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REMOVAL OF THE DEPOSITES.

MR. CALHOUN'S SPEECH.

IN THE UNITED STATES SENATE, MONDAY, JANUARY 13.
The special Order now came up. The question being on Mr. Clay's Resolutions in regard to the Removal of the Public Deposites.

Mr. CALHOUN then rose and said, that the statement of this case might be given in a very few words. The 15th section of the act incorporating the Bank provides that wherever there is a bank or branch of the United States Bank, the public monies should be deposited therein, unless otherwise ordered by the Secretary of the Treasury; and that, in that case, he should report to Congress, if in session immediately; and if not, at the commencement of the next session. The Secretary, acting under the provision of this section, has ordered the deposits to be withheld from the bank, and has reported his reasons, in conformity to the provisions of the section.—The Senate is now called upon to consider his reasons, in order to determine whether the Secretary is justified or not. I have examined them with care and deliberation, and with the slightest bias, as far as I am conscious, personal or political. I have but a slight acquaintance with the Secretary, and that little is not unfavorable to him. I stand wholly disconnected with the two great parties now contending for ascendancy. My political connections are with that small and denominated party which has voluntarily retired from the party strife of the day, with a view of saving, if possible, the liberty and the constitution of the country, in this great crisis of our affairs.

Having maturely considered, with these impartial feelings, the reasons of the Secretary, I am constrained to say, that he has entirely failed to make out his justification. At the very commencement he has placed his right to remove the deposits on an assumption resting on a misconception of the case. In the progress of his argument he has entirely abandoned the first, and assumed a new and greatly enlarged ground, utterly inconsistent with the first and equally untenable; and yet, as broad as his assumptions are, there is an important part of the transaction which he does not attempt to vindicate, and to which he has not even alluded. I shall, said Mr. Calhoun, now proceed without further remark, to make good these assertions.

The Secretary, at the commencement of his argument, assumes the position that in the absence of all legal provisions, he, as the head of the financial department, had the right, in virtue of his office, to designate the agent and place, for the safe keeping of the public deposits. He then contends that the 16th section does not restrict his power, which stands, he says, on the same ground that it did before the passing of the act incorporating the bank. It is unnecessary to inquire into the correctness of the position assumed by the Secretary; but if it were, it would not be difficult to show that when an agent with general powers, assumes, in the execution of his agency, a power not delegated, the assumption rests on the necessity of the case; and that no power, in such case, can be lawfully exercised, which was not necessary to effect the object intended. Nor would it be difficult to show that, in this case, the power assumed by the Secretary would belong, not to him, but to the Treasurer, who under the act organizing the Treasury Department, is expressly charged with the safe keeping of the public funds, for which he is responsible under bond, in heavy penalties. But, as strongly and directly as these considerations bear on the question of the power of the Secretary, I do not think it necessary to pursue them, for the plain reason that the Secretary has entirely mistaken the case. It is not a case, as he supposes, where there is no legal provision in relation to the safe keeping of the public funds, but one of precisely the opposite character.

The 16th section expressly provides that the deposits shall be made in the bank and its branches, and of course it is perfectly clear that all powers which the Secretary has derived from the general and inherent powers of his office, in the absence of such provision, are wholly inapplicable to this case. Nor is it less clear, that if the section had terminated with the provision directing the deposits to be made in the bank, the Secretary would have had no more control over the subject, than myself or any other Senator, and it follows of course that he must derive his power from any general reason connected with the nature of his office, but from some express provision contained in the section, or some other part of the act. It has not been attempted to be shown, that there is any such provision in any other section or part of the act.—The only control, then, which the Secretary can rightfully claim over the deposits, is contained in the provision which directs that the deposits shall be made in the bank, unless otherwise ordered by the Secretary of the Treasury, which brings the whole question in reference to the deposits, to the extent of the power which Congress intended to confer upon the Secretary, in these few words—"unless otherwise ordered."

