and no other can be required. Yet, he would be charged with insanity who should contend, that the legislature might not superadd, to the oath directed by the constitution, such other oath of office as its wisdom might suggest.

So, with respect to the whole penal code of the United States; whence arises the power to punish in cases not prescribed by the constitution? All admit that the government may, legitimately, punish any violation of its laws; and yet, this is not among the enumerated powers of Congress. The right to enforce the observance of law, by punishing its infraction, might be denied with the more plausibility, because it is expressly given in some cases.

Congress is empowered "to provide for the punishment of counterfeiting the securities and current coin of the United States," and "to define and punish piracies and felonies committed on the high seas, and offences against the laws of nations." The several powers of Congress may exist in a very imperfect state to be sure, but they may exist, and be carried into execution, although no punishment should be inflicted in cases where the right to punish is not expressly given.

Take, for example, "the power to establish post offices and post roads." This power is executed by the single act of making the establishment.—But, from this has been inferred the power and duty of carrying the mail, along the post road, from one post office to another. And from this implied power, has again been inferred the right to punish those who steal letters from the post-office, or rob the mail. It may be said, with some plausibility, that the right to carry the mail, and to punish those who rob it, is not indispensably necessary, to the establishment of a post office and post road. This right is indeed essential to the beneficial exercise of the power, but not indispensably necessary to its existence. So, in the punishment of the crimes of stealing or falsifying a record or process of a court of the United States or of perjury in such court. To punish these offences is certainly conducive to the due administration of justice. But courts may exist, and may decide the causes brought before them, though such crimes escape punishment.

The baneful influence of this narrow construction on all the operations of the government, and the absolute impracticability of maintaining it without rendering the government incompetent to its great objects, might be illustrated by numerous examples drawn from the constitution and from our laws. The good sense of the public has pronounced, without hesitation, that the power of punishment appertains to sovereignty, and may be exercised whenever the sovereign has a right to act, as incidental to his constitutional powers. It is a means for carrying into execution all sovereign powers, and may be used, although not indispensably necessary. It is a right incidental to the powers, and conducive to its beneficial exercise.

If this limited construction of the word "necessary" must be abandoned in order to punish, whence is derived the rule which would reinstate it, when the government would carry its powers into execution by means not vindictive in their nature? If the word "necessary" means "needful," "requisite," "essential," "conducive to," in order to let in the power of punishment for the infraction of law, why is it not equally comprehensive when required to authorize the use of means which facilitate the execution of the powers of government without the infliction of punishment?

In ascertaining the sense in which the word "necessary" is used in this clause of the constitution, we may derive some aid from that with which it is associated. Congress shall have power "to make all laws which shall be necessary and *proper* to carry into execution" the powers of the government. If the word "necessary" was used in that strict and rigorous sense for which the counsel for the State of Maryland contend, it would be an extraordinary departure from the usual course of the human mind, as exhibited in composition, to add a word, the only possible effect of which is to qualify that strict & rigorous meaning; to present to the mind the idea of some choice of means of legislation not straightened and compressed within the narrow limits for which gentlemen contend.

But the argument which most conclusively demonstrates the error of the construction contended for by the Counsel of Maryland, is founded on the intention of the convention, as manifested in the whole clause. To waste time and argument in proving that, without it, Congress might carry its powers into execution, would be not much less idle than to hold a lighted taper to the sun. As little can it be required to prove that, in the absence of this clause Congress would have some choice of means. That it might employ those which, in its judgment, would most advantageously effect the object to be accomplished. That any means adapted to the end, any means which tended directly to the execution of the constitutional powers of the government, were in themselves constitutional. This clause, as construed by the State of Maryland, would abridge and almost annihilate this useful and necessary right of the Legislature to select its means. That this could not be intended is, we should think, had it not been already controverted, too apparent for controversy. We think so for the following reasons.

1. The clause is placed among the powers of Congress, not among the limitations in those powers.

2nd. Its terms purport to enlarge, not to diminish the powers vested in the government. It purports to be an additional power, not a restriction on those already granted. No reason has been or can be assigned for thus concealing an intention to narrow the discretion of the national legislature under words which purport to enlarge it. The framers of the constitution wished its adoption, and well knew that it would be endangered by its strength not by its weakness. Had they been capable of using language which would convey to the eye one idea, and, after deep reflection, impress on the mind another, they would rather have disguised the grant of power, than its limitation. If then their intention had been, by this clause, to restrain the free use of means which might otherwise have been implied that intention would have been inserted in another place, and would have been expressed in terms resembling these. "In carrying into execution the foregoing powers and all others," &c. "no laws shall be passed but such as are necessary and proper." Had the intention been to make this clause restrictive, it would unquestionably have been so in form as well as in effect.

