# Alexander Hamilton's Opinion as to the Constitutionality of the Bank of the United States, 1791

The Secretary of the Treasury having perused with attention the papers containing the opinions of the Secretary of State and Attorney General, concerning the constitutionality of the bill for establishing a National Bank, proceeds, according to the order of the President, to submit the reasons which have induced him to entertain a different opinion.

It will naturally have been anticipated, that in performing this task, he would feel uncommon solicitude. Personal considerations alone, arising from the reflection that the measure originated with him, would be sufficient to produce it. The sense which he has manifested of the great importance of such an institution to the successful administration of the department under his particular care, and an expectation of serious ill consequences to result from a failure of the measure, do not permit him to be without anxiety on public accounts. But the chief solicitude arises from a firm persuasion, that principles of construction like those espoused by the Secretary of State and Attorney General, would be fatal to the just and indispensable authority of the United States.

In entering upon the argument, it ought to be premised that the objections of the Secretary of State and Attorney General are founded on a general denial of the authority of the United States to erect corporations. The latter, indeed, expressly admits, that if there be anything in the bill which is not warranted by the Constitution, it is the clause of incorporation.

Now it appears to the Secretary of the Treasury that this general principle is inherent in the very definition of government, and essential to every step of progress to be made by that of the United States, namely: That every power vested in a government is in its nature sovereign, and includes, by force of the term, a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the essential ends of political society.

This principle, in its application to government in general, would be admitted as an axiom; and it will be incumbent upon those who may incline to deny it, to prove a distinction, and to show that a rule which, in the general system of things, is essential to the preservation of the social order, is inapplicable to the United States.

The circumstance that the powers of sovereignty are in this country divided between the National and State governments, does not afford the distinction required. It does not follow from this, that each of the portion of powers delegated to the one or to the other, is not sovereign with regard to its proper objects. It will only follow from it, that each has sovereign power as to certain things, and not as to other things. To deny that the government of the United States has sovereign power, as to its declared purposes and trusts, because its power does not extend to all cases would be equally to deny that the State governments have sovereign power in any case, because their power does not extend to every case. The tenth section of the first article of the Constitution exhibits a long list of very important things which they may not do. And thus the United States would furnish the singular spectacle of a political society without sovereignty, or of a people governed, without government.

If it would be necessary to bring proof to a proposition so clear, as that which affirms that the powers of the federal government, as to its objects, were sovereign, there is a clause of its Constitution which would be decisive. It is that which declares that the Constitution, and the laws of the United States made in pursuance of it, and all treaties made, or which shall be made, under their authority, shall be the serene law of the land. The power which can create the supreme law of the land in any case, is doubtless sovereign as to such case.

This general and indisputable principle puts at once an end to the abstract question, whether the United States have power to erect a corporation; that is to say, to give a legal or artificial capacity to one or more persons, distinct from the natural. For it is unquestionably incident to sovereign power to erect corporations, and consequently to that of the United States, in relation to the objects intrusted to the management of the government. The difference is this: where the authority of the government is general, it can create corporations in ad cases, where it is

confined to certain branches of legislation, it can create corporations only in those cases.

Here then, as far as concerns the reasonings of the Secretary of State and the Attorney General, the affirmative of the constitutionality of the bill might be permitted to rest. It will occur to the President, that the principle here advanced has been untouched by either of them.

For a more complete elucidation of the point, nevertheless, the arguments which they had used against the power of the government to erect corporations, however foreign they are to the great and fundamental rule which has been stated, shall be particularly examined. And after showing that they do not tend to impair its force, it shall also be shown that the power of incorporation, incident to the government in certain cases, does fairly extend to the particular case which is the object of the bill.

The first of these arguments is, that the foundation of the Constitution is laid on this ground: " That all powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved for the States, or to the people." Whence it is meant to be inferred, that Congress can in no case exercise any power not Included in those not enumerated in the Constitution. And it is affirmed, that the power of erecting a corporation is not included in any of the enumerated powers.

The main proposition here laid down, in its true signification is not to be questioned. It is nothing more than a consequence of this republican maxim, that all government is a delegation of power. But how much is delegated in each case, is a question of fact, to be made out by fair reasoning and construction, upon the particular provisions of the Constitution, taking as guides the general principles and general ends of governments.

It is not denied that there are implied well as express powers, and that the former are as effectually delegated as the tatter. And for the sake of accuracy it shall be mentioned, that there is another class of powers, which may be properly denominated resting powers. It will not be doubted, that if the United States should make a conquest of any of the territories of its neighbors, they would possess sovereign jurisdiction over the conquered territory. This would be rather a result, from the whole mass of the powers of the government, and from the nature of political society, than a consequence of either of the powers specially enumerated.

But be this as it may, it furnishes a striking illustration of the general doctrine contended for; it shows an extensive case in which a power of erecting corporations is either implied in or would result from, some or all of the powers vested in the national government. The jurisdiction acquired over such conquered country would certainly be competent to any species of legislation.

To return: It is conceded that implied powers are to be considered as delegated equally with express ones. Then it follows, that as a power of erecting a corporation may as well be implied as any other thing, it may as well be employed as an instrument or mean of carrying into execution any of the specified powers, as any other instrument or mean whatever. The only question must be in this, as in every other case, whether the mean to be employed or in this instance, the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government. Thus a corporation may not be erected by Congress for superintending the police of the city of Philadelphia, because they are not authorized to regulate the police of that city. But one may be erected in relation to the collection of taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian tribes; because it is the province of the federal government to regulate those objects, and because it is incident to a general sovereign or legislative power to regulate a thing, to employ all the means which relate to its regulation to the best and greatest advantage.

A strange fallacy seems to have crept into the manner of thinking and reasoning upon the subject. Imagination appears to have been unusually busy concerning it. An incorporation seems to have been regarded as some great independent substantive thing; as a political end of peculiar magnitude and moment; whereas it is truly to be considered as a quality, capacity, or mean to an end. Thus a mercantile company is formed, with a certain capital, for the purpose of carrying on a particular branch of business. Here the business to be prosecuted is the end. The association, in order to form the requisite capital, is the primary mean. Suppose that an incorporation were added to this, it would only be to add a new quality to that association, to give it an artificial capacity, by which it would be enabled to prosecute the business with more safety

and convenience.