In ascertaining the intention of Congress, I lay it down as a rule, which I suppose will not be controverted, that all political powers under our free institutions are trust powers, and not rights, liberties or immunities, belonging personally to the officer. I also lay it down as a rule, not less incontrovertible than that trust powers are necessarily limited (unless there be some express provision to the contrary,) to the subject matter and object of the trust. This brings us to the question—what is the subject and object of the trust in the case. The whole section relates to deposits—to the safe and faithful keeping of the public funds. With this view they are directed to be made in the bank. With the same view and in order to increase the security, power was conferred on the Secretary to withhold the deposits; and with the same view he is directed to report his reasons, for the removal, to Congress. All have one common object—the security of the public funds. To this point the whole section converges. The language of Congress, fairly understood, is—we have selected the bank because we confide in it as a safe and faithful agent to keep the public money; but to prevent the abuse of so important a trust, we invest the Secretary with power to remove the deposits, with a view to their increased security. And lest the Secretary, on his part, should abuse so important a trust—and in order still further to increase that security, we direct, in case of removal, that he shall report his reasons. It is obvious, under this view of the subject, that the Secretary has no right to act in relation to the deposits but with a view to their increased security. It is he has no right to order them to be withheld from the bank so long as the funds are in safety and the bank has faithfully performed the duties imposed in relation to them; and not even then, unless the deposits can be placed in safer and more faithful hands. That such was the opinion of the Executive, in the first instance, we have demonstrative proof in the message of the President to Congress at the close of the last session, which placed the subject of the removal of the deposits exclusively on the question of their safety; and that such was also the opinion of the House of Representatives then, we have equally

conclusive proof, from the vote of that body, that the public funds in the bank were safe, which was understood at that time on all sides, by friends and foes, as deciding the question of the removal of the deposits.

The extent of the power intended to be conferred being established, the question now arises, has the Secretary transcended his limits? It can scarcely be necessary to urge this point. It is not even pretended that the public deposits were in danger, or that the bank had not faithfully performed all the duties imposed on it in relation to them; nor that the Secretary had placed the money in a safer or in more faithful hands. So far otherwise, there is not a man who hears me, who will not admit that the public monies are now less safe than they were in the Bank of the United States. And I will venture to assert that not a capitalist can be found who would not ask a considerably higher per centage to insure them in their present, than in the place of deposit designated by law. If these views are correct, and I hold them to be unquestionable, the question is decided.—The Secretary has no right to withhold the deposits from the Bank. There has been, and can be, but one argument advanced in favor of his right; which has even the appearance of being tenable; that the power to withhold is given in general terms, and without qualification, "unless the Secretary otherwise direct." Those who resort to this argument must assume the position, that the letter ought to prevail over the clear and manifest intention of the act. They must regard the power of the Secretary, not as a trust power, limited by the subject and object of trust, but as a chartered right, to be used according to his discretion and pleasure. There is a radical defect in our mode of construing political powers of which this and many other instances afford striking examples; but, I will give the Secretary his choice, either the intention or the letter must prevail; he may select either, but cannot be permitted to take one or the other as may suit his purpose. If he chooses the former, he has transcended his powers, as I have clearly demonstrated. If he selects the latter, he is equally condemned, as he has clearly exercised power not comprehended in the letter of his authority. He has not confined himself simply to withholding the public monies from the Bank of the U. States, but he has ordered them to be deposited in other Banks, though there is not a word in the section to justify it. I do not intend to argue the question, whether he had a right to order the funds, withheld from the United States Bank to be placed in State Banks which he has selected; but I ask, how has he acquired the right? It rests wholly on construction—on the supposed intention of the legislature, which, when it gives a power, intends to give all the means necessary to render it available. But, as clear as this principle of construction is, it is not more clear than that which would limit the right of the Secretary to the question of the faithful keeping of the public funds; and I cannot admit that the Secretary shall be permitted to resort to the letter or to construction, as may best be calculated to enlarge his power, when the right construction is denied to those who would limit his power by the clear and obvious intention of Congress.

I might here said Mr. Calhoun, rest the question of the power of the Secretary over the deposits, without adding another word. I have placed it on grounds from which no ingenuity, however great, or subtlety, however refined, can remove it; but such is the magnitude of the case, and such my desire to give the reasons of the Secretary the fullest consideration, that I shall follow him through the remainder of his reasons.