The result of the most careful and attentive consideration bestowed upon this clause is that, if it does not enlarge, it cannot be construed to restrain the powers of Congress, or to impair the right of the legislature to exercise its best judgment in the selection of measures to carry into execution the constitutional powers of the government. If no other motive for its insertion can be suggested, a sufficient one is found in the desire to remove all doubts respecting the right to legislate on that vast mass of incidental power which must be involved in the constitution, if that instrument be not a splendid bauble.

We admit, as all must admit, that the powers of the government are limited, & that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

That a corporation must be considered as a means not less usual, not of higher dignity, not more requiring a particular specification than other means, has been sufficiently proved. If we look to the origin of corporations, to the manner in which they have been framed in that government from which we have derived most of our legal principles and ideas, or to the uses to which they have been applied, we find no reason to suppose that a constitution, omitting, & wisely omitting, to enumerate all the means for carrying into execution the great powers vested in government, ought to have specified this, Had it been intended to grant this power as one which should be distinct and independent to be exercised in any case whatever, it would have found a place among the enumerated powers of the government. But being considered merely as a means, to be employed only for the purpose of carrying into execution the given powers, there could be no motive for particularly mentioning it.

The propriety of this remark would seem to be generally acknowledged by the universal acquiescence in the construction which has been uniformly put on the 3d sec. of the 4th article of the constitution The power to make all needful rules and regulations respecting the territory or other property belonging to the United States" is not more comprehensive, than the power to make all laws which shall be necessary and proper for carrying into execution" the powers of the government. Yet all admit the constitutionality of a territorial government, which is a corporate body.

If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank if required for its fiscal operations. To use one, must be within the discretion of Congress, if it be an appropriate mode of executing the powers of government. That it is a convenient, a useful, and essential instrument in the prosecution of its fiscal operations, is not now a subject of controversy. All those who have been concerned with the administration of our finances, have concurred in representing its importance and necessity; and so strongly have they been felt, that statesmen of the first class, whose previous opinions against it had been confirmed by every circumstance which can fix the human judgment, have yielded those opinions to the exigencies of the nation. Under the confederation, Congress, justifying the measure by its necessity, transcended perhaps its powers to obtain the advantage of a bank; and our own legislation attests the universal conviction of the utility of this measure. The time has passed away when it can be necessary to enter into any discussion in order to prove the importance of this instrument as a means to effect the legitimate objects of the government.

But were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed is to be discussed in another place. Should Congress in the execution of its powers, adopt measures which are prohibited by the constitution; or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government; it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to enquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power.

(Concluded on fourth page.)

FOREIGN NEWS.

FROM FRANCE.

Boston, March 16.

By the arrival of the brig Mary Jane, from Havre, we have been favoured with French Papers to the 21st of Jan. A few translations follow:

The Emperor of Austria was about to proceed on a visit to Naples and Sicily, Florence, (where he was born,) Parma, Milan and Tyrod. Napoleon's wife will return with him. After this journey, the Empress of Austria will be crowned at Prague, and then, with the Emperor, visit Russia

PARIS, JAN. 17.

The Emperor of Austria has appointed the Duke of Wellington Field Marshal of Austria, and proprietor of the regiment d'Erback.

The new English expedition to explore the interior of Africa, is under the command of M. Ritchie, recently private Secretary of the English Ambassador at Paris—his associates are Lieut. Lyon, of the English ship Albion, M. Duponte, French naturalist, a surgeon, and a carpenter. The Bashaw and a military escort are to accompany them from Tripoli, where they now are, as far as Mourzook—they ought to have a similar protection during the whole of their journey.

M. Guizot is appointed director general of departments under the Minister of the Interior.

Baron Louis is Minister of Finance in France, and St. Cyr is Minister of War. Count Mathieu Dumas is a member of the Council of State.

Gen. Dessolle is now the French Minister of Foreign Affairs.

Gen. Excelmans has received permission to return to France.

Gen. Alix is also permitted to return to France.

STUTGARD, JAN. 13.

Last night, at 10 o'clock, the remains of the late Queen of Wirtemberg were conveyed by torch light to the Grecian Chapel. The coffin was borne by twelve Chamberlains, preceded by the persons attached to the Court. Count Salm, Grand Ecuyer to the deceased Queen, bearing the Order of St. Catherine: Count Berolding en, her first Chamberlain, bearing the Imperial Mantle; the Grand Master of the Queen's Court, the Minister of State, Count Winzingerode, bearing the Crown; four Grand Crosses of the Order of the Crown of Wirtemberg, supporting the four corners of the pall, and the King's Adjutant Generals the canopy The Royal guard was drawn up on parade, and the religious ceremonies being gone through, the body was deposited in the vault where the members of the Royal Family of Wirtemberg repose.

