

existence of government—from the expediency of the measure itself—and from precedents of Congress—to which may be added, a similar exercise of authority by Congress, under the former confederation.

Observations arising from the constitution itself were of two kinds: The right of exercising this authority is either expressed in the constitution, or deducible from it by necessary implication. One gentleman only, from Massachusetts (Mr. Sedgwick) has ventured to assert, that discarding the doctrine of implication, he could show that the right to exercise the authority contended for, was expressly contained in the constitution; this I presume must have been a mistake in language, because the difference between an express, and an implied authority appears to me to consist in this; in the one case the natural import of the words used in granting the authority, would of themselves, convey a complete idea to the mind, of the authority granted, without the aid of argument or deduction; in the other, to convey a complete idea to the mind, the aid of argument and deduction, is found necessary to the usual import of the words used; and that gentleman proceeded with a laboured argument to prove that the authority was expressly granted, which would have been totally useless if his assertion had been just.

(Mr. Sedgwick rose to explain—he never conceived the authority granted by the express words of the constitution, but absolutely by necessary implication from different parts of it.)

I shall not contend as to the assertion; but shall proceed to consider the arguments in favor of the measure upon the doctrine of implication—which indeed are those only which deserve consideration.

In doing this, I shall consider the authority contended for, to apply to that of granting charters of incorporation in general; for I do not recollect any circumstance, and I believe none has been pretended, which could vary this case from the general exercise of that authority. To establish the affirmative of this proposition, arguments have been drawn from several parts of the constitution—the context has been referred to. [*We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, &c.*] It has been remarked, that here the ends for which this government was created are clearly pointed out—the means to produce the ends are left to the choice of the legislature, and that the incorporation of a bank is one necessary mean to produce these general ends. It may be observed in reply, that the context contemplates every general object of government whatever; and if this reasoning were to be conclusive, every object of government would be within the authority of Congress, and the detail of the constitution would have been wholly unnecessary farther than to designate the several branches of the government, which were to be intrusted with this unlimited, discretionary choice of means to produce these specified ends: The same reasoning would apply as forcibly to every clause in the constitution, restraining the authority of Congress as to the present case, or to any other one in which the constitution is silent. The only candid construction arising from the context appears to me to be this, it is designed, and it is the known office of every member to point out the great objects proposed to be answered by the subsequent regulations of which the constitution is composed. These regulations contain the means by which these objects are presumed to be best answered: These means consist in a proper distribution of all governmental rights between the government of the United States and the several state governments, and in fixing limits to the exercise of all authorities granted to the government of the United States; the context therefore gives no authority whatever, but only contemplates the ends for which certain authorities are subsequently given. Arguments drawn from this source appear to me to be ineffectual in themselves, and the reliance of gentlemen upon them, indicates a suspicion and distrust of such as may be drawn from other parts of the constitution.—The advocates of the bill have turned away from this context, and have applied to the body of the constitution in search of arguments: They have fixed upon the following clauses, to all or some one of which they assert the authority contended for is clearly incidental—the right to lay and collect taxes, &c. &c.—to provide for the common defence and general welfare, &c.—to borrow money, &c.—to regulate commerce with foreign nations, &c. The bill contemplates neither the laying or collecting taxes, and of course it cannot be included in that clause; indeed it is not pretended by the bill itself, to be at all necessary to produce either of those ends—the farthest the idea is carried in the bill is, that it will tend to give a facility to the collection. The terms, (*common defence and general welfare*) contain no grant of any specific authority, and can relate to such only as are particularly enumerated and specified.

To borrow money,—gentlemen have relied much upon this clause, their reasoning is, that a right to incorporate a bank is incidental to that of borrowing money, because it creates the ability to lend, which is necessary to effectuate the right to borrow. I am at a loss to discover one single relation between the right to borrow, and the right to create the ability to lend, which is necessary to exist between principal and incident: It appears to me that the incidental authority is paramount to the principal, for the right of creating the ability to lend is greater than that of borrowing from a previously existing ability; I should therefore rather conclude that the right to borrow, if there be a connection at all, would be incidental to the right, to grant charters of incorporation, than the reverse of that proposition, which is the doctrine contended for by the advocates of the measure; the same reasoning which would establish a right to create the ability to lend, would apply more strongly to enforce the will after the ability be created, because the creator would have a claim of gratitude at least upon the created ability, which if withheld, perhaps with justice might be insisted on. To regulate commerce with foreign nations: This is by no means a satisfactory ground for the assumption of this authority, for if it be deemed a commercial regulation, there is a clause in the constitution which would absolutely inhibit its exercise: I allude to that clause which provides that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; and it seems to be admitted that one principal effect to be produced by the operation of this measure, will be to give a decided commercial preference to this port over every other in the United States.

Gentlemen finding it difficult to show that necessary relation and intimate connection between the authority contended for, and any one of the specified authorities before mentioned, which would be essential to the establishment of their doctrine, have referred to what has been generally called the sweeping clause, and have made deductions from the terms *necessary and proper*; they have observed, that certain specified authorities being granted, all others necessary to their execution follow without any particular specification. This observation may in general be true, but its fallacy here consists in its application to this particular case. It cannot be applied until the exercise of this authority be proved to be necessarily connected with some one of the previously enumerated authorities—and here the argument as well as the fact fails: The authority contended for seems to me to be a distinct substantive branch of legislation, and perhaps paramount to any one of the previously enumerated authorities, and should therefore not be usurped as an incidental subaltern authority.