That the Secretary was conscious that the first position which he assumed, and which I have considered, was untenable, we have ample proof in the precipitation with which he retreated from it. He had scarcely laid it down, when, without illustration or argument, he passed with a rapid transition, and I must say a transition as obscure as rapid, to another position wholly inconsistent with the first, and in assuming which, he repudiates the idea that the safe and faithful keeping of the public funds had any necessary connexion with his removal of the deposits; his power to do which he places on the broad and unlimited ground, that he had a right to make such disposition of them as the public interest, or the convenience of the people might require. I have said that the transition of the Secretary was as obscure as it was rapid; but obscure as it is, he has said enough to enable us to perceive the process by which he has reached so extraordinary a position, and we may safely affirm that his arguments are not less extraordinary than the conclusion at which he arrives. His first proposition, which, however, he has not ventured to lay down expressly, is, that Congress has an unlimited control over the deposits, and that it may dispose of them in what manner it may please, in order to promote the general welfare and convenience of the people. He next asserts that Congress has parted with this power, under the 16th section, which directs the deposits to be made in the Bank of the United States, and then concludes with affirming that it has invested the Secretary of the Treasury with it, for reasons which he professes to be unable to understand.

It cannot be necessary, before so enlightened a body, that I should undertake to refute an argument so utterly untrue in premises and conclusion—to show that Congress never possessed the power which the Secretary claims for it—that it is a power, from its very nature incapable of such enlargement, being limited solely to the safe keeping of the public funds—so that if it existed, it would be susceptible of the most dangerous abuses—that Congress might make the widest and most dangerous association the depository of the public funds—might place them in the hands of the fanatics and the mad men of the North, who are waging war against the domestic institutions of the South, and who promote the general welfare. But admitting that Congress possessed the power which the Secretary attributes to it, by what process of reasoning can he show that it has parted with this unlimited power simply by directing the public monies to be deposited in the Bank of the United States? or, if it has parted with the power, to what extraordinary process has it been transferred to the Secretary of the Treasury, by those few and simple words "unless he shall otherwise order?" In support of this extraordinary argument, the Secretary has offered not a single illustration, nor a single remark bearing the semblance of reason, but one, which I shall now proceed to notice.

He asserts, and asserts truly, that the Bank charter is a contract between the Government, or rather the people of the United States and the bank, and then assumes that it constituted him a common agent or trustee to superintend the execution of the stipulations contained in that portion of the contract comprehended in the 16th section. Let us now, taking these assumptions to be true, ascertain what those stipulations are, the superintendence of the execution of which, as he affirms, are jointly confided by the parties to the Secretary. The Government stipulated on its part that the public money should be deposited in the Bank of the United States—a great and valuable privilege on which the successful operation of that institution mainly depends. The Bank on its part stipulated that the funds should be safely kept—that the duties imposed in relation to them should be faithfully discharged, and that for this with other privileges, it would pay to the Government the sum of one million five hundred thousand dollars. These

are the stipulations, the execution of which according to the Secretary's assumption, he has been appointed, as joint agent or trustee, to superintend, and from which he would assume the extraordinary power which he claims over the deposits, to dispose of them in such manner as he may think the public interest or the convenience of the people may require.

It is not obvious that the whole extent of power conferred upon him, admitting his assumption to be true, is to withhold the deposits in case that the bank should violate its stipulations in relation to them on one side, and on the other to prevent the Government from withdrawing the deposits, so long as the bank faithfully performed its part of the contract.—This is the full extent of his power; according to his own showing, not a particle more can be added. But there is another aspect in which the position in which the Secretary has placed himself may be viewed. It offers for consideration not only a question of the extent of his power, but a question as to the nature and extent of duty which has been imposed upon him. If the position be such as he has described, there has been confided to him a trust of the most sacred character, accompanied by duties of solemn obligation. He stands by the mutual confidence of the parties, vested with the high judicial power to determine on the infraction or observance of a contract in which Government and a large and respectable portion of citizens are deeply interested; and in the execution of this power he is bound by honor and conscience, so to act as to protect each of the parties in the full enjoyment of their respective portion of benefit in the contract, so long as they faithfully observe it. How has the Secretary performed these solemn duties, which according to his representation have been imposed upon him. Has he protected the bank against the aggression of the Government, or the Government against the unfaithful conduct of the bank in relation to the deposits? Or has he, forgetting his sacred obligations, disregarded the interests of both—on one side, divesting the bank of the deposits, and on the other, defeating the Government in the intended security of the public funds, by seizing on them as the property of the executive, to be disposed, at pleasure, to favorite and partizan banks.