LONDON, JAN. 11.

Since the disastrous era of 1810, we do not recollect to have witnessed so many failures as have lately taken place. On Monday we were made acquainted with those of seven French houses; the next day, a leading house of this city, having as principal a bank director and member of parliament, stopped payment. On Wednesday and Thursday other failures were announced, and on Friday, one of the first houses in London, whose credit had never been doubted, was obliged to suspend payment. This concern is said to have failed for £900,000 sterling; being the greatest failure since that of Fordyce in 1792. No failure ever excited more interest than this; the high reputation of this house for probity has drawn forth much commiseration for its misfortunes. To close, two other houses stopped payment on Saturday.

[It appears by letters from France that the house connected with the Bank Director has resumed its payments, and that business prospects were improving. Stocks had risen.]

Mr. Courtois, a London hair-dresser, died lately in London, leaving a fortune of 4,800,000 francs to his nephew of the same name at Brussels.

ON FOREIGN AFFAIRS.

From the New-York American.

The struggles of Europe, which have so long disturbed the repose of the whole world, are for the present suspended, and, as many good men believe, are satisfactorily terminated.—The man, whom heaven permitted so long to scourge the human race, cast down from the pinnacle of his power, and, chained to a rock in the ocean, seems destined to linger in a tortured existence. The cause of the allies has prevailed; and the suppression, division, & distribution of states, which have been made by them, are supposed to establish a more solid and durable balance of power than that which was formerly provided by, and grew out of, the great treaty of Westphalia. If we could rely upon the treaties that have been concluded, and the declarations and manifestoes that have been published, we also might join in the opinion that is propagated with so much industry, and conclude, that the late settlement of the affairs of Europe, will not only be permanent, but auspicious to the future happiness of the world. But it should be recollected, that the last half century has been a period of intellectual exertion and activity, which has no parallel in the history of mankind. The principles and forms of government, the rights and duties of rulers, and the object of civil and political laws, have, within this period, been subjected to rigorous examination. Truth has been separated from falsehood, and error, when detected, has not escaped condemnation.

The political disquisitions, which preceded the American revolution, prepared the way for the more full developement of the important principles, which that great event victoriously established. Since that period, ancient prejudices have been successfully assailed, and usurped establishments have been shaken. Prescription, which changes wrong to right, has lost its force, and, because a political dogma is ancient, it is no longer to be inferred, that it is *therefore* true. Governments are now acknowledged to be formed for the benefit of the governed, and not for the exclusive advantage of the governors. The association, to be lawful, must be founded in contract; and as violence never has, so it is admitted that it never can, establish as right, that which is naturally or morally wrong. The diffusion of literature, the progress of science, and the power of the press, have united to extend and to strengthen political truth, and to refute and expose political error.

The universities of Germany, with the institutions of learning in the other European states, have encouraged and prosecuted inquiries, which have served to elevate the human character, as well as to disclose the artful devices, by which the rights and welfare of the many have been so unworthily sacrificed, to the gratification and advantage of the few. The extension of commerce, and the multiplied intercourse between nations, have removed jealousies, and softened animosities, which, for ages, have been nurtured and strengthened by the rulers of the earth. Men of letters, every where, belong to one commonwealth; and their labors, their opinions, and sympathies, all tend to one and the same beneficial object, that of extending the welfare and happiness of the great family of mankind.

France, under all her mortifying disappointments—after the repeated perfidies of those to whom she gave her confidence—after the destruction of a corps of as learned and scientific men as had at any period adorned her history, has made positive advances in civil, political and religious freedom. France will not stop where she has arrived; she beholds the goal that is before her, and it is the hope of every friend of his species, that she may attain it. Her once powerful nobility is deprived of its innumerable and oppressive privileges; her clergy is reduced to the ostentatious and modest condition, in which their example and their services will most effectually promote the cause of their adorable master. Tithes are abolished, and the lands are divided among the cultivators, who are also the uncontrolled proprietors. The freedom of the press, though not complete, is no longer under its former shackles; and, above all, the consent of an efficient representation of the people of France is declared indispensable, not only to the levying taxes, but to the enactment of laws. The ancient monarchy restrained as it was by manners and by education, is now subjected to constitutional limitations, and the French people are not only to become the keepers of their own liberties but the only supporters of the throne.