That the importance of the power of incorporation has been exaggerated, leading to erroneous conclusions, will further appear from tracing it to its origin. The Roman law is the source of it, according to which a voluntary association of individuals, at any tome, or for any purpose, was capable of producing it. In England, whence our notions of it are immediately borrowed, it forms part of the executive authority, and the exercise of it has been often delegated by that authority. Whence, therefore, the ground of the supposition that it lies beyond the reach of all those very important portions of sovereign power, legislative as well as executive, which belongs to the government of the United States.

To this mode of reasoning respecting the right of employing all the means requisite to the execution of the specified powers of the government, it is objected, that none but necessary and proper means are to be employed; and the Secretary of State maintains, that no means are to be considered as necessary but those without which the grant of the power would be nugatory. Nay, so far does he go in his restrictive interpretation of the word, as even to make the case of necessity which shall warrant the constitutional exercise of the power to depend on casual and temporary circumstances; an idea which alone refutes the construction. The expediency of exercising a particular power, at a particular time, must, indeed depend on circumstances, but the constitutional right of exercising it must be uniform and invariable, the same to-day as to-morrow.

All the arguments, therefore, against the constitutionality of the bill derived from the accidental existence of certain State banks, institutions which happen to exist to-day, and, for aught that concerns the government of the United States, may disappear tomorrow, must not only be rejected as fallacious, but must be viewed as demonstrative that there is a radical source of error in the reasoning.

It is essential to the being of the national government, that so erroneous a conception of the meaning of the word necessary should be exploded.

It is certain that neither the grammatical nor popular sense of the term requires that construction. According to both, necessary often means no more than needful, requisite, incidental, useful, or conducive to. It is a common mode of expression to say, that it is necessary for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interests of the government or person require, or will be promoted by, the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense. And it is the true one in which it is to be understood as used in the Constitution. The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are thought to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof."

To understand the word as the Secretary of State does, would be to depart from its obvious and popular sense, and to give it a restrictive operation, an idea never before entertained. It would be to give it the same force as if the word absolutely or indispensably had been prefixed to it.

Such a construction would beget endless uncertainty and embarrassment. The cases must be palpable and extreme, in which it could be pronounced, with certainty, that a measure was absolutely necessary, or one, without which, the exercise of a given power would be nugatory. There are few measures of any government which would stand so severe a test. To insist upon it, would be to make the criterion of the exercise of any implied power, a case of extreme necessity; which is rather a rule to justify the overleaping of the bounds of constitutional authority, than to govern the ordinary exercise of it.

It may be truly said of every government, as well as of that of the United States, that it has only a right to pass such laws as are necessary and proper to accomplish the objects intrusted to it. For no government has a right to do merely what it pleases. Hence, by a process of reasoning similar to that of the Secretary of State, it might be proved that neither of the State governments has a right to incorporate a bank. It might be shown that all the public business of the state could be performed without a bank, and inferring thence that it was unnecessary, it might be argued that it could not be done, because it is against the rule which has been just mentioned. A like

mode of reasoning would prove that there was no power to incorporate the inhabitants of a town, with a view to a more perfect police. For it is certain that an incorporation may be dispensed with, though it is better to have one. It is to be remembered that there is no express power in any State constitution to erect corporations.

The degree in which a measure is necessary, can never be a test of the legal right to adopt it; that must be a matter of opinion, and can only be a test of expediency. The relation between the measure and the end; between the nature of the mean employed toward the execution of a power, and the object of that power must be the criterion of constitutionality, not the more or less of necessity or utility.

The practice of the government is against the rule of construction advocated by the Secretary of State. Of this, the Act concerning lighthouses, beacons, buoys, and public piers, is a decisive example. This, doubtless, must be referred to the powers of regulating trade, and is fairly relative to it. But it cannot be affirmed that the exercise of that power in this instance was strictly necessity or that the power itself would be nugatory, with out that of regulating establishments of this nature.

This restrictive interpretation of the word necessary is also contrary to this sound maxim of construction, namely, that the powers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defense, etc., ought to be construed liberally in advancement of the public good. This rule does not depend on the particular form of a government, or on the particular demarcation of the boundaries of its powers, but on the nature and object of government itself. The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent, and complexity, that there must of necessity be great latitude of discretion in the selection and application of those means. Hence, consequently, the necessity and propriety of exercising the authorities intrusted to a government on principles of liberal construction.

The Attorney General admits the rule, but takes a distinction between a State and the Federal Constitution. The latter, he thinks, ought to be construed with greater strictness, because there is more danger of error in defining partial than General powers. But the reason of the rule forbids such a distinction. This reason is, the variety and extent of public exigencies, a far greater proportion of which, and of a far more critical kind, are objects of National than of State administration. The greater danger of error, as far as it is supposable, may be a prudential reason for caution in practice, but it cannot be a rule of restrictive interpretation.

In regard to the clause of the Constitution immediately under consideration, it is admitted by the Attorney General, that no restrictive effect can be ascribed to it. He defines the word necessary thus: ``To be necessary is to be incidental, and may be denominated the natural means of executing a power.''

But while on the one hand the construction of the Secretary of State is deemed inadmissible, it will not be contended, on the other, that the clause in question gives any new or independent power. But it gives an explicit sanction to the doctrine of implied powers, and is equivalent to an admission of the proposition that the government, as to its specified powers and objects, has plenary and sovereign authority, in some cases paramount to the States; in others, co-ordinate with it. For such is the plain import of the declaration, that it may pass all tams necessary and proper to carry into execution those powers.

It is no valid objection to the doctrine to say, that it is calculated to extend the power of the government throughout the entire sphere of State legislation. The same thing has been said, and may be said, with regard to every exercise of power by implication or construction.

The moment the literal meaning is departed from, there is a chance of error and abuse. And yet an adherence to the letter of its powers would at once arrest the motions of government. It is not only agreed, on all hands, that the exercise of constructive powers is indispensable, but every act which has been passed, is more or less an exemplification of it. One has been already mentioned that relating to lighthouses, etc. that which declares the power of the President to remove officers at pleasure, acknowledges the same truth in another and a signal instance.

The truth is, that difficulties on this point are inherent in the nature of the Federal Constitution;

they result inevitably from a division of the legislative power. The consequence of this division is, that there will be cases clearly within the power of the national government; others, clearly without its powers; and a third class, which will leave room for controversy and difference of opinion, and concerning which a reasonable latitude of judgment must be allowed.

But the doctrine which is contended for is not chargeable with the consequences imputed to it. It does not affirm that the national government is sovereign in all respects, but that it is sovereign to a certain extent; that is, to the extent of the objects of its specified powers.