But I shall relieve the Secretary from his awkward and disagreeable position in which his own arguments have placed him. He is not the mutual trustee, as he has represented, of the Government and the bank, but simply the agent of the former, vested under the contract, with power to withhold the deposits with a view, as has been stated, to their additional security—to their safe keeping; and if he had but for a moment reflected on the fact, that he was directed to report his reasons to Congress only, and not also to the bank, for withholding the deposits, he could scarcely have failed to perceive that he was simply the agent of one of the parties, and not, as he supposes, a joint agent of both.

The Secretary having established, as he supposes, his right to dispose of the deposits, as in his opinion the general interest and convenience of the people might require, proceeds to claim and exercise power with a boldness commensurate with the extravagance of the right which he has assumed. He commences with a claim to determine in his official character, that the Bank of the U. States is unconstitutional—a monopoly—beneficial to the welfare of the community.—Having determined this point, he comes to the conclusion that the charter of the bank ought not to be renewed, and then assumes that it will not be renewed. Having reached this point he then determines that it is his duty to remove the deposits. No man can object, that Mr. Taney, as a citizen, in his individual character, should entertain an opinion as to the unconstitutionality of the bank; but that he, acting in his official character, and performing official acts under the charter of the bank, should undertake to determine that the institution was unconstitutional, and that those who granted the charter, and bestowed upon him his power to act under it, had violated the constitution, is an assumption of power of a nature which I will not undertake to characterize, as I wish not to be personal.

But he is not content with the power simply to determine on the unconstitutionality of the bank. He goes far beyond—he claims to be the organ of the voice of the people. In this high character he pronounces that the question of the renewal of the bank charter was put in issue at the last Presidential election, and that the people had determined that it should not be renewed. I do not, said Mr. Calhoun, intend to enter into the argument whether, in point of fact, the renewal of the charter was put at issue at the last election. That point was ably and fully discussed by the honorable Senators from Kentucky, (Mr. Clay) and New Jersey, (Mr. Southard) who conclusively proved that no such question was involved in the issue; and if it were, the issue comprehended so many others that it was impossible to conjecture on which the election turned. I look to higher objections: I would inquire by what authority the Secretary of the Treasury constitutes himself the organ of the people of the United States. He has the reputation of being an able lawyer, and can he be ignorant that so long as the Constitution of the United States exists, the only organs of the people of these States, as far as the action of the General Government is concerned, are the several departments legislative, executive and judicial, which, acting within the respective limits assigned by the Constitution, have a right to pronounce authoritatively, the voice of the people.

A claim on the part of the Executive to interpret, as the Secretary has done, the voice of the people, through any other channel, is to shake the foundation of our system. Has the Secretary forgotten that the last step to absolute power, is this very assumption which he has claimed for that department? I am thus brought, said Mr. C., to allude to the extraordinary manifesto read by the President to the Cabinet, and which is so intimately connected with the point immediately under consideration. That document, though apparently addressed to the Cabinet, was clearly and manifestly intended as an appeal to the people of the United States, and opens a new and direct organ of communication between the President and them unknown to the Constitution and the laws. There are but two channels known to either, through which the President can communicate with the people—by messages to the two Houses of Congress, as expressly provided for in the Constitution, or by proclamation, setting forth the interpretations which he places upon a law it has become his official duty to execute. Going beyond, is one amongst the alarming signs of the times which portend the overthrow of the Constitution and the approach of despotic power.