I am confirmed in this opinion, from the indistinct confused conceptions of gentlemen who advocate the measure; they rely upon the incidentality of this authority to some one of those particularly specified, and yet have applied it as an incident to several distinct, unconnected subjects of legislation; and then distrusting their own conclusions, or as if the inquiry would be too troublesome or minute, they leave this ground, and assert that it is incidental to the result of the whole combined specified authorities: Gentlemen must therefore view this right through different optics at different times—or what I rather believe to be the fact, they have no distinct view of it at all, the right having no existence.

(To be continued.)

L O N D O N, Feb. 9.

THE Duke of Portland, Mr. Fox, Lord Stormont, Mr. Burke, joined to the leading men of the present ministry, would render opposition so trifling, that danger might result to the country. The best of administrations ought to be well watched.

The Indians have an idea that Monkeys are a species of men, and should be made to work.—The experiment has long been tried in this country without any effect!

A lady paraded the streets on Sunday in a white muslin cloak of a new form. It was made exactly in the form of a *surplice*, and from appearances, most people who saw the lady, were inclined to think she would *take orders*, and had every qualification for going through the SERVICE!

The species of beer, which was philanthropically puffed by the name of the Root of Scarcity, is now discovered to be good for so little, that a peck of potatoes are worth ten acres of it.

The Six Cherokee Chiefs still remain in town, but are now quite out of fashion!

The following articles were stolen last month from a French lady of quality at Marli.

- A ring, white brilliants, weight 35 grains.
- Ditto brilliant, 50 grains.
- A rose, of 528 brilliants, the center-jewel weighing near 24 grains.
- Buckles, composed of 84 brilliants, weight 77 carats.
- Girandoles, brilliants, value 120,000 livres.

A chain, containing 200 pearls.
Pictures of Louis XIVth, and XVth, richly mounted, &c. &c.

The whole perhaps the most superb private cabinet in Europe.

The fictions of law are now out-done by more fashionable fictions. A man who has cut his throat dies by the visitation of God—and another who hanged himself, expired after a short illness.

The Municipality of Paris have published a proclamation against the sale of indecent books and pictures—Something of this kind is very much wanted in London, where the evil is grown to a most atrocious height.

The advice of Mr. Fox to take no farther notice of Horne Tooke's petition is founded on wisdom, and we may add experience. Had Mr. Wilke's writings been served so, he would not at this time have been Chamberlain of London or even one of its aldermen. The populace know no difference between a just prosecution, and a cruel prosecution, and take part with the supposed sufferer whether right or wrong.

The king of France seems now perfectly reconciled to the revolution, and when this, after a long state of probation, is confirmed, the assembly, it is said, mean to extend the prerogative in some respects.

Powderham-Castle, February 5.

Yesterday evening a most alarming accident occurred at this venerable seat, which had very nearly proved fatal. As the Hon. Miss Courtenay was standing near the drawing-room fire in earnest conversation with another lady, her cloaths unfortunately caught the blaze, and she was almost instantly enveloped in flames. Lord Courtenay, who was happily in the room, with wonderful presence of mind, threw his terrified relative down, and instantly rolled the carpet round her, and with the timely assistance of the company, soon extinguished the flames. Miss Courtenay is however dreadfully burnt in the face, neck and arms. His Lordship's hands and face are likewise much injured.

It is but two years ago that a beloved sister of his Lordship's was burnt to death in London, by her clothes taking fire, whilst she was dressing to go to St. James's on her Majesty's Birth-Day.

Feb. 11. Letters from Madrid of the 8th of January, mention that the spirit of reformation has spread so generally through Spain, that the government are taking every precaution to prevent its dreaded consequences: several people have been banished for speaking and writing too freely.

Feb. 12. Some dispatches of the last importance were received yesterday from France, which were communicated to his Majesty at the Levee.

The substance of these dispatches were last night reported to be, that the Duke of Orleans had been discovered in Paris to act a part which was thought inimical to the new government, and that the populace had, in resentment, put him to an ignominious death. Letters were received in town yesterday, by the way of Dieppe, which are also said to contain this melancholy intelligence. It will give us real pleasure to be able to contradict this tale, and compose the minds of this illustrious personage's friends in London.

The holy inquisition of Rome, being unable to substantiate any irreligious charges against poor Cagliostro, have turned him over to the civil power on an accusation of high treason; tho' it is generally believed that the charge is brought only to harrass him, and as an excuse for shutting him up in a most horrid dungeon.

Last night Capt. Bowles, chief of the embassy of the Creeks and Cherokee Indians, was initiated into the mysteries of Free Masonry.

F R A N C E.

NATIONAL ASSEMBLY, Jan. 27.

The King's Message to the Emperor of Germany.

A LETTER, bearing the name of Leopold, to the King of France, on the subject of the claims which the Princes and different members of the German empire make to their possessions in Alsace, having been printed in the public papers some days ago, with many corruptions of the text, the King sent a translation of the original which is in latin, to the National Assembly. This communication was accompanied with a declaration from his Majesty, that he looked upon this letter from Leopold, in no other light, than as an official measure, as Emperor of Germany, and that it was preceded and followed by the most satisfactory assurance of pacific intentions. And he takes the same opportunity of professing that such seems to be the dispositions of all the other principal courts of Europe.

Immediately after the reading of this letter, a decree passed on the motion of the military committee, for augmenting the fifty thousand fusces, ordered by a decree of the 18th of December, to be distributed among the National Guards, of the kingdom to ninety-eight thousand. Of these fusces, the officers of the departments, districts, and municipalities, are to be the guardians; the names of the citizens to whom they are entrusted, are to be registered; and, whoever is convicted of selling his fusce, is to be rendered incapable of bearing arms for three years.