It leaves, therefore, a criterion of what is constitutional, and of what is not so. This criterion is the end, to which the measure relates as a mean. If the end be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that end, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority. There is also this further criterion, which may materially assist the decision: Does the proposed measure abridge a pre-existing right of any State or of any individual ? If it does not, there is a strong presumption in favor of its constitutionality, and slighter relations to any declared object of the Constitution may be permitted to turn the scale.

The general objections, which are to be inferred from the reasonings of the Secretary of State and Attorney General, to the doctrine which has been advanced, have been stated, and it is hoped satisfactorily answered, Those of a more particular nature shall now be examined.

The Secretary of State introduces his opinion with an observation, that the proposed incorporation undertakes to create certain capacities, properties, or attributes, which are against the laws of alienage, descents, escheat and forfeiture, distribution and monopoly, and to confer a power to make laws paramount to those of the States. And nothing, says he, in another place, but necessity, invincible by other means, can justify such a prostration of laws, which constitute the pillars of our whole system of jurisprudence, and are the foundation laws of the State governments. If these are truly the foundation laws of the several States, then have most of them subverted their own foundations. For there is scarcely one of them which has not, since the establishment of its particular constitution, made material alterations in some of those branches of its jurisprudence, especially the law of descents. But it is not conceived how anything can be called the fundamental law of a State government which is not established in its constitution unalterable by the ordinary legislature. And, with regard to the question of necessity, it has been shown that this can only constitute a question of expediency, not of right.

To erect a corporation, is to substitute a legal or artificial for a natural person, and where a number are concerned, to give them individuality. To that legal or artificial person, once created, the common law of every State, of itself, annexes all those incidents and attributes which are represented as a prostration of the main pillars of their jurisprudence.

It is certainly not accurate to say, that the erection of a corporation is against those different head's of the State laws; because it is rather to create a kind of person or entity, to which they are inapplicable, and to which the general rule of those laws assign a different regimen. The laws of alienage cannot apply to an artificial person, because it can have no country; those of descent cannot apply to it, because it can have no heirs; those of escheat are foreign from it, for the same reason; those of forfeiture, because it cannot commit a crime; those of distribution, because, though it may be dissolved, it cannot die.

As truly might it be said, that the exercise of the power of prescribing the rule by which foreigners shall be naturalized, is against the law of alienage, while it is, in fact, only to put them in a situation to cease to be the subject of that law. To do a thing which Is against a law, is to do something which it forbids, or which is a violation of it.

But if it were even to be admitted that the erection of a corporation is a direct alteration of the state laws, in the enumerated particulars, it would do nothing toward proving that the measure was unconstitutional. If the government of the United States can do no act which amounts to an alteration of a State law, all its powers are nugatory; for almost every new law is an alteration, in same way or other, of an old law, either common or statute.

There are laws concerning bankruptcy in some States. Some States have laws regulating the values of foreign coins. Congress are empowered to establish uniform laws concerning bankruptcy throughout the United States, and to regulate the values of foreign coins. The

exercise of either of these powers by Congress, necessarily involves an alteration of the laws of those States.

Again. Every person, by the common law of each State, may export his property to foreign countries, at pleasure.: But Congress, in pursuance of the power of regulating trade, may prohibit the exportation of commodities; in doing which, they would alter the common law of each State, in abridgment of individual right.

It can therefore never be good reasoning to say this or that act is unconstitutional, because it alters this or that law of a State. It must be shown that the act which makes the alteration is unconstitutional on other accounts, not because it makes the alteration.

There are two points in the suggestions of the Secretary of State, which have been noted, that are peculiarly incorrect. One is, that the proposed incorporation is against the laws of monopoly, because it stipulates an exclusive right of banking under the national authority; the other, that it gives power to the institution to make laws paramount to those of the States.

But, with regard to the first: The bill neither prohibits any State from erecting as many banks as they please, nor any number of individuals from associating to carry on the business, and consequently, is free from the charge of establishing a monopoly; for monopoly implies a legal impediment to the carrying on of the trade by others than those to whom it is granted.

And with regard to the second point, there is still less foundation. The by-laws of such an institution as a bank can operate only on its own members can only concern the disposition of its own property, and must essentially resemble the rules of a private mercantile partnership. They are expressly not to be contrary to law; and law must here mean the law of a State, as well as of the United States. There never can be a doubt, that a law of a corporation, if contrary to a law of a State, must be overruled as void unless the law of the State is contrary to that of the United States and then the question will not be between the law of the State and that of the corporation, but between the law of the State and that of the United States.

Another argument made use of by the Secretary of State is, the rejection of a proposition by the Convention to empower Congress to make corporations, either generally, or for some special purpose.

What was the precise nature or extent of this proposition, or what the reasons for refusing it, is not ascertained by any authentic document, or even by accurate recollection. As far as any such document exists, it specifies only canals. If this was the amount of it, it would, at most, only prove that it was thought inexpedient to give a power to incorporate for the purpose of opening canals, for which purpose a special power would have been necessary, except with regard to the western territory, there being nothing in any part of the Constitution respecting the regulation of canals. It must be confessed, however, that very different accounts are given of the import of the proposition, and of the motives for rejecting it. Some affirm, that it was confined to the opening of canals and obstructions in rivers, others, that it embraced banks; and others, that it extended to the power of incorporating generally. Some, again, allege, that it was disagreed to because it was thought improper to vest in Congress a power of erecting corporations. Others, because it was thought unnecessary to specify the power, and inexpedient to furnish an additional topic of objection to the Constitution. In this state of the matter, no inference whatever can be drawn from it.

But whatever may have been the nature of the proposition, or the reasons for rejecting it, nothing is included by it, that is the proposition, in respect to the real merits of the question. The Secretary of State will not deny, that, whatever may have been the intention of the framers of a constitution, or of a law, that intention is to be sought for in the instrument itself, according to the usual and established rules of construction. Nothing is more common than for laws to express and elect more or less than was intended. If, then, a power to erect a corporation in any case be deducible, by fair inference, from the whole or any part of the numerous provisions of the Constitution of the United States arguments drawn from extrinsic circumstances regarding the in tension of the Convention must be rejected.

Most of the arguments of the Secretary of State, which have not been considered in the foregoing remarks, are of a nature rather to apply to the expediency than to the constitutionality of the bill. They will, however, be noticed in the discussions which will be necessary in reference

to the particular heads of the powers of the government which are involved in the question.