The Secretary, having determined that the Bank was unconstitutional, and that the people had pronounced against the re-charter, concludes that Congress had nothing to do with the subject. With a provident foresight, he perceives the difficulty and embarrassment into which the currency of the country would be thrown on the termination of the Bank charter; to prevent which, he proceeds deliberately, with a parental care, to supply a new currency, "equal to or better" than that which Congress had supplied. With this view he determines on the immediate removal of the deposits; he puts them in certain State institutions, intending to organize them after the fashion of the empire state, into a great safety fund system, but which unfortunately, undoubtedly for the projector, if not for the country, the

limited power of the State Banks did not permit him to effect. But a substitute was found by associating them in certain articles of agreement, and appointing an inspector general of all this league of banks, and all this without law or appropriation! Is it not amazing, that it never occurred to the Secretary, that the subject of currency belonged exclusively to Congress, and that to assume to regulate it, was a plain usurpation of the power of that department of the government?

Having thus assumed the power officially to determine on the constitutionality of the Bank; having erected himself into an organ of the people's voice, and settled the question of the regulation of the currency, he next proceeds to assume the judicial power over the bank. He declares that the bank has transcended its powers, and therefore forfeited its charter, for which he inflicts on the institution the severe and exemplary punishment of withholding the deposits, and all this in the face of an express provision, investing the court with power touching the infraction of the charter, directing in what manner the trial should be commenced and conducted, and securing expressly to the bank the sacred right of trial by jury, in finding the facts. All this passed for nothing in the eyes of the Secretary, who was too deeply engrossed in providing for the common welfare, to regard either Congress, the Court, or the Constitution.

The Secretary next proceeds to supervise the general operations of the bank, pronouncing with authority, that at one time it has discounted too freely, and at another too sparingly, without reflecting that all the control which the government can rightfully exercise over the operations of the institution, is the five directors who represent the government in this respect. Directors! Mr. Calhoun exclaimed, did I say, (alluding to the present.) No, spies is their proper designation.

I cannot, said Mr. C. proceed with the remarks which I intended, on the remainder of the Secretary's reasons; I have not patience to dwell on assumptions of power, so bold, so lawless, and so unconstitutional; they deserve not the name of argument, and I cannot waste time in treating them as such. There are, however, two which I cannot pass over, not because they are more extraordinary, or audacious than the other, but for another quality which I choose not to designate.

The Secretary alleges that the Bank has interfered with the politics of the country. If this be true, it certainly is a most heinous offence. The bank is a great public trust, possessing for the purpose of discharging the trust, great power and influence, which it could not pervert from the object intended to that of influencing the politics of the country, without being guilty of a great political crime. In making these remarks, I do not intend to give any countenance to the truth of the charge alleged by the Secretary, nor to deny to the officers of the bank the right which belongs to them in common with every citizen, freely to form political principles, and act on them in their private capacity, without permitting them to influence their official conduct.

But it is strange it did not occur to the Secretary, while he was accusing and punishing the bank on the charge of interfering in the politics of the country, that the Government also was a great trust, vested with powers still more extensive, and influence immeasurably greater than that of the bank, given to enable it to discharge the object for which it was created; and that it has no more right to pervert its power and influence into the means of controlling the politics of the country, than the Bank itself. Can it be unknown to him that the Fourth Auditor of the Treasury—(an officer in his own department) the man who has made so prominent a figure in this transaction, was daily and hourly meddling in politics, and that he is one of the principal political managers of the Administration? Can he be ignorant that the whole power of Government has been perverted into a great political machine with a view of corrupting and controlling the country? Can he be ignorant that the avowed and open policy of the Government is to reward political friends and punish political enemies? and that, acting on this principle, it has driven from office hundreds of honest and competent officers for opinion's sake only, and filled their places with devoted partisans? Can he be ignorant that the real office of the bank, is not that it has intermeddled in politics, but because it would not intermeddle on the side of power? There is nothing more dignified than reproof from the lips of innocence, or punishment from the hands of justice; but change the picture—let the guilty reprove, and the criminal punish, and what more odious, more hateful, can be presented to the imagination?

