the judges in subversion of the independence of the Executive and Senate within their peculiar department."

This answer of Mr. Jefferson, sir, to the Supreme Court, appears to me to be conclusive and irrefragable. It shows that the doctrine of Marbury vs. Madison was wrong, not merely with regard to the merits of the particular case, but dangerously wrong, in another aspect, in asserting a claim of the judiciary, which is now reiterated by the honorable Senator from Kentucky, to control an independent branch of the Government, in matters confided by the constitution to its separate and responsible action. As this last aspect of the decision involves a question of the gravest import—one affecting that fundamental principle not merely of our constitution, but of free government in general, which prescribes the separation and mutual independence of the three great Departments, Legislative, Executive, and Judicial—a question too in regard to which the imputed opinions of the present Chief Magistrate have been freely commented upon in the course of this discussion, I beg permission of the Senate, while I have the writings of Mr. Jefferson in my hand, to read what was uttered by this Republican oracle on this important subject. In a letter addressed to him in 1819 to Judge Rame, himself one of the most profound constitutional jurists of our country, he expressed himself thus: "My construction of the constitution is very different from that you quote—it is, that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the constitution in the cases submitted to its action; and especially where it is to act ultimately and without appeal. I will explain myself by examples, which, having occurred while I was in office, are better known to me, and the principles which govern them. A legislature had passed the sedition law. The federal courts had subjected certain individuals to its penalties, of fine and imprisonment.—On coming into office, I released the individuals by the power of pardon committed to Executive discretion, which could never be more properly exercised than where citizens were suffering without the authority of law, or which was equivalent, under a law unauthorized by the constitution, & therefore null. In the case of Marbury and Madison the federal judges declared that commissions signed and sealed by the President, were valid although not delivered. I deemed delivery essential to complete a deed, which, as long as it remains in the hands of the party is as yet no deed, it is in posse only, but not in esse, and I withheld delivery of the commissions." Yes, sir, I, the President, not the Secretary, withheld the commissions.—"They cannot issue a mandamus to the President or to the Legislature or to any of their officers—(the constitution controlling the common law in this particularly.) When the British treaty of 1807 arrived, without any provision against impressment of our seamen, I determined not to ratify it. The Senate thought I should ask their advice. I thought that would be a mockery of them, when I was pre-determined against following it, should they advise its ratification. The constitution had made their advice necessary to confirm a treaty; but not to reject it. This had been blamed by some; but I have never doubted its soundness. In the case of two persons, antenatal, under exactly similar circumstances the federal court had determined that one of them (Dunne) was not a citizen; the House of Representatives, nevertheless determined that the other, (Smith of South Caro-

lin) was a citizen, and admitted him to sit in their body. Dunne was a republican, and Smith a federalist; and these decisions were during the federal ascendancy. These are examples of my position, that each of the three departments has equally the right to decide for itself what is its duty under the constitution, without any regard to what the others may have decided for themselves under a similar question."

Without entering at this time, sir, into any discussion of those important principles, I will only say, that if the present Chief Magistrate has sinned against the Constitution by any doctrine, which he has advanced, or is supposed to entertain, on this subject, he has sinned in company with the great apostle of American liberty and of the rights of man.

To sum up then, in a few words, the results of what has been said, I think it has been shown that, according to the true theory of the Constitution, the President of the United States, in whom the "executive power is vested," is made responsible for the conduct and proceedings of all the Executive Departments—that, as a necessary consequence of that responsibility, he has a constitutional right to inspect, superintend, and control, the operations of those Departments—and that at the very organization of the Government, immediately succeeding the adoption of the Constitution, the correctness of these principles was acknowledged in the most formal manner, and after the fullest discussion, by an explicit Legislative recognition of the power of the President to remove from office any of the functionaries of the Executive Departments—a power which has never since been questioned.

But to avoid the application of these principles to the subject under consideration, the extraordinary novelty has been advanced that the Secretary of the Treasury is not an executive officer. How then has it happened, Mr. President, that from the origin of the Government to the present day, he has been associated with the Heads of the other Departments in the Cabinet of the President? By what title could the President of the United States require of him, as we know has been often done, "his opinion in writing upon subjects relating to the duties of his office," which the Constitution authorizes him to do only "of the principal officer in each of the Executive Departments?" Do gentlemen expect us to forget the most familiar facts which have been passing under our eyes, for nearly half a century, in order to sustain their novel theories? On what, then, sir, is this new doctrine founded, that the Secretary of the Treasury is not an executive officer? Is it that in the mere title of the act for the establishment of the Treasury Department, it does not happen to be styled an Executive Department? The acts for the establishment of the other Departments are styled, in the title, (forming no part of the law itself) "An act to establish an Executive Department, to be denominated the Department of War," and so likewise of the State and Navy Departments, while the act for the establishment of the Treasury, is simply styled in its title, "An act to establish the Treasury Department."