Those of the Attorney General will now properly come under view.

His first objection is, that the power of incorporation is not expressly given to Congress. This shall be conceded, but in this sense only, that it is not declared in express terms that Congress may erect a corporation. But this cannot mean, that there are not certain express powers which necessary include it. For instance Congress have express power to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased, by consent of the legislature of the State in which the same shall be for the erection of forts, arsenals, dock-yards, and other needful buildings. Here, then, is express power to exercise exclusive legislation, in all cases whatsoever, over certain Ices, that is to do, in respect to those places, all that any government whatsoever may do. For language does not afford a more complete designation of sovereign power than in those comprehensive terms. It is, in other words, a power to pass all laws whatsoever, and consequently, to pass laws for erecting corporations, as well as for any other purpose which is the proper object of law in a free govern meet.

Surely it can never be believed that Congress, with exclusive powers of legislation in all cases whatsoever, cannot erect a corporation within the district which shall become the seat of government, for the better regulation of its police. And yet there is an unqualified denial of the power to erect corporations in every case on the part both of the Secretary of State and of the Attorney General; the former, indeed, speaks of that power in these emphatical terms: That it is a right remaining exclusively with the States.

As far, then, as there is an express power to do any particular act of legislation, there is an express one to erect a corporation in the case above described. But, accurately speaking, no particular power is more than that implied in a, general one. Thus the power to lay a duty on a gallon of rum is only a particular implied in the general power to collect taxes, duties, imposts, and excises. This serves to explain in what sense it may be said that Congress have not an express power to make corporations.

This may not be an improper place to take notice of an argument which was used in debate in the House of Representatives. It was there argued, that if the Constitution intended to confer so important a power as that of erecting corporations, it would have been expressly mentioned. But the case which has been noticed is clearly one in which such a power exists, and yet without any specification of express grant of it, further than as every particular implied in a general power can be said to be so granted.

But the argument itself is founded upon an exaggerated and erroneous conception of the nature of the power. It has been shown that it is not of so transcendent a kind as the reasoning supposes, and that, viewed in a just light, it is a mean which ought to have been left to implication, rather than an end which ought to have been expressly granted.

Having observed that the power of erecting corporations is not expressly granted to Congress, the Attorney General proceeds thus:

" If it can be exercised by them, it must be

"1. Because the nature of the federal government implies it.

"2. Because it is involved in some of the specified powers of legislation.

" 3. Because it is necessary and proper to carry into execution some of the specified powers."

To be implied in the nature of the federal government, says he, would beget a doctrine so indefinite as to grasp every power.

This proposition, it ought to be remarked, is not precisely, or even substantially, that which has been relied upon. The proposition relied upon is, that the specified powers of Congress are in their nature sovereign. That it is incident to sovereign power to erect corporations, and that

therefore Congress have a right, within the sphere and in relation to the objects of their power, to erect corporations. It shall, however, be supposed that the Attorney General would consider the two propositions in the same light, and that the objection made to the one would be made to the other.

To this objection an answer has been already given. It is this, that the doctrine is stated with this express qualification, that the right to erect corporations does only extend to cases and objects within the sphere of the specified powers of the government. A general legislative authority implies a power to erect corporations in all cases. A particular legislative power implies authority to erect corporations in relation to cases arising under that power only. Hence the affirming that, as incident to sovereign power, Congress may erect a corporation in relation to the collection of their taxes, is no more to affirm that they may do whatever else they please, than the saying that they have a power to regulate trade, would be to affirm that they have a power to regulate religion; or than the maintaining that they have sovereign power as to taxation, would be to maintain that they have sovereign power as to everything else.

The Attorney General undertakes in the next place to show, that the power of erecting corporations is not involved in any of the specified powers of legislation confided to the national government. In order to this, he has attempted an enumeration of the particulars which he supposes to be comprehended under the several heads of the Covers to lay and collect taxes, &c.; to borrow money on the credit of the United States, to regulate commerce with sovereign nations; between the States, and with the Indian tribes, to dispose of and make all needful rules and regulations respecting the territory of other property belonging to the United States. The design of which enumeration is to show, what is included under those different heads of power, and negatively, that the power of erecting corporations is not included.

The truth of this inference or conclusion must depend on the accuracy of the enumeration. If it can be shown that the enumeration is defective, the inference is destroyed. To do this will be attended with no difficulty.

The heads of the power to lay and collect taxes are stated to be:

1. To stipulate the sum to be lent.

2. An interest or no interest to be paid.

3. The time and manner of repaying, unless the loan be placed on an irredeemable fund.

This enumeration is liable to a variety of objections. It omits in the first place, the pledging or mortgaging of a fund for the security of the money lent, an usual, and in most cases an essential ingredient.

The idea of a stipulation of an interest or no interest is too confined. It should rather have been said, to stipulate the consideration of the loan. Individuals often borrow on considerations other than the payment of interest, so may governments, and so they often find it necessary to do. Everyone recollects the lottery tickets and other douceurs often given in Great Britain as collateral inducements to the lending of money to the government. There are also frequently collateral conditions, which the enumeration does not contemplate. Every contract which has been made for moneys borrowed in Holland, induces stipulations that the sum due shall bedded from taxes, and from sequestration in time of war, and mortgages all the land and property of the United States for the reimbursement.

It is also known that a lottery is a common expedient for borrowing money, which certainly does not fall under either of the enumerated heads.

The heads of the power to regulate commerce with foreign nations, are stated to be:

1. To prohibit them or their commodities from our ports.

2. To impose duties on them, where none existed before, or to increase existing; duties on them.

3. To subject them to any species of custom-house regulation.

4. To grant them any exemptions or privileges which policy may suggest.

This enumeration is far more exceptionable than either of the former. It omits everything that relates to the citizens' vessels, or commodities of the United States.

The following palpable omissions occur at once:

I Of the power to prohibit the exportation of commodities, which not only exists at all times, but which in time of war it would be necessary to exercise, particularly with relation to naval and warlike stores

i. Of the power to prescribe rules concerning the characteristics and privileges of an American bottom, how she shall be navigated, or whether by citizens or foreigners, or by a proportion of each

3. Of the power of regulating the manner of contracting with seamen; the police of ships on their voyages, &c., of which the Act for the government and regulation of seamen, in the merchants' service, is a specimen.