The Secretary next tells us, in the same spirit, that the bank had been wasteful of the public funds. That it has spent some thirty, forty, or fifty thousand dollars, I do not remember the exact amount—(trifles have no weight in the determination of so great a question) in circulating essays and speeches in defence of the institution, of which sum one-fifth part—some seven thousand dollars—belonged to the Government. Well, sir, if the bank has really wasted this amount of the public money, it is a grave charge. It has not a right to waste a single cent, but I must say, in defence of the bank, that, as it was by the Executive, it would have been unfaithful to its trust both to stockholders and to the public, had it not resorted to every proper means in its power to defend its conduct, and among others the free circulation of able and judicious publications.

But, admit that the Bank has been guilty of wasting the public funds, to the full extent charged by the Secretary, I would ask, if he, the head of the financial department of the Government, is not under as high and solemn obligation to take care of the monied interests of the public as the bank itself? I would ask him to answer me a few simple questions: How has he performed this duty in relation to the interest which the public holds in the bank? Has he been less wasteful than he has charged the bank to have been? Has he not wasted thousands where the bank, even according to his own statement, has hundreds? Has he not by withdrawing the deposits, and placing them in the State Banks, where the public receives not a cent of interest, greatly affected the dividends of the Bank of the U. S. in which the Government, as a stockholder, is a loser to the amount of one-fifth of the diminution?—a sum which I will venture to predict will many fold exceed the entire amount which the bank has expended in its defence. But this is a small, a very small proportion of the public loss, in consequence of the course which the Executive has pursued in relation to the bank, and which has reduced the value of the shares from 130 to 103—(a Senator near me says much more. It may be, I am not particular in such things)—and on which the public sustains a corresponding loss on its share of the stock, amounting to seven millions of dollars—a sum more than two hundred fold greater than the waste which he has charged upon the bank. Other administrations may exceed this in talents, patriotism, and honesty, but certainly in audacity, in effrontery, it stands without a parallel!

The Secretary has brought forward many and grievous charges against the Bank. I will not condescend to notice them—the conduct of the Secretary, and not that of the Bank, which is immediately under examination, and he has no right to drag the conduct of the Bank into the issue, beyond its operations in regard to the deposits. To that extent I am prepared to examine his allegations against it; but beyond that he has no right—no, not the least—

to arraign the conduct of the Bank; and I for one, will not, by noticing his charges beyond that point, sanction his authority to call its conduct in question. But let the point in issue be determined, and I, as far as my voice extends, will give to those who desire it, the means of the freest and most unlimited inquiry into its conduct. I am no partizan of the Bank—I am connected with it in no way, by monied or political ties. I might say, with truth, that the Bank owes as much to me as to any other individual in the country; and I might even add that, had it not been for my efforts, it would not have been chartered. Standing in this relation to the institution, a high sense of delicacy—a regard to independence and character, has restrained me from any connexion with the institution whatever, except some trifling accommodations, in the way of ordinary business, which were not of the slightest importance either to the Bank or to myself.

But while I shall not condescend to notice the charges of the Secretary against the Bank, beyond the extent which I have stated, a sense of duty to the institution, and regard to the part which I took in its creation, compels me to notice two allegations against it which have fallen from another quarter. It is said that the Bank had no agency, or at least efficient agency, in the restoration of specie payment in 1817, and that it had failed to furnish the country with a uniform and sound currency, as had been promised at its creation. Both of these allegations I pronounce to be without just foundation. To enter into a minute examination of them would carry me too far from the subject, and I must content myself with saying, that having been on the political stage without interruption, from that day to this—having been an attentive observer of the question of the currency throughout the whole period—that the Bank has been an indispensable agent in the restoration of specie payments; that without it, the restoration could not have been effected, short of the utter prostration of all the monied institutions of the country, and an entire depreciation of Bank paper; and that it has not only restored specie payments, but has given a currency, far more uniform, between the extremes of the country, than was anticipated or even dreamed of at the time of its creation. I will say for myself that I did not believe, at that time, that the exchange between the Atlantic and the West would be brought lower than two and a half per cent, the estimated expense, then, including insurance and loss of time, of transporting specie between the two points. How much it was below the anticipated point, I need not state, the whole commercial world knows that it was not a fourth part at the time of the removal of the deposits.