Now, sir, if this difference in the title was not the result of mere accident, as I am inclined to think it was, for I find that the title was the same as of the other acts, in all the preliminary and intermediate proceedings, down to the very passage of the act, (after which, according to parliamentary custom, a formal entry is made on the journal to this effect—"ordered that the title of the act" be so and so, if, sir, I say this difference was not merely accidental, it is sufficiently explained by the different organization of the Treasury Department, compared with the other Departments. The organization of the other Departments is simple and homogeneous, consisting, in each, of one principal officer, the head of the Department, and of Clerks employed under him, to perform, as he shall direct and arrange it, the business of the Department. But, on the other hand, the organization of the Treasury Department is complex and diversified. It consists not only of one principal officer, the head of the Department, and his clerks, but of various other officers, of a high and important grade, whose respective functions are classified and arranged by the law itself—such as the Comptroller, the Auditor, the Register, the Treasurer. The functions of some of these officers, of the Comptroller and of the Auditor for example, seem to partake somewhat of the judicial character; and it will be seen in the debates on the organization of the Treasury Department, that this idea was suggested in relation to the Comptroller particularly, by Mr. Madison, who, for that reason, proposed to modify differently the tenure of his office. The same idea, we have seen it stated in the newspapers, in regard to the character of the Auditor's functions, has recently furnished, in my own State, the ground of an able and ingenious argument against the constitutionality of a particular act of Congress. The organization of the Treasury Department there, embracing officers of this description, whose functions appeared to partake, in a considerable degree, of the judicial character, doubts might have arisen as to the propriety of denominating the whole Department an Executive Department; though cer-

tainly, in regard to the head of the Department himself, his functions are obviously and exclusively executive.

What, sir, are those functions as prescribed by the act for the establishment of the Treasury Department? To report and prepare plans for the improvement and management of the revenue, &c. to prepare and report estimates of the public expenditure, &c.; to superintend the collection of the revenue; to decide on the forms of keeping and stating accounts, &c. and to grant warrants for money to be issued from the Treasury, in pursuance of appropriations by law; and to execute services relative to the sales of public lands, &c. All these functions, I think, sir, must be allowed to be Executive. The only other duty prescribed by the act is to make reports and give information to either branch of the Legislature, &c. respecting all matters referred to him by them, or which shall appertain to his office, &c. It is this circumstance, it seems, of reporting to Congress which is considered as divesting the Secretary of the Treasury of the character of an Executive officer. But, sir, does not the President himself, the chief Executive officer, report to Congress? Is he not required by the constitution to "give, from time to time, to Congress, information of the state of the Union, and to recommend to them such measures as he shall judge necessary and expedient?" In other words, to report to Congress both facts and opinions, just as the Secretary of the Treasury does? Do not the other Heads of Departments, also report, whenever required, to Congress? Are not resolutions adopted almost every day in the one House or the other, directing them to report on some matter or other?

The circumstance of reporting to Congress, then, surely cannot divest the Secretary of the Treasury of the character of an Executive officer; which character he has borne in the practice of the Government, and in the understanding of the community, as well as in the view of the law, from the adoption of the constitution to the present day. As little, sir, can the omission to denominate him an Executive officer, in the mere title of the act establishing the Department of which he forms a part have that effect, explained too, as that omission is by the circumstances to which I have adverted.) If the functions assigned to him by the act itself be, as I think all must admit them to be, Executive in their nature, but there is still another criterion, if another were necessary, for ascertaining the character of his office. I mean its tenure. The Secretary of the Treasury holds his office by precisely the same tenure as every other Head of a Department. He is removable by the President precisely in the same way as other Secretaries are, and that removability is declared in the act creating the Treasury Department, in identically the same terms and manner, that the removability of the other Secretaries is declared, in the acts constituting their respective Departments. By reference to the debates of Congress in '89 on the power of removal by the President, it will be seen that the removability of public officers by the President, was considered as depending solely on the circumstance of their being Executive officers or otherwise. All Executive officers were regarded as mere assistants and substitutes of the President in the exercise of that Executive power which the Constitution had vested wholly in him, and as such ought to be, and were removable by him at pleasure. The act establishing the Treasury Department, therefore, in expressly recognizing as it does the removability of the Secretary of the Treasury by the President, virtually declares him to be an Executive officer.