That the three preceding articles are omissions, will not be doubted there is a long list of items in addition, which admit of little, if any question, of which a few samples shall be given.

1. The granting of bounties to certain kinds of vessels, and certain species of merchandise; of this nature, is the allowance on dried and pickled fish and salted provisions

2. The prescribing of rules concerning the inspection of commodities to be exported. Though the States individually are competent to this regulation, yet there is no reason, in point of authority at least, why a general system might not be adopted by the United States.

3. The regulation of policies of insurance; of salvage upon goods found at sea, and the disposition of such goods.

4. The regulation of pilots.

5. The regulation of bills of exchange drawn by a merchant of one State upon a merchant of another State. This last rather belongs to the regulation of trade between the States, but is equally omitted in the specifications under that head

The last enumeration relates to the power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The heads of this power are said to be:

1. To exert an ownership over the territory of the United States which may be properly called the property of the United States, as in the western territory, and to institute a government therein, or

2. To exert an ownership over the other property of the United States.

The idea of exerting an ownership over the territory or other property of the United States, is particularly indefinite and vague. It does not at all satisfy the conception of what must have been intended by a power to make all needful rules and regulations, nor would there have been any use for a special clause, which authorized nothing more. For the right of exerting an ownership is implied in the very definition of property. It is admitted, that in regard to the western territory, something more is intended; even the institution of a government, that is, the creation of a body politic, or corporation of the highest nature; one which, in its maturity, will be able itself to create other corporations. Why, then, does not the same clause authorize the erection of a corporation, in respect to the regulation or disposal of any other of the property of the United States.

This idea will be enlarged upon in another place.

Hence it appears, that the enumerations which have been attempted by the Attorney General, are so imperfect, as to authorize no conclusion whatever; they, therefore, have no tendency to disprove that each and every of the powers, to which they relate, includes that of erecting

corporations, which they certainly do, as the subsequent illustrations will snore and more evince.

It is presumed to have been satisfactorily shown in the course of the preceding observations:

1. That the power of the government, as to the objects intrusted to its management, is, in its nature, sovereign.

2. That the right of erecting corporations is one inherent in, and inseparable from, the idea of sovereign power.

3. That the position, that the government of the United States can exercise no power, but such as is delegated to it by its Constitution, does not militate against this principle.

4. That the word necessary, in the general clause, can have no restrictive operation derogating from the force of this principle indeed' that the degree in which a measure is or is not necessary cannot be a test of constitutional right, but of expediency only.

5. That the power to erect corporations is not to be considered as an independent or substantive power, but as an incidental and auxiliary one, and was therefore more properly left to implication, than expressly granted.

6. That the principle in question does not extend the power of the government beyond the prescribed limits, because it only affirms a power to incorporate for purposes within the sphere of the specified powers.

And lastly, that the right to exercise such a power in certain cases is unequivocally granted in the most positive and comprehensive terms. To all which it only remains to be added, that such a power has actually been exercised in two very eminent instances; namely, in the erection of two governments, one northwest of the River Ohio, and the other southwest the last independent of any antecedent compact. And these result in a full and complete demonstration that the Secretary of State and the Attorney General are mistaken when they deny generally the power of the national government to erect corporations.

It shall now be endeavored to be shown that there is a power to erect one of the kind proposed by the bill. This will be done by tracing a natural and obvious relation between the institution of a bank and the objects of several of the enumerated powers of the government; and by showing that, politically speaking, it is necessary to the effectual execution of one or more of those powers.

In the course of this investigation, various instances will be stated, by way of illustration of a right to erect corporations under those powers.

Some preliminary observations may be proper.

The proposed bank is to consist of an association of persons, for the purpose of creating a joint capital, to be employed chiefly and essentially in loans. So far the object is not only lawful, but it is the mere exercise of a right which the law allows to every individual. The Bank of New York, which is not incorporated, is an example of such an association. The bill proposed ill addition that the government shall become a joint proprietor in this undertaking, and that it shall permit the bills of the company, payable on demand, to be receivable in its revenues; and stipulates that it shall not grant privileges, similar to those which are to be allowed to this company, to any others. All this is incontrovertibly within the compass of the discretion of the government. The only question is, whether it has a right to incorporate this company, in order to enable it the more effectually to accomplish ends which are in themselves lawful.

To establish such a right, it remains to show the relation of such an institution to one or more of the specified powers of the government. Accordingly it is affirmed that it has a relation, more or less direct, to the power of collecting taxes, to that of borrowing money, to that of regulating trade between the States, and to those of raising and maintaining fleets and armies. To the two former the relation Nay be said to be immediate; and in the last place it will be argued, that it is clearly within the provision which authorizes the making of all needful rules and regulations concerning the property of the United States, as the same has been practiced upon by the government.

A bank relates to the collection of taxes in two ways indirectly, by increasing the quantity of circulating medium and quickening circulation, which facilitates the means of paying directly, by creating a convenient! species of medium in which they are to be paid.

To designate or appoint the money or thing in which taxes are to be paid, is not only a proper, but a necessary exercise of the power of collecting them. Accordingly Congress, in the lava concerning the collection of the duties on imposts and tonnage, have provided that they shall be paid in gold and silver. But while it was an indispensable part of the work to say in what they should be paid, the choice of the specific thing was mere matter of discretion. The payment might have been required in the commodities themselves. Taxes in kind, however ill-judged, are not without precedents, even in the United States; or it Night have been in the paper money of the several States, or in the bills of the Bank of North America, New York and Massachusetts, all or either of them; or it might have been in bills issued under the authority of the United States.

No part of this can, it is presumed, be disputed. The appointment, then, of the money or thing in which the taxes are to be paid, is an incident to the power of collection. And among the expedients which may be adopted, is that of bills issued under the authority of the United States.

Now, the manner of issuing these bills is again matter of discretion. The government might doubtless proceed in the following manner:

It might provide that they should be issued under the direction of certain officers, payable on demand, and, in order to support their credit, and give them a ready circulation, it might, besides giving them a currency in its taxes, set apart, out of any moneys in its treasury, a given sum, and appropriate it, under the direction of those officers, as a fund for answering the bills, as presented for payment.