But to return from this digression. Though I will not notice the charges of the Secretary for the reasons already stated; I will take the liberty of propounding to those who support them on this floor, a few plain questions. If there be in banking institutions an inherent tendency so strong to abuse and corruption as they contend—if, in consequence of this tendency, the bank of the United States be guilty of the enormous charges and corruptions alleged, notwithstanding its responsibility to the Government and our control over it, what is to be expected from irresponsible league banks, as called by the Senator from Kentucky, (Mr. Clay,) over which we can have no legal control? If our power of renewing the charter of the Bank of the United States—if our right to vacate the charter by *scire facias* in cases of misconduct—if the influence which the appointment of five Government Directors gives us; and, finally, if the power which we have of appointing committees to examine into its condition, are not sufficient to hold the institution in check; if, in spite of all these, it has, from the innate corruption of such institutions, been guilty of the enormous abuses and crimes charged against it; what may we not expect from the associated banks, the favorites of the Treasury, over the renewal of whose charter the Government has no power, against which it can issue no *scire facias*; in whose direction it has not a single individual, and into whose conduct Congress can appoint no committee to look? With these checks all withdrawn, what would be the condition of the public funds?

I said Mr. Calhoun, stated in the outset of my remarks, that as broad as was the power which the Secretary had assumed in relation to the deposits, that there was a portion of the transaction of a highly important character, to which he has not alluded, and in relation to which he has not even attempted a justification. I will now proceed to make good this assertion to the letter.

There is a material difference between withholding money from going into the bank, and withdrawing it after it has been placed there. The former is authorized in the manner which I have stated, under the sixteenth section, which directs, as has been frequently stated, that the public money shall be deposited in the bank, unless otherwise ordered by the Secretary of the Treasury. But neither that section nor any portion of the act incorporating the bank, nor, in truth, any other act, gives the Secretary any authority, of himself, to withdraw public money deposited in the bank. There is, I repeat, a material difference between withholding public money from deposit, and withdrawing it. When paid into the place designated by law as the depository of the public money, it passes to the credit of the Treasury, and then is in the Treasury of the United States, where it is placed under the protection of the constitution itself, and from which, by an express provision of the constitution, it can only be withdrawn by an appropriation made by law. So careful were the framers of the act of 1816, to leave nothing to implication, that express authority is given to the Secretary of the Treasury, in the sixteenth section, to transfer the deposits from one place, to another, for the convenience of disbursements; but which by a strange perversion, is now attempted to be so construed as to confer on the Secretary the power to withdraw the money from the depository, and to loan it to favorite State Banks.

I express myself too favorably, I should say, give—(they pay no interest,) with a view to sustain their credits or enlarge their profits—a power, not only far beyond the Secretary, but which Congress itself could not exercise without a flagrant breach of the constitution. But, it is said, in answer to these views, that money paid in deposit into the bank, as directed by law, is not in the Treasury. I will not stop, said Mr. C. to reply to such an objection. If it be not in the Treasury, where is it? If it be not money in the Treasury, where is the money annually reported to be in the Treasury? Where the eight or nine millions which, by the annual report of the Secretary, is said to be now in the Treasury? Are we to understand that none of this money is, in truth, in the Treasury?—that it is floating about at large, subject to be disposed of—to be given away, at the will of the Executive, to favorites and partisans? So it would seem; for it appears, by a correspondence between the Treasurer and the Cashier of the bank, derived through the bank, (the Secretary not deeming it worth while to give the slightest information of the transaction, as if a matter of course,) that he has drawn out two millions and a quarter of the public money, without appropriation, and distributed it as pleasure among his favorites!

But it is attempted to vindicate the conduct of the Secretary on the ground of precedent. I will not stop to notice whether the cases cited are in point; nor will I avail myself of the great and striking advantage that I might have on the question of precedent; this case stands alone and distinct from all others. There is none similar to it in magnitude and