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Congress of the United States.

HOUSE OF REPRESENTATIVES.

DEBATE

On the bill for renewing the Charter of the United States' Bank.

Mr. W. ALSTON said, that the motion to strike out the first section was undoubtedly a fair way of attacking the principle of the bill; but as the same motive, even if he did hereafter vote against the bill, would not govern him as it had other gentlemen, he begged leave to state the reasons why he should vote against the motion. It has been contended (said he) by gentlemen who have gone before me in this debate, that the constitution did not authorise Congress to continue this charter, or, to have created it in the first instance. I am opposed to this doctrine of the restriction of our powers, because I believe, if practised upon to the extent that gentlemen of great talents contend, the government itself cannot get along. I do not believe that gentlemen can put their finger on the constitution and shew their authority for a number of acts which we are compelled to pass, any more than they can put their finger on the particular passage which authorises the granting this charter.

Sir, we are met on the threshold of this question by the gentleman from Virginia (Mr. Burwell) on constitutional grounds; and I will take the argument of that gentleman alone, and I think can prove that he himself has given up the constitutional question. In the clause which many gentleman have called the sweeping clause in the constitution, I find these words:—"Congress shall have power to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or office thereof." The gentleman, well satisfied that this clause confers the power, attaches to it, to make it the more important, the word "*absolutely*" before he is able to give any weight to the construction for which he contends. I have examined the constitution over and over again for the *absolutely*, and can find no such a word. Where then does the gentleman get it from, but from the very same source to the charges on the favorers of the constitutional right to pass the law? It is by implication, that he calls in the aid of the word *absolutely* before necessary. With what propriety then can he refuse to others the exercise of the same right that he himself has taken? If gentlemen have the right to interpolate this word, why may we not as well interpolate others? It is denied that the doctrine of implication can apply with respect to granting charters. If it can apply in any way, why not in this way? If I can shew to the House that it might apply in some cases, or it will be impossible that you can execute the object of the constitution, why may it not as well apply in the case of granting charters as in any other. I ask gentlemen to put their finger on the clause of the constitution which authorises them to pay away one cent of the public money? How do they get at the power but by implication? You have a power by the constitution to pay the debts of the U. States—but that part which provides for the payments of debts means debts already contracted and owing at the time of the adoption of the constitution; that too is in the sweeping clause, which gentlemen will certainly not avail themselves of. But you have not the power expressly given to create a debt, other than the clause which authorises you to borrow money on the credit of the United States; but none will contend, that by this you are authorised to make contracts and go in debt. There is an important clause of the constitution which gives to the United States power to call out the militia of the states for particular purposes. Shew me the spot in the constitution which authorises the payment of the militia. Not one. The power to call them out implies the power to pay them. It inevitably follows that the power to lay & collect taxes & raise a revenue implies the power to take care of it. Will gentlemen pretend to deny it? What is the argument of gentlemen on this point? They say it is true that a bank is necessary for the safe-keeping & paying the debts of the U. S.; but, say they, the banks of all the states are open to you. How does this doctrine apply to the U. S.? Have not the states themselves denied the connection of the state and federal governments? Can I quote a state which does not afford an example of this disposition? The seat of a gentleman of high standing in the Legislature of Virginia was vacated merely because he was a contractor for carrying the mail. Will then the state of Virginia, who is so jealous of your influence over her officers, permit you to exercise that influence by placing your money under officers created by her? Let gentlemen examine this question. The argument will not bear them out. In the state which I represent also, a law has been passed to prevent a person from holding any office or appointment at the same time under the state & federal governments. What right have the directors in a state bank appointed by the state to contract with the general government to keep its money? I deny their right.