The constitutionality of all this would not admit of a question, and yet it would amount to the institution of a bank, with a view to the more convenient collection of taxes, For the simplest and most precise idea of a bank is, a deposit of coin, or other property, as a fund for circulating credit upon it, which is to answer the purpose of money. That such an arrangement would be equivalent to the establishment of a bank, would become obvious if the place where the fund to be set apart was kept should be made a receptacle of the moneys of all other persons who should incline to deposit them there for safe-keeping; and would become still more so, if the officers charged with the direction of the fund were authorized to make discounts at the usual rate of interest, upon good security. To deny the power of the government to add these ingredients to the plan, would be to refine away all government.

A further process will still more clearly illustrate the point. Suppose, when the species of bank which has been described was about to be instituted, it was to be urged that, in order to secure to it a due degree of confidence, the fund ought not only to be set apart and appropriated generally, but ought to be specifically vested in the officers who were to have the direction of it, and in their successors in office, to the end that it might acquire the character of private property, incapable of being resumed without a violation of the sanctions by which the rights of property are protected, and occasioning more serious and general alarm the apprehension of which might operate as a check upon the government. Such a proposition might be opposed by arguments against the expedience of it, or the solidity of the reason assigned for it, but it is not conceivable what could be urged against its constitutionality; and yet such a disposition of the thing would amount to the erection of a corporation; for the true definition of a corporation seems to be this: It is a legal person, or a person created by act of law, consisting of one or more natural persons authorized to hold property, or a franchise in succession, in a legal, as contradistinguished from natural, capacity.

Let the illustration proceed a step further.. Suppose a bank of the mature which has been described, with or without incorporation, had been instituted, and that experience had evinced as it probably would, that, being wholly under a public direction, it possessed not the confidence requisite to the credit of the bills. Suppose, also, that, by some of those adverse conjunctures which occasionally attend nations, there had been a very great drain of the specie of the country, so as not only to cause general distress for want of an adequate medium of circulation, but to produce, in consequence of that circumstance, considerable defalcations in the public revenues. Suppose, also, that there was no bank instituted in any State; in such a posture of things, would it not be most manifest, that the incorporation of a bank like that proposed by the bill would be a

measure immediately relative to the effectual collection of the taxes, and completely within the province of the sovereign power of providing, by all laws necessary and proper, for that collection ? If it be said, that such a state of things would render that necessary, and therefore constitutional, which is not so now, the answer to this, and a solid one it doubtless is, must still be that which has been already stated circumstances may affect the expediency of the measure, but they can neither add to nor diminish its constitutionality.

A bank has a direct relation to the power of borrowing money, because it is an usual, and in sudden emergencies an essential, instrument in the obtaining of loans to government.

A nation is threatened with a war, large sums are wanted on a sudden to make the requisite preparations. Taxes are laid for the purpose, but it requires tine to obtain the benefit of them. Anticipation is indispensable. If there be a bank the supply can at once be had. If there be none, loans from individuals must be sought. The progress of these is often too slow for the exigency ill some situations they are not practicable at all. Frequently when they are, it is of great consequence to be able to anticipate the product of them by advance from a bank.

The essentiality of such an institution as an instrument of loans is exemplified at this very moment. An Indian expedition is to be prosecuted. The only fund, out of which the money can arise, consistently with the public engagements, is a tax, which only begins to be collected in July next. The preparations, however, are instantly to be made. The money must, therefore, be borrowed and of whom could it be borrowed if there were no public banks ?

It happens that there are institutions of this kind, but if there were none, it would be indispensable to create one.

Let it then be supposed that the necessity existed, (as but for a casualty would be the case,) that proposals were made for obtaining a loan; that a number of individuals came forward and said, we are willing to accommodate the government with the money; with what we have in hand, and the credit we can raise upon it, we doubt not of being able to furnish the sum required; but in order to this, it is indispensable that we should be incorporated as a bank. This is essential toward putting it in our power to do what is desired, and we are obliged on that account to make it the consideration or condition of the loan.

Can it be believed that a compliance with this proposition would be unconstitutional ? Does not this alone evince the contrary ? It is a necessary part of a power to borrow, to be able to stipulate the consideration or conditions of a loan. It is efficient as has been remarked elsewhere, that this is not confined to the mere stipulation of a franchise. If it may, and it is not perceived why it may not, then the grant of a corporate capacity may be stipulated as a consideration of the loan. There seems to be nothing unfit or foreign from the nature of the thing in giving individuality, or a corporate capacity to a number of persons, who are willing to lend a sum of money to the government, the better to enable them to do it, and make them an ordinary instrument of loans in future emergencies of the state. But the more general view of the subject is still more satisfactory. The legislative power of borrowing money, and of making all laws necessary and proper for carrying into execution that power, seems obviously competent to the appointment of the organ, through which the abilities and wills of individuals may be roost efficaciously exerted for the accommodation of the government by loans.

The Attorney General opposes to this reasoning the following observation: "Borrowing money presupposes the accumulation of a fund to be lent, and is secondary to the creation of an ability to lend." This is plausible in theory, but is not true in fact. In a great number of cases, a previous accumulation of a fund equal to the whole sum required does not exist. And nothing more can be actually presupposed, than that there exist resources, which, put into activity to the greatest advantage by the nature of the operation with the government, will be equal to the effect desired to be produced. All the provisions and operations of government must be presumed to contemplate things as they really are.

The institution of a bank has also a natural relation to the regulation of trade between the States, in so far as it is conducive to the creation of a convenient medium of exchange between them, and to the keeping up a full circulation, by preventing the frequent displacement of the metals in reciprocal remittances Money is the very hinge on which commerce turns. And this does not merely mean gold and silver; many other things have served the purpose, with different degrees of utility. Paper has been extensively employed.

It cannot, therefore, be admitted, with the Attorney General, that the regulation of trade between the States, as it concerns the medium of circulation and exchange, ought to be considered as confined to coin. It is even supposable that the whole or the greatest part, of the coin of the country might be carried out of it.

The Secretary of State objects to the relation here insisted upon by the following mode of reasoning: To erect a bank, says he, and to regulate commerce, are very different acts. He who creates a bank, creates a subject of commerce, so does he who snakes a bushel of wheat, or digs a dollar out of the Nines, yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold, is not to prescribe regulations for buying and selling.

This making the regulation of commerce to consist in prescribing rules for buying and selling this, indeed, is a species of regulation of trade, hut is one which falls more aptly within the province of the local jurisdictions than within that of the general government, whose care they must be presumed to have been intended to be directed to those general political arrangements concerning trade on which its aggregated interests depend, rather than to the details of buying and selling. Accordingly, such only are the regulations to be found in the laws of the United States whose objects are to give encouragement to the enterprise of our own merchants, and to advance our navigation and manufactures. And it is in reference to these general relations of commerce, that an establishment which furnishes facilities to circulation, and a convenient medium of exchange and alienation, is to be regarded as a regulation of trade.