In this condition of Europe, with the deep impressions which are already engraved upon the minds of the people, and the progress that has been made in the ascertainment of their rights, a return to their old and slavish condition seems to us to be impossible. The value of the acquisition is too well understood and too highly prized, to be quietly surrendered; and the attempt of even the combined sovereigns to effect it, while it would re-open the wounds of their respective countries, would fail to accomplish its purpose. The people of every country in Europe, not excepting those of Spain, will make themselves and their interests felt, and the proofs that this will happen, if the broken sceptre of Napoleon is not sufficient, are daily becoming more manifest, not only by what has been done in France for their security, but by what is doing in the Netherlands, throughout Germany, and the Austrian dominions, and even within the empire of the mighty Czar.

These considerations might be further pursued, and, to increase their force, we might present our views of the conflicting interests of the allied powers, and hence infer the probability that their alliance will be of short duration; but this would exceed our present limits, and is not now requisite, in addition to the foregoing reflections, to show the uncertainty, in point of duration, of the present repose of Europe.

FROM THE NATIONAL INTELLIGENCER.

STATE INSOLVENT LAWS.

Great interest having been excited respecting the recent decisions of the Supreme Court, on the subject of the State Bankrupt and Insolvent Laws, we have obtained a statement of the points decided by the Court, the accuracy of which may be depended on, and which we now lay before our readers. The opinion at large, with the cases, and the argument of counsel, will very soon appear in the 4th volume of Mr. Wheaton's Reports. It would be obviously impossible to include all these in the compass of a newspaper: and we have, therefore, limited ourselves to a brief analysis of the opinions of the Court.

The first cause on this subject which was heard and determined by the Court, was that of Sturges against Crowninshield. This was an action of assumpsit against the defendant as promissor upon two promissory notes, both dated at New-York, 22d March, 1811, for the sum of $771 81 each and payable to the plaintiff, one on the first of August, 1811. The defendant plead his discharge under "an act for the benefit of insolvent debtors and their creditor," passed by the legislature of New-York, the third day of April, 1811. After stating the provisions of the act, the defendant's plea averred his compliance with them, and that he was discharged, and a certificate given to him the day of 1812.

To this plea there was a demurrer and joinder. At the October term of the Circuit Court, 1817, this cause came on to be argued and heard on the demurrer, and the following questions arose, viz.

1. Whether, since the adoption of the constitution of the United States, any State has authority to pass a bankrupt law, or whether the power is exclusively vested in the Congress of the United States?

2. Whether the act of New-York, passed the third day of April, 1811, and stated in the plea in this case, is a bankrupt act within the meaning of the constitution of the U. States?

3. Whether the act aforesaid is an act or law impairing the obligation of contract, within the meaning of the constitution of the U. States?

4. Whether the plea is a good and sufficient bar of the plaintiff's action?

And, after hearing counsel upon the questions, the Judges of the Circuit court were opposed in opinion thereupon; and upon motion of the plaintiff's counsel, the questions were certified to the Supreme Court, for their final decision.

On the first question, the Supreme Court were of opinion, that, until the power, contained in the constitution of the U. States, to pass uniform laws throughout the union on the subject of bankruptcies, be exercised by Congress, the states have authority to pass a bankrupt law, provided such law contains no principle violating the 10th section of the first article of the constitution of the United States, which declares that "no state shall pass any law impairing the obligation of contracts."

This opinion, of course, rendered it unnecessary to consider the 2d question.

On the 3d question, the Court were of opinion, that the act of New-York, which was pleaded in this case, (and which not only liberates the person of the debtor, but discharges him from all liability for any debt previously contracted on his surrendering his property in the manner it prescribes) is an act or law impairing the obligation of contracts within the meaning of the 10th section of the first article of the constitution of the U. States. In delivering the judgment of the Court the Chief Justice stated, that, as to what was intended by the framers of the constitution when they used the terms, "*any law impairing the obligation of contracts,*" it would seem difficult to substitute words which are more intelligible, or less liable to misconstruction. A contract is an agreement in which a party undertakes to do or not to do a particular thing.—The law binds him to perform his undertaking, and this is, of course, the obligation of a contract. In the case at the bar, the defendant had given his promissory note to pay the plaintiff a sum of money on or before a certain day. The contract binds him to pay that sum on that day, and this is its obligation. Any law, which releases a part of this obligation, must, in the literal sense of the word, impair it. Much more must a law impair it which makes it totally invalid, and entirely discharges it,

It was not necessary, nor would it have been safe, for the framers of the constitution to enumerate particularly the objects to which the principle they intended to establish should apply. T