Putting the state banks out of the question, it is necessary that we should create means by which can we transfer the money of the government without expence, hazard or loss? I will state a case. We have an army in the city of New Orleans, which must be paid. By paying the money at Baltimore or Philadelphia, it is transferred to the paymaster at New Orleans without costing him a cent. Is not this convenient, expedient, necessary to comply with the interests of the United States in the case I have stated? I do not believe it possible, taking the ground that they have a right to place money in the banks of the individual states, that such a connection between them could ever be established as with the same ease, convenience and safety as at present to pay in the different parts of the Union money which the United States are bound to pay. I ask the question—Will a bank in North Carolina trust a bank in New Hampshire? No; but the state and every individual in it would trust the bank of the United States. You could not establish a connection between North-Carolina and New Hampshire so that either would trust the other. The establishment of the Bank of the United States affords in this case a facility useful and absolutely necessary in my opinion to carry on the measures of government. How will putting down the bank of the United States have an effect to lessen the quantity of paper in circulation? If I could think so I would join the gentleman most seriously; but the very contrary, in my opinion, would be the effect. The bank of the United States and its paper serves as a controling power; keeps the state banks in proper bounds; and prevents them from issuing a vast quantity of paper which would inundate the country. They are very confident if they issue two much paper, that there will be a run upon them; because the interest of the United States' Bank and the state banks do not at all times go hand in hand. At this time it certainly restrains the circulation of state bank paper.

It is said, sir, that the states are not compelled to do particular acts which they are required to do. To be sure the states have the physical power but they are bound by the same solemn oath to carry into effect the constitution of the United States that the members of this House are. It may as well be said that the state Legislatures may if they chuse refuse to appoint Electors to vote for President and Vice President, or elect Senators, but the obligation upon them is as strong as upon any other department of the government, as it is upon the members of this house to perform its duties. They have taken a solemn oath and must perform its obligations.

Sir, there is one part of this constitution which in my humble opinion gives the power completely. It is a part of the constitution which I never heard any gentleman mention, nor any writer on the subject. I may put an erroneous construction on it; but if I am correct, the conclusion is inevitable. In the 10th section of the first article, it is said, "No state shall coin money, emit bills of credit; or make any thing but gold and silver coin a tender in payment of debts;" and the interpretation which I give to it is that the *United States* possess the power to make any thing besides gold and silver a legal tender. If this then be the correct construction, it is a clause which I have never before heard relied on. If what I conceive to be the fair interpretation be admitted, it must follow that they have a right to make bank paper a tender. Much more, then, sir, have they the power of causing it to be received by themselves in payment of taxes. If they have power to make paper of any description whatever receivable in payment of all debts whatever, can any one deny that they have a power to make it a tender in payment of taxes or debts to the United States? After admitting the power, will you place the exercise of it in your Secretary of the Treasury, or in the hands of fifteen or twenty men whom you call directors? But I might not have voted against concurring with the committee in striking out the first section of the bill if I stood on this ground alone.

To the bill in its present shape I should have no hesitation in giving a decided negative; but there is a plan on which I would vote for the renewal. Sir, I ask gentlemen who have voted against it on constitutional ground to meet me on this point—the plan is, that the additional stock shall be taken wholly by the United States; that they shall be bound to distribute it among the individual states, having respect to their relative numbers, at its par value. The states would take it if they think proper; if taken there is an end to the violation of state rights. In a plan of this kind a distinction is brought to the mind of every man, whether he will prefer the interest of the great body of those people who are represented in the state legislature, or whether he will support the interest of a few who think proper to incorporate themselves for the support of a bank. The true question is, whether the emoluments of the banking system should belong exclusively to a few or collectively to the whole United States. I therefore hope the first section will not be stricken out. In discussing the detail such a plan would be more interesting than any other can be to the states. The advantages of such a system must be seen. The anxiety evinced for the renewal of this charter and the credit of the state banks altogether, in consequence of the money made by the banking system, is then done away. The money arising from the profit of the banks will belong to the states in their individual capacity, and the taxes of every individual lessened in proportion to its share of the capital. Let gentlemen bring the question home to them; let them examine how it concerns their constituents, and put the question which of the two will interest the great body of the people the most.

Putting down the charter of the United States bank will not put an end to the banking system. Cast your eyes about you at what has taken place at the last sessions of the state legislatures? Has one of them adjourned without establishing a bank? It is bank paper as much when issuing from state banks as when from the bank of the United States. There is no sort of difference. If this question had not been attacked on constitutional ground; if it had been left merely to expediency, I should not have troubled the House on the subject. I know too little of the concerns of a bank to think of making a speech on the details alone. But I know how much interest moves us on this question. When you place money in the state banks, you give a complete licence to the state banks to issue what they please. What was the loss of paper money during our revolution? Did it not fall on those who had given credit; and are we prepared to meet such a shock as that? Could we have stood it in any other case than that in which we were engaged? Here let me enter my protest against the banking system altogether; but we have it. Is not the consequence more dangerous—Will not the loss ultimately be greater, to let the state banks issue paper at will, than to control them by the bank of the United States?