The power of removal, existing alike in regard to the Secretary of the Treasury and the other heads of Departments, may be rightfully exercised for reasons so various, that it is impossible to reduce them to any general classification. The President, who possesses the power, is to judge, in the first instance at least, of the reasons for its exercise. In the debate of '89, so frequently appealed to on this subject, Mr. Madison said, "If a head of a Department shall not conform to the judgment of the President, in doing the executive duties of his office, he may be displaced." The honorable Senator from New Jersey (Mr. Southard) who spoke a few days ago, cited the opinion expressed by Mr. Madison in the same debate, that the President might be impeached for a wanton removal of a public officer. Sir, I do not doubt it; but I beg leave to remind the honorable Senator of a correlative opinion delivered by Mr. Madison on the same occasion—that the President might be properly impeached also for neglecting to remove a public officer, when the public interest demanded it. And this, sir, suggests the true mode of testing the question which has been raised of the President's constitutional power, to remove the late Secretary of the Treasury, for his refusal, (in the language of Mr. Madison just cited) "to conform to the judgment of the President" on the subject of the public deposits. Let us reverse the case which actually occurred, and suppose that the Secretary of the Treasury, instead of the President, had desired a transfer of the public deposits—that he did so without any sufficient reason, and was about to commit them to Banks and question-

able solvency or of notorious insolvency. If the President, entertaining a different opinion of the expediency and propriety of the measure, had stood by, and renouncing the salutary control which the constitution had placed in his hands by the power of removal, had permitted his Secretary quietly to consummate his purpose, on the ground that the President had no right to interfere with a discretionary power entrusted by Congress to a head of a Department, what then would have been said? We should have heard, sir, denunciations not less loud and vehement, than those which have been uttered on the present occasion, thundered against him, but upon a different principle. We should then have been told, sir, that the President had been recreant to his high trust—that he had been armed with the power of removal expressly to protect the public interests from the faithlessness or incapacity of public officers, and that, in failing to exercise it, he had weakly and wickedly betrayed his duty to the Constitution and to the country.

Having thus reviewed, Mr. President, the doctrines, to me, I must say, novel doctrines, of constitutional law which have been advanced by the honorable Senator from Kentucky, (Mr. Clay,) I will detain the Senate but with a few words more. The honorable Senator told us, with a deep and mournful pathos, that we are in the midst of a revolution. I agree with him, sir; we are in the midst of a revolution—a happy and auspicious revolution, like the "civil revolution of 1800," which, according to Mr. Jefferson, was "as real a revolution in the principles, as that of '76 was in the form, of our government." A like salutary revolution "in the principles of the government," we have seen accomplished during the last five years of its administration. In that time, sir, we have seen the Government brought back to its "republican tack"—from the deviations of latitudinarian power into which it had fatally fallen—we have seen an unconstitutional and corrupting system of internal improvements, under the patronage of the federal authority, arrested, and those great local interests remitted to their natural and safe guardians; the governments of the States—we have seen the Bank, the "first-born" of federal usurpations, foiled in its efforts to perpetuate its existence, and to confirm its triumph over the sanctity of the constitution—we have seen, finally, the American System of the honorable Senator himself—a system which we of the South have felt to be one, not of protection, but of oppression—we have seen that, too, partially overthrown and abandoned. Here, indeed, is a happy and glorious revolution for those who have cherished the cardinal principles of limited constitutional construction, of freedom, of industry, of equality of public burdens. And for these great results, we are indebted to the firmness, the vigor, the patriotism, of the individual who now presides over the administration of the Government—sustained by the virtuous confidence of a free people.

We have, sir, the authentic and positive declaration of the honorable Senator from Kentucky himself, made on this floor during the last session, that it was owing to the known and determined opposition of the Chief Magistrate to the protective system, sustained as it was foreseen he would be by an increased popular support in the present Congress, that the honorable Senator consented to yield what he did of that system in the compromise of the last winter. The other great reforms of national policy have been accomplished by the direct agency of that high power which the constitution has placed in the hands of the President, as a shield, among other purposes, for the protection of the just rights of the States, and which he has faithfully and firmly wielded for that object. Used, sir, as that power has been, I cannot sympathize in the sentiments of indignant reprobation with which its exercise has been denounced by the honorable Senator of Kentucky. It is a power, sir, which has been exercised in the best constitutional times of England and of our own country. In England, sir, William the Third, a veneration for whose memory is pronounced by a late writer on the constitutional history of England to be the true test of English whiggism exercised it—an exercise rendered necessary, and justified, we are told, by one of the historians of the times, by a strong party in the House of Lords, "who entertained deep designs." Our own Madison, sir, whom there never lived a man more virtuous, more conscientious, more scrupulous in the use of power, nor yet one firmer in the discharge of duty, did not hesitate to exercise it. The limited opportunities of research I have had, disclosed no less than half a dozen instances in which he resorted to the veto, four of those during the first term of his presidency—and one of them, (the veto of the "Borus Bill for Internal Improvement") the very last act of his public life, thus rendering an appropriate and impressive homage to the constitution on retiring from its highest trust. I cannot see then, in the use of the veto by the present Chief Magistrate any cause of alarm for the liberties of the country.