The Secretary of State further argues, that if this was a regulation of commerce, it would be void, as extending as much to the internal commerce of every State as to its external. But what regulation of commerce does not extend to the internal commerce of every State ? What are all the duties upon imported articles amounting to prohibitions, but so many bounties upon domestic manufactures, affecting the interests of different classes of citizens, in different ways? What are all the provisions in the Coasting Acts which relate to the trade between district and district of the same State? In short, what regulation of trade between the States but must affect the internal trade of each State? What can operate upon the whole, but must extend to every part ?

The relation of a bank to the execution of the powers that concern the common defense has been anticipated. It has been noted, that, at this very moment, the aid of such an institution is essential to the measures to be pursued for the protection of our frontiers.

It now remains to show, that the incorporation of a bank is within the operation of the provision which authorizes Congress to make all needful rules and regulations concerning the property of the United States. But it is previously necessary to advert to a distinction which has been taken by the Attorney General.

He admits that the word property may signify personal property, however acquired, and yet asserts that it cannot signify money arising from the sources of revenue pointed out in the Constitution, " because," says he, " the disposal and regulation of money is the final cause for raising it by taxes."

But it would be more accurate to say that the object to which money is intended to be applied is thermal cause for raising it, than that the disposal and regulation of it is such.

The support of government - the support of troops for the common defense - the payment of the public debt, are the true final causes for raising money. The disposition and regulation of it, when raised, are the steps by which it is applied to tile ends for which it was raised, not the ends themselves. Hence, therefore, the money to be raised by taxes, as well as any other personal property, must be supposed to come within the meaning, as they certainly do within the letter, of authority to make all needful rules and regulations concerning the property of the United States.

A case will make this plainer. Suppose the public debt discharged, and the funds now pledged for it liberated. In some instances it would be found expedient to repeal tile taxes; in others, the repeal might injure our own industry, our agriculture and manufactures. In these cases they would, of course, be retained. Here, then, would be moneys arising from the authorized sources of revenue, which would not fall within the rule by which the Attorney General endeavors to

except them from other personal property, and from the operation of the clause in question. The moneys being in the coffers of government, what is to hinder such a disposition to be made of them as is contemplated in the bill; or what an incorporation of the parties concerned, under the clause which has been cited ?

It is admitted that with regard to the western territory they give a power to erect a corporation that is, to institute a government; and by what rule of construction can it be maintained, that the same words in a constitution of government will not have the same effect when applied to one species of property as to another as far as the subject is capable of it ? Or that a legislative power to make all needful rules and regulations, or to pass all laws necessary and proper, concerning the public property, which is admitted to authorize an incorporation in one case, will not authorize it in another ? will justify the institution of a government over the western territory, and will not justify the incorporation of a bank for the more useful management of the moneys of the United States ? If it will do the last, as well as the first, then under this provision alone, the bill is constitutional, because it contemplates that the United States shall be joint proprietors of the stock of the bank.

There is an observation of the Secretary of State to this effect which may require notice in this place:-Congress, says he, are not to lay taxes ad libitum, for any purpose they please, but only to pay the debts or provide for the welfare of the Union. Certainly no inference can be drawn from this against the power of applying their money for the institution of a bank. It is true that they cannot without breach of trust lay taxes for any other purpose than the general welfare; but so neither can any other government. The welfare of the community is the only legitimate end for which money can be raised on the community. Congress can be considered as under only one restriction which does not apply to other governments, they cannot rightfully apply the money they raise to any purpose merely or purely local.

But, with this exception, they have as large a discretion in relation to the application of money as any legislature whatever. The constitutional test of a right application must always be, whether it be for a purpose of general or local nature. If the former, there can be no want of constitutional power. The quality of the object as how far it will really promote or not the welfare of the Union must be matter of conscientious discretion, and the arguments for or against a measure in this light must be arguments concerning expediency or inexpediency, not constitutional right. Whatever relates to the general order of the finances, to the general interests of trade, etc., being general objects, are constitutional ones for the Application of money.

A bank, then, whose bills are to circulate in all the revenues of the country, is evidently a general object, and, for that very reason, a constitutional one, as far as regards the appropriation of money to it. Whether it will really be a beneficial one or not, is worthy of careful examination, but is no more a constitutional point, in the particular referred to, than the question, whether the western lands shall be sold for twenty or thirty cents per acre.

A hope is entertained that it has, by this time, been made to appear, to the satisfaction of the President, that a bank has a natural relation to the power of collecting taxes-to that of regulating trade-to that of providing for the common defense and that, as the bill under consideration contemplates the government in the light of a joint proprietor of the stock of the bank, it brings the case within the provision of the clause of the Constitution which immediately respects the property of the United States.

Under a conviction that such a relation subsists, the Secretary of the Treasury, with all deference, conceives that it will result as a necessary consequence from the position that all the special powers of government are sovereign, as to the proper objects

that the incorporation of a bank is a constitutional measure, and that the objections taken to the bill, in this respect, are ill-founded.

But, from an earnest desire to give the utmost possible satisfaction to the mind of the President, on so delicate and important a subject, the Secretary of the Treasury will ask his indulgence, while he gives some additional illustrations of cases in which a power of erecting corporations may be exercised, under some of those heads of the specified powers of the government, which are alleged to include the right of incorporating a bank.

i. It does not appear susceptible of a doubt, that if Congress had thought proper to provide, in

the collection laws, that the bonds to be given for the duties should be given to the collector of the district, A or B. as the case might require, to inure to him and his successors in office, in trust for the United States, that it would have been consistent with the Constitution to make such an arrangement; and yet this, it is conceived, would amount to an incorporation.

i. It is not an unusual expedient of taxation to farm particular branches of revenue-that is, to mortgage or sell the product of them for certain definite sums, leaving the collection to the parties to whom they are mortgaged or sold. There are even examples of this in the United States. Suppose that there was any particular branch of revenue which it was manifestly expedient to place on this footing, and there were a number of persons willing to engage with the government, upon condition that they should be incorporated, and the sums invested in them, as well for their greater safety, as for the more convenient recovery and management of the taxes. Is it supposable that there could be any constitutional obstacle to the measure ? It is presumed that there could be none. It is certainly a mode of collection which it would be in the discretion of the government to adopt, though the circumstances must be very extraordinary that would induce the Secretary to think it expedient.