If the doctrine which gentlemen advance about putting the finger on that part of the constitution which gives power to carry on the government itself be true, we may as well quit legislation altogether. You cannot go a single step without calling in the aid of implication. When a mean is necessary and expedient; when the operations of government cannot as well be carried on in any other way as by it, then it is necessary, and being necessary, is constitutional.

UNITED STATES BANK.

The charter of the bank of the United States, was enacted by Congress in February 1791. This law originated from a report of General Hamilton, then Secretary of the Treasury.—The bill for the incorporation of the Bank, was first passed in the Senate, and we have understood that the question of *constitutionality* was not started in that house. It is a little remarkable, that when such men as the late Judge *Ellsworth, Gov. Strong, Rufus King, &c.* were members, a point, *now* so very obvious to the understandings of gentlemen, who to say the most of them, do not surpass the persons above named, either in understanding, integrity or patriotism should have escaped the discernment of those eminent statesmen. Besides, they had all been members and distinguished members, of the convention that framed the constitution and of course must have known, as well at least as men who then were, *or ought to have been at school*, what powers the instrument was intended to convey to the national government, and what to secure to the several states. If, however, the question was raised in the Senate, it was decided in favor of the bank, and of course, the point was, so far as the vote of that house goes, settled.

When the bill came to the house of Representatives, the constitutional question was raised, and debated, principally by Mr. Madison, now President. It is very well known, that Mr. Madison was a member of the Convention, and a zealous friend of the Constitution; that he assisted Gen. Hamilton and Gov. Jay in writing the Federalist, and lent his aid in procuring its adoption in Virginia. It is also well known, that Mr. Jefferson was an enemy to the constitution, and wrote from France to his friends in this country, stating his objections to it. When the government was organized, Gen. Hamilton was appointed Secretary of the Treasury. Mr. Madison, it is supposed, became jealous of his great rival, and in Congress took part with the opposition, of which he was the ostensible, and Mr. Jefferson the real head. The bill lay in the house a considerable time, and finally passed on the 8th February—Yeas 39—Nays 20—almost two to one in its favour—The members from this state at that time were—Roger Sherman, Jonathan Trumbull, Jonathan Sturges, Jeremiah Wadsworth and Benjamin Huntington. Three of these gentlemen were lawyers of eminence, and have been for their talents and integrity successively raised to the Bench of the highest court of law in this state; the other two were gentlemen distinguished for their wisdom, virtue and patriotism, were both active officers in the revolutionary war, and possessed in an eminent degree the confidence of Gen. Washington, and of Congress. It will not be easy to persuade the people of Connecticut, at least that Roger Sherman would not have discerned the want of power in the Constitution to incorporate the Bank. More difficult will it be to persuade them, that if he had discerned it, he would against the dictates of his conscience, have voted for the bill. But the integity of Judge Sherman, high as it deservedly stood throughout the United States, was not more pure than that of Gov. Trumbull, Colonel Wadsworth, Judge Huntington and Judge Sturges. These eminent men all voted for the bank; and with them such characters as Fisher Ames, Egbert Benson, Elias Boudinot, of New Jersey, William Floyd of New-York, Gov. Gerry, Nicholas Gilman, Peter Muhlenburgh of Pennsylvania, Jeremiah Van Rensselaer of New-York, &c. &c. These names are sufficient to shew, not only that there was as much talent and integrity in the House of Representatives then, as there is now, but at the same time to prove, that it was not, as Mr. Eppes has had the assurance to declare it was, a party question.——Among the Nays will be found, *not democrats* for the name was happily unknown in the country, but anti-federalists, as well as federalists, and so among the Yeas.

