

seamen, &c. because we say that they are the incidents to that power: The most familiar and undisputed acts of legislation will shew, that we have adopted it as a safe rule of action to legislate beyond the letter of the constitution.

He proceeded to enforce this idea by several considerations, and illustrated it by various examples. He said that the ingenuity of man was unequal to providing, especially before hand, for all the contingencies that would happen. The constitution contains the principles which are to govern in making laws; but every law requires an application of the rule to the case in question. We may err in applying it; but we are to exercise our judgments, and on every occasion to decide according to an honest conviction of its true meaning.

The danger of implied power does not arise from its assuming a new principle: We have not only practised it often; but we can scarcely proceed without it: Nor does the danger proceed so much from the extent of the power, as from its uncertainty. While the opposers of the Bank exclaim against the exercise of this power by Congress, do they mark out the limits of the power which they will leave to us, with more certainty than is done by the advocates of the Bank? Their rules of interpretation by co-temporaneous testimony, the debates of conventions, and the doctrine of substantive and auxiliary powers, will be found as obscure, and of course as formidable, as that which they condemn: They only set up one construction against another.

The powers of Congress are disputed: We are obliged to decide the question according to truth. The negative, if false, is less safe than the affirmative if true: Why then shall we be told, that the negative is the safe side? Not exercising the powers we have, may be as pernicious, as usurping those we have not. If the power to raise armies had not been expressed in the enumeration of the powers of Congress, it would be implied from other parts of the constitution. Suppose, however, that it were omitted, and our country invaded, would a decision in Congress against raising armies be safer than the affirmative? The blood of our citizens would be shed, and shed unavenged. He thought therefore, that there was too much prepossession with some against the Bank, and that the debate ought to be considered more impartially, as the negative was neither more safe, certain, nor conformable to our duty, than the other side of the question. After all, the proof of the affirmative imposed a sufficient burden, as it is easier to raise objections than to remove them. Would any one doubt that Congress may lend money—that they may buy their debt in the market, or redeem their captives from Algiers? Yet no such power is expressly given, tho it is irresistably implied.

If therefore some interpretation of the constitution must be indulged, by what rules is it to be governed? The great end of every association of persons or States, is, to effect the end of its institution. The matter in debate affords a good illustration: A corporation, as soon as it is created, has certain powers, or qualities, tacitly annexed to it, which tend to promote the end for which it was formed—such as, for example, its individuality—its power to sue, and be sued—and the perpetual succession of persons. Government is itself the highest kind of corporation, and from the instant of its formation, it has tacitly annexed to its being, various powers which the individuals who framed it did not separately possess, but which are essential to its effecting the purposes for which it was framed—to declare, in detail, every thing that government may do, could not be performed, and has never been attempted: It would be endless, useless, and dangerous—exceptions of what it may not do, are shorter and safer.

Congress may do what is necessary to the end for which the constitution was adopted, provided it is not repugnant to the natural rights of man, or to those which they have expressly reserved to themselves, or to the powers which are assigned to the States: This rule of interpretation seems to be a safe, and not a very uncertain one, independently of the constitution itself: By that instrument certain powers are specifically delegated, together with all powers necessary and proper to carry them into execution: That construction may be maintained to be a safe one which promotes the good of the society, and the ends for which the government was adopted, without impairing the rights of any man, or the powers of any State.

This, he said, was remarkably true of the Bank—no man could have cause to complain of it; the bills would not be forced upon any one. It is of the first utility to trade. Indeed the intercourse from State to State can never be on a good footing without a Bank; whose paper will circulate more extensively than that of any State Bank. Whether the power to regulate trade from State to State will involve that of regulating inland bills of exchange and bank paper, as the instruments of the trade and incident to the power, he would not pause to examine. That is an injury and wrong which violates the

right of another. As the Bank is founded on the free choice of those who make use of it, and is highly useful to the people, and to government, a liberal construction is natural and safe. This circumstance creates a presumption in favor of its conformity to the constitution. This presumption is enforced by the necessity of a Bank to other governments. The most orderly governments in Europe have Banks. They are considered as indispensably necessary; these examples are not to be supposed to have been unnoticed. We are to pay the interest of our debt in 13 places. Is it possible to transport the revenue from one end of the continent to the other: Nay, a week before the quarter's interest becomes due, transfers may be made which will require double the sum in Boston which was expected. To guard against this danger, an extra sum must be deposited at the different loan-offices. This extra sum is not to be had; our revenue is barely equal to the interest due. This imposes an absolute necessity upon the government to make use of a Bank. The answer is, that the State Banks will supply this aid. This is risking a good deal to the argument against the Bank; for will they admit the necessity and yet deny to the government the lawful and only adequate means of providing for it. Ten of the States have no Banks; those who have may abolish theirs, or suffer their charters to expire. But the State Banks are insufficient to the purpose—their paper has not a sufficient circulation—of course their capitals are small. Congress is allowed to have a complete legislative power over its own finances; and yet without the courtesy of the States it cannot be exercised. This seems to be inconsistent.

If a war should suddenly break out, how is Congress to provide for it? Perhaps Congress would not be fitting; great expences would be incurred, and they must instantly be provided for. How is this to be done—by taxes? And will the enemy wait till they can be collected? by loans at home? Our citizens would employ their money in war speculations, and they are not individually in a condition to lend a sufficient sum in specie—or shall we send across the sea for loans? The dispute between England and Spain furnish an example; the aid of their Banks for several millions was prompt and effectual. Or will you say that Congress might issue paper money? That power, ruinous and fallacious as it is, is deduced from implication, for it is not expressly given. A Bank only can afford the necessary aid in time of sudden emergency. If we have not the power to establish it, our social compact is incomplete, we want the means of self preservation.