3. Suppose a new and unexplored branch of trade should present itself, with some foreign country. Suppose it was manifest that to undertake it with advantage required an union of the capitals of a number of individuals, and that those individuals would not be disposed to embark without an incorporation, as well to obviate that consequence of a private partnership which makes every individual liable in his whole estate for the debts of the company, to their utmost extent, as for the more convenient management of the business-what reason can there be to doubt that the national government would have a constitutional right to institute and incorporate such a company? None. They possess a general authority to regulate trade with foreign countries. This is a mean which has been practiced to that end, by all the principal commercial nations, who have trading companies to this day, which have subsisted for centuries. Why may not the United States, constitutionally, employ the means usual in other countries, for attaining the ends intrusted to them ?

A power to make all needful rules and regulations concerning territory, has been construed to mean a power to erect a government. A power to regulate trade, is a power to make all needful rules and regulations concerning trade. Why may it not, then, include that of erecting a trading company, as well as, in other cases, to erect a government ?

It is remarkable that the State conventions, who had proposed amendments in relation to this point, have most, if not all of them, expressed themselves nearly thus: Congress shall not grant monopolies, nor erect any company with exclusive advantages of commerce! Thus, at the same time, expressing their sense, that the power to erect trading companies or corporations was inherent in Congress, and objecting to it no further than as to the grant of exclusive privileges.

The Secretary entertains all the doubts which prevail concerning the utility of such companies, but he cannot fashion to his own mind a reason, to induce a doubt, that there is a constitutional authority in the United States to establish them. If such a reason were demanded, none could be given, unless it were this: That Congress cannot erect a corporation. Which would be no better than to say, they cannot do it, because they cannot do it-first presuming an inability, without reason, and then assigning that inability as the cause of itself. Illustrations of this kind might be multiplied without end. They shall, however, be pursued no further.

There is a sort of evidence on this point, arising from an aggregate view of the Constitution, which is of no inconsiderable weight: the very general power of laying and collecting taxes, and appropriating their proceeds--that of borrowing money indefinitely--that of coining money, and regulating foreign coins-that of making all needful rules and regulations respecting the property of the United States. These powers combined, as well as the reason and nature of the thing, speak strongly this language: that it is the manifest design and scope of the Constitution to vest in Congress all the powers requisite to the effectual administration of the finances of the United States. As far as concerns this object, there appears to be no parsimony of power.

To suppose, then. that the government is precluded from the employment of so usual and so important an instrument for the administration of its finances as that of a bank, is to suppose what does not coincide with the general tenor and complexion of the constitution, and what is not agreeable to impressions that any new spectator would entertain concerning it.

Little less than a prohibitory clause can destroy the strong presumptions which result from the general aspect of the government. Nothing but demonstration should exclude the idea that the power exists.

In all questions of this nature, the practice of mankind ought to have great weight against the theories of individuals.

The fact, for instance, that all the principal commercial nations have made use of trading corporations or companies, for the purpose of external commerce, is a satisfactory proof that the establishment of them is an incident to the regulation of the commerce.

This other fact, that banks are an usual engine in the administration of national finances, and an ordinary and the most effectual instrument of loan, and one which, in this country, has been found essential, pleads strongly against (he supposition that a government, clothed with most of the most important prerogatives of sovereignty in relation to its revenues, its debts, its credits, its defense, its trade, its intercourse with foreign nations, is forbidden to make use of that instrument as an appendage to its own authority.

It has been stated as an auxiliary test of constitutional authority to try whether it abridges any pre-existing right of any State, or any individual. The proposed investigation will stand the most severe examination on this point. Each State may still erect as many banks as it pleases. Every individual may still carry on the banking business to any extent he pleases.

Another criterion may be this. Whether the institution or thing has a more direct relation, as to its uses, to the objects of the reserved powers of the State governments than to those of the powers delegated by the United States. This, rule, indeed, is less precise than the former, but it may still serve as some guide. Surely a bank has more reference to the objects intrusted to the national government than to those left to the care of the State governments. The common defense is decisive in this comparison.

It is presumed that nothing of consequence in the observations of the Secretary of State, and Attorney General, has been left un-noticed.

There are, indeed, a variety of observations of the Secretary of State designed to show that the utilities ascribed to a bank, in relation to the collection of taxes, and to trade, could be obtained without it; to analyze which, would prolong the discussion beyond all bounds. It shall be forborne for two reasons. First, because the report concerning the bank, may speak for itself in this respect

and secondly, because all those observations are grounded on the erroneous idea that the quantum of necessity or utility is the test of a constitutional exercise of power.

One or two remarks only shall be made. One is, that he has taken no notice of a very essential advantage to trade in general which is mentioned in the report, as peculiar to the existence of a bank circulation, equal in the public estimation to gold and silver. It is this that renders it unnecessary to lock up the money of the country, to accumulate for months successively, in order to the periodical payment of interest. The other is this: that his arguments to show that treasury orders and bills of exchange, from tint. course of trade, will prevent any considerable displacement of the metals, are founded on a particular view of the subject. A case will prove this. The sums collected in a State may be small in comparison with the debt due to it; the balance of its trade direct and circuitous with the seat of government, may be even, or nearly so; here, then, without bank bills, which in that State answer the purpose of coin, there must be a displacement of the coin, in proportion to the difference between the sum collected in the State, and that to be paid in it. With bank bills, no such displacement would take place, or as far as it did, it would be gradual and insensible. In many other ways, also, would there be at least a temporary and inconvenient displacement of the coin, even where the course of trade would eventually return it to its proper channel.

The difference of the two situations in point of convenience to the treasury, can only be appreciated by one, who experiences the embarrassments of making provision for the payment of the interest on a stock, continually changing place in thirteen different places.

One thing which has been omitted, just occurs, although it is not very material to the main

argument. The Secretary of State affirms that the bill only contemplates a repayment, not a loan, to the government. But here he is certainly mistaken. It is true the government invests in the stock of the bank a sum equal to that which it receives on loan. But let it be remembered, that it does not, therefore, cease to be a proprietor of the stock, which would be the case, if the money received back were in the nature of a payment. It remains a proprietor still, and will share in the profit or loss of the institution, according as the dividend is more or less than the interest it is to pay on the sum borrowed. Hence that sum is manifestly, and in the strictest sense, a loan.

Source:
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