When the bill was passed, it went to President Washington for his approbation. It will not be said, even by our democrats at the present time, (because they *now* claim Gen. Washington to have always been their man) that this great man would wilfully have given his sanction to a measure which violated the Constitution. His regard for that instrument was high and reverential. His understanding always led him to the most correct conclusions, and he never formed them on any important subject, without previous deliberation, and the most mature consideration. On this question, it is understood, that Mr. Madison and Mr. Jefferson both wrote, and were answered by General Hamilton. The strength of argument was found by General Washington to be *clearly* in favor of the bank, and on the 25th of February, 17 days after it had passed both houses, he signed it.

At the time when this act passed, the times were far different from the present.—The baneful spirit of party had not so thoroughly contaminated the body politic, as it unhapily has for many years past. The ambition of Mr. Jefferson and Mr. Madison, though in existance, operated slowly and secretly. Neither they, nor their friends, had courage enough to declare when engaged in any official duty, that the measure before them "*was a mere question of party, and ought to be decided on party principles.*" Then a great majority of the United States were found on the side of General Washington, and the Constitution of their country, not devoted to the sinister, selfish, aggrandizing views of Mr. Jefferson. Having these feelings, and these sentiments, and having also a perfect knowledge of the powers granted to Congress in the Constitution which they had just formed and adopted, there was little room to fear a wilful, or mistaken departure in the public mind from the true spirit of that instrument.

Immediately after the incorporation of the bank, the shares were filled, and it went into operation. When its bills began to circulate, laws were passed in many probably in most, and possibly in all the States, making it penal to counterfeit them. This fact shews, that the states entertained no doubts of the constitutionality of the incorporation; for had they doubted on the subject, or at any rate, had they considered it clearly unconstitutional, they would not have protected it by the force of their own laws. In June, 1798, Congres also passed a law, making it penal to forge or counterfeit the bills of the Bank.—This is a direct recognition of the power to establish the bank. Congress also have directed the national cash to be deposited in the bank. They have in a multitude of instances, & under all administrations, as is believed, authorised loans of the Bank, for the benefit of the U. States. This was done in 1803, and again in 1804, under Mr. Jefferson; the first instance was to borrow money to pay claims under the Louisiana Convention with France, the other for the protection of Mediterranean commerce against the Barbary powers. But a fact conclusive on the point, is to be found under the same administration. In 1804, an act was passed of the tenour following—viz.

"An Act supplementary to the Act entitled, "An Act to incorporate the subscribers to the Bank of the United States."

"*Be it enacted &c.* That the President and Directors of the bank of United States shall be, and they are hereby authorised to establish offices of Discount and Deposit, in any part of the territories or dependencies of the United States, in the manner, and on the terms, prescribed by the act to which this is a supplement."

"APPROVED, March 23d, 1804.

"TH: JEFFERSON."

To the foregoing circumstances, are to be added the fact—that convictions for forging and counterfeiting the bills of the bank, have been had in the state courts; and that the government, under Mr. Jefferson, actually sold their own shares and received the pay for them.—Hence it would seem to follow, that the constitutionality of the bank has been settled by the united voice of Congress, under various administrations, and, of course, by the various Presidents—by the legislatures of many perhaps all the States, by the federal and state courts, and implicitly by the people, who have partaken in the operations and profits of the bank for twenty years, without any effort to remove it on this ground.

It would seem as if this question has been as much settled, as any question can be. In what manner is it attacked? A number of persons engaged in the publication of newspapers, and principally foreigners, have made the renewal of the bank charter a subject of much clamour, and declamation, and have been joined by a few natives out of Congress, equally desperate and unprincipled. Without stopping to notice the views of these men, it may be worth the pains to consider for a moment, the ground taken on this question. Mr. Madison objected to the original bank charter, because it was in his opinion unconstitutional. Congress, by a large majority decided the question against him. Three successive Presidents before him, have assented to its constitutionality; and, indeed, we humbly conceive he has impliedly done so himself, by approving a law to borrow money of the bank? Congress from time to time have directly or indirectly given their sanction to it; and now, notwithstanding it has been thus considered and treated for twenty years, a new set of men are about to overthrow the doings of all that have gone before them, by declaring that the establishing the bank was unconsitutional.

Is a constitutional question never to be settled? What authority have the present Congress to say, that the proceedings of the former were not warranted by the constitution? or if they do say it, will it be more binding than the doings of the la