I confess, sir, I consider those liberties far more seriously threatened by the unconstitutional institution with whose grasping ambition we are now struggling. If, sir, it shall triumph in this vital struggle, then, indeed, a

fatal revolution will have been accomplished. The time will have arrived, which was foretold by the great republican statesman, (Mr. Jefferson,) whose prophetic and instinctive warnings were read to us by the Senator from Missouri, when a moneyed power, self constituted and irresponsible, will have superseded the delegated and responsible Government of the people in its action. Gentlemen in the course of this debate have decried much on the dangerous influence of money. But the only money whose influence they seem to regard as dangerous, is the money of the people—money raised and appropriated by the representatives of the people—disbursed by responsible officers—looked up by the "strong bolts and bars of the law" from corrupt use! But they seem to be wholly insensible to the danger of money in the hands of a great corporation, wielding an immense capital at will, without control, without responsibility.

Let Congress, sir, abstain from unconstitutional appropriations; let the public expenditure be restrained to the simple and economical wants of republican government; let the accountability of public disbursements be enforced; and we shall have—but little danger to apprehend from the money of the people. But, sir, we shall by those means have provided but a poor security against the danger of money, if at the same time, we invite its concentration in the hands of an organized association, and give it thus artificial facilities of united action and accumulated power.

A profound thinker, sir, with whom I have had the good fortune to serve in the public councils, but who is now in private life, and to whom it affords me sincere gratification to have this opportunity of paying the tribute of a cordial and respectful remembrance, (Mr. S. C. Allen, of Mass.) has beautifully and philosophically said, that "associated wealth is the dynasty of modern States." Sir, it is so. This modern dynasty is now seeking to establish its sway over us in the worst of all forms—that of a great legal corporation, ramified and extended through the Union, directed by irresponsible authority, controlling the fortunes and the hopes of individuals and communities—influencing the public press, dictating to the organs of the public will.

I may be permitted, Mr. President, to recall to the recollection of the Senate, the solemn language of a great patriot and statesman of another country, on an occasion not unlike the present. It was in the memorable impeachment of Warren Hastings, sir, that Edmund Burke, with the profound sagacity which belonged to his genius, held the following impressive language to the highest judicial and legislative body of his country: "To day the Commons of Great Britain prosecute the delinquents of India. To morrow the delinquents of India may be the Commons of Great Britain." We all know and feel the force of money, and we now call upon you for justice in this cause of money. We call upon you for the preservation of our manners—of our virtues. We call upon you for our national character. We call upon you for our liberties."

Sir, an American Senator, applying to his own times and country, the solemn appeal of the British patriot, might well say—To day the Congress of the U. States sits in judgment on the monopolists of the Bank. To morrow the monopolists of the Bank may be the Congress of the United States. All history hath taught us the dangerous power of moneyed corporations, and we now see and feel that power exerted in the most dangerous of all forms, in assailing the purity of our republican manners, undermining the stability of our institutions, and swaying the deliberations of our public councils. Sir, the American people—yes, sir, the people—when their true voice shall be heard, call upon us for justice in this great cause of money violating and trampling upon the guarantees of freedom.—They call upon us for the preservation of the public morals, exposed to a new and daring corruption. They call upon us for the vindication of our national character from the scandal of practices before unknown in our history. They call upon us for the rescue of their liberties from the grasp of a selfish and unrelenting moneyed despotism. They call upon us, sir, for the performance of these high duties, and worthily, I trust, will the call be answered by the firmness, the constancy, and the patriotism of their Representatives.

Forsyth, King, of Georgia, and Chambers took part. The Senate adjourned, after spending a short time on ordinary business.

Tuesday, March 11.