I shall perhaps be told, that necessity is the tyrant's plea. I answer that it is a miserable one, when it is urged to palliate the violation of private right. Who suffers by this use of our authority? Not the States, for they are not warranted to establish a national Bank: Not individuals, for they will be assisted in trade and defended from danger by it.

Having endeavored to enforce his argument by noticing the uses of Banks to trade, to revenue, to credit, and in cases of exigency, he adverted to the authority of our own precedents: Our right to govern the Western Territory is not disputed. It is a power which no State can exercise: It must be exercised, and therefore it resides in Congress. But how does Congress get this power? It is not expressly given in the Constitution, but is derived either from the nature of the case, or by implication from the power to regulate the property of the United States. If the power flows from the nature and necessity of the case, it may be demanded, Is there not equal authority for the Bank? If it is derived from the power of Congress to regulate the territory and other property of the United States, and to make all needful rules and regulations concerning it, and for the disposal of it, a strict construction would restrain Congress merely to the management and disposal of property, and of its own property: Yet it is plain, that more is intended. Congress has accordingly made rules not only for governing its own property, but the property of the persons residing there: It has made rules which have no relation to property at all—for punishing crimes: In short it exercises all power in that territory: Nay, it has exercised this very power of creating a corporation: The government of that territory is a corporation—and who will deny that Congress may lawfully establish a Bank beyond the Ohio? It is fair to reason by analogy from a power which is unquestionable, to one which is the subject of debate.

He then asked, whether it appeared on this view of the subject, that the establishment of a National Bank would be a violent misinterpretation of the Constitution. He did not contend for an arbitrary unlimited discretion in the government to do every thing: He took occasion to protest against such a mis-conception of his argument. He had noticed the great marks by which the construction of the Constitution, he conceived, must be guided and limited—and these, if not absolutely certain, were very far from being

arbitrary or unsafe: It is for the house to judge, whether the construction which denies the power of Congress, is more definite and safe.

In proving that Congress may exercise powers which are not expressly granted by the constitution, he had endeavored to establish such rules of interpretation, and had illustrated his ideas by such observations, as would anticipate, in a considerable degree, the application of his principles to the point in question. Before he proceeded to the construction of the clauses of the constitution which apply to the argument, he observed that it would be proper to notice the qualities of a corporation, in order to take a more exact view of the controversy.

He adverted to the individuality and the perpetuity of a corporation, and that the property of the individuals should not be liable for the debts of the Bank or Company. These qualities are not more useful to the corporation than conformable to reason: but government, it is said, cannot create these qualities. This is the narrow of the argument: For Congress may set up a Bank of its own, to be managed as public property, to issue notes which shall be received in all payments at the treasury, which shall be exchangeable into specie on demand, and which it shall be death to counterfeit. Such a bank would be less safe and less useful than one under the direction of private persons—yet the power to establish it is indisputable. If Congress has authority to do this business illy, the question returns, whether the powers of a corporation, which are essential to its being well done, may be annexed as incident to it. The bank of New-York is not a corporation, yet its notes have credit. Congress may agree with that bank, or with a company of merchants, to take their notes, and to cause all payments to pass through their coffers. Every thing that government requires of and will perform to the bank, may be lawfully done without giving them corporate powers—but to do it well, safely and extensively, those powers are indispensable. This seems to bring the debate within a very narrow compass.

This led him to consider whether the corporate powers are incidental to those which Congress may exercise by the constitution.

He entered into a discussion of the construction of that clause which empowers Congress to regulate the territory and other property of the United States. The United States may hold property—may dispose of it—they may hold it in partnership—they may regulate the terms of the partnership. One condition may be, that the common stock only shall be liable for the debts of the partnership, and that any purchaser of a share shall become a partner. These are the chief qualities of a corporation. It seems that Congress, having power to make all needful rules and regulations for the property of the United States, may establish a corporation to manage it—without which we have seen, that the regulation cannot be either safe or useful: The United States will be the proprietor of one tenth of the Bank Stock.

Congress may exercise exclusive legislation in all cases whatsoever, over the 10 miles square, and the places ceded by the States for arsenals, light-houses, docks, &c.—Of course it may establish a Bank in those places, with corporate powers. The bill has not restrained the Bank to this city—and if it had, the dispute would lose a part of its solemnity: If instead of principles, it concerns only places, what objection is there to the constitutional authority of Congress to fix this Bank at Sandy-Hook, or Reedy Island, where we have light-houses, and a right of exclusive legislation? A Bank established there, or in the district located by law on the Potowmac for the seat of government, could send its paper all over the Union: It is true, that the places are not the most proper for a Bank; but the authority to establish it in them, overthrows the argument which is deduced from the definite nature of the powers vested in Congress, and the dangerous tendency of the proposed construction of them.

The preamble of the constitution warrants this remark, that a Bank is not repugnant to the spirit and essential objects of that instrument.

He then considered the power to borrow money. He said it was natural to understand that authority as it was actually exercised in Europe—which is, to borrow of the Bank. He observed, the power to borrow, was of narrow use, without the institution of a Bank—and in the most dangerous crisis of affairs would be a dead letter.

After noticing the power to lay and collect taxes, he adverted to the sweeping clause, as it is usually called, which empowers Congress to exercise all powers necessary and proper to carry the enumerated powers into execution. He did not pretend that it gives any new powers; but it established the doctrine of implied powers.—He then demanded whether the power to incorporate a Bank is not fairly relative, and a necessary incident to, the entire powers to regulate trade and revenue, and to provide for the public credit and defence.

He entered into a particular answer to several objections, and after recapitulating his argument,