Memorials were presented by Mr. Prentiss, from citizens of Burlington, Vermont, and by Mr. Freelinghusen, from 450 citizens of Paterson, New Jersey, being a large majority of the voters in that town; both memorials complaining of distress, and of the late usurpations of the Executive. Mr. Freelinghusen also presented a counter-memorial from six or seven hundred citizens of Paterson and vicinity, and one from inhabitants of four of the northern towns in the State. The debate on these memorials occupied nearly the whole of the day. Mr. Clay read a letter from Mayor of Troy, and other distinguished citizens, which stated that instead of there being only 100 supporters of General Jackson, whose names were attached to the Troy memorial, as asserted by Mr. Wright on the authority of the Representative from the county, there were more than 400. The Senate spent a short time on Executive business, and then adjourned.

Wednesday, March 12.

Mr. Leigh presented a memorial from citizens of Petersburg, Virginia, complaining of the late Executive usurpation, and asking the restoration of the deposits. A debate followed, for two or three hours, in which Messrs. Leigh, Forsyth, Clay, and King, of Georgia, took part. Mr. McKean also presented memorials and resolutions, of the same tenor, from citizens of Cumberland county, Pa.; and from the tin plate and sheet iron workers and cooperSmiths of Philadelphia.

The Senate then resumed the consideration of the Special Order, being the resolutions of Mr. Clay, and the report of the Secretary of the Treasury on the subject of the removal of the public deposits from the Bank of the United States; when Mr. Tallmadge commenced his remarks, and addressed the Senate until 3 o'clock; and then the Senate adjourned.

Thursday, March 13.

Memorials were presented from Brooklyn, N. Y. Esport and Lakes, Maine, Falmouth, Fredericksburg and Accomack county, Virginia, on the subject of the pecuniary embarrassments of the country, ascribing them to the withdrawal of the public deposits from the Bank of the United States, and praying for their restoration; which were read and referred.

Friday, March 14.

Memorials and resolutions were presented, by Mr. Wright, from citizens of Brooklyn, New York; by Mr. McKean, from a great meeting at Philadelphia, of the citizens of Pennsylvania in favor of General Jackson; and from three meetings in the county of Perry, Pa., the first two being in favor of the Executive and his measures, the first one in favor of a national convention; and the three others being opposed to the whole. The memorials were only accompanied with a few remarks from the gentlemen presenting them. Mr. Tallmadge concluded his remarks on the standing Special Order; and then the Senate adjourned till Monday.

HOUSE OF REPRESENTATIVES

Monday, March 10.

This being the weekly day for presenting Memorials, &c. and the consideration of the resolutions of the Virginia Legislature, presented last Monday, being the morning business first in order, Mr. Gholson took the floor, and addressed the House, in extenso, in support of the resolutions of his State, and particularly in reply to Mr. Patton's argument on the other side. Mr. Moore, of Va., followed, in an animated speech, on the same side. Mr. Pinckney, of S. C., next addressed the House, also in support of the resolutions, and continued to speak until half past three, when he yielded to a motion for adjournment. All three of these gentlemen went occasionally into very severe animadversion upon the course of the Administration in reference to the deposits.

Tuesday, March 11.

Mr. Clayton of G. o. concluded his remarks on the Bank question, under the resolutions submitted by Mr. Macdill.

The order of the day was taken up, and the House went into Committee of the Whole on the state of the Union. Mr. Wayne in the Chair, and took up the army appropriation bill for the year 1834. The various clauses of the bill were discussed with much animation by Messrs. McKean, of N. C. Hall of Me., Poik, the Chairman of the committee of Ways and Means, Vinton of O., Everett of Mass., M. Duffie, Chilton, J. nes of Geo., and Crockett, until half past four o'clock; the committee rose, reported and obtained leave to sit again, and the House then adjourned.

Wednesday, March 12.

The report of the committee of Ways and Means on the subject of the removal of the public deposits from the Bank of the United States, came under consideration. A resolution was finally agreed to, after a debate of great length and warmth, postponing the question till Tuesday next, and providing that it should on and after that day be taken up at one o'clock P. M. on every day with the exception of Mondays and Saturdays; the former being devoted to the reception of petitions, and the latter to the action upon private bills.

CONGRESS.

SENATE.

Monday, March 10.

Resolutions were presented by Mr. Silsbee, adopted by a large majority of the Legislature of Massachusetts, complaining of great pressure in their pecuniary affairs, ascribing it to the removal of the deposits, and praying relief by the charter of a Bank of the United States. Mr. Webster gave notice that he would, on Monday next, ask leave to introduce a bill to recharter the Bank of the United States, for a longer or shorter period. Mr. W. accompanied this notice with a few explanatory remarks, and a discussion followed, in which Messrs. Webster,