SPEECH

OF

THE HON. WILLIAM C. RIVES,

ON THE SUBJECT OF

THE REMOVAL OF THE DEPOSITES;

DELIVERED

IN THE SENATE OF THE UNITED STATES,

JANUARY 17, 1834.

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1834.

SPEECH

OF

MR. RIVES, OF VIRGINIA.

The Senate having resumed the consideration of the subject of the removal of the Deposites from the Bank of the United States—

Mr. RIVES rose and said:

Mr. PRESIDENT:

It is with great reluctance, at all times, sir, that I obtrude myself on the attention of the Senate. In so enlightened a body, I feel far more disposed to be a listener than a speaker—to receive instruction from the views and arguments of others, rather than to attempt the communication of my own. But there are questions and occasions which leave no other alternative, than a departure from this reserve, or a silence exposed to *misconstruction*. Such, sir, is the present question, and such the circumstances under which I now venture to ask the indulgence of the Senate.

The subject we are considering, Mr. President, is admitted, on all hands, to be one of the highest importance, deriving an especial interest from the distress and embarrassment which are said at the present moment to pervade the community. In regard to the extent of that distress, it may, and probably has been exaggerated, and it is destined, I trust, above all, to be of transitory duration. But that it has existed, and still exists to a very considerable extent, there can be no doubt; and we are now called upon to investigate the causes of the evil, and to apply a suitable and effectual remedy. But, in the performance of this office, let us be careful not to mistake a mere symptom for the disease itself, and by an empirical practice addressed to the momentary palliation or removal of the one, to add to and confirm the violence and danger of the other.

For myself, sir, I believe that the disease is far more deeply seated than the honorable mover of the resolutions now under consideration supposes. It has its origin in the vices of our own legislation, and will require the cautery and the knife for its extirpation. I am not less sensible, I trust, sir, than other gentlemen, to the sufferings of any portion of my fellow-citizens, but I must say that the present crisis, whatever be its severity, comes alleviated by one high consolation. It is calculated to awaken, and I trust it *will* awaken, all of us to the true nature and dangerous character of that formidable moneyed power which we have built up by our own laws, and which now sits enthroned upon our statute book in the pride of chartered prerogative. Sir, we have heretofore been singularly deaf to the monitory lessons delivered to us by our fathers and predecessors. In vain did the republican statesmen of '91 warn us of the fatal consequences of this "first transgression" of the sacred limits of the constitution—in vain did Mr. Jefferson, in that prophetic passage which was read to us the other day by the Senator from Missouri, [Mr. Benton,] tell us that of all possible institutions "this was the one of

"most deadly hostility against the principles and form of our constitution," and that if permitted to exist, it would, one day, reduce the constituted authorities of the nation themselves under *vassalage* to its will. In vain, sir, did the eloquent voice of the Senator from Kentucky himself, [Mr. Clay,] on another occasion, warn us that this corporation, though then wielding less than one-third of its present capital and resources, was fraught with the most serious "danger to our liberties"—liberties which the honorable Senator seems now to think can be preserved only by upholding this same corporation against the just animadversions of the public functionaries appointed to supervise it. Sir, all these warnings have been unheeded by us, till the distresses which it has now wantonly inflicted upon the country, with the obvious design of influencing and controlling our proceedings here, must have brought home to all of us, I trust, a deep conviction of the danger and capacities of mischief inherent in this great monopoly.

It will hardly now be contended, I presume, by any gentleman who has taken the trouble to examine the subject, that the present distress is the necessary consequence of the removal of the public deposites from the Bank of the United States. It has been expressly admitted, in a quarter entitled to the highest consideration, not only from the distinguished eminence of the gentleman himself, but from the special relation in which he stands to the Bank, [Mr. R. here alluded to the speech of Mr. Binney in the House of Representatives,] that the removal of the deposites *per se* is not a sufficient or justifiable cause for the present distress—that this removal is a thing which might happen, and had happened before in the history of the Bank, without producing any distress or inconvenience to the community. Sir, a removal of the public deposites from the Bank happens, in effect, whenever an application of the public moneys to the public debt, or to the current expenses of the Government, exhausts the amount which is to the credit of the United States in Bank. If we are to credit the book which the Bank itself has laid on our desks, (the report of its committee on the exposition of the President to his Cabinet,) a removal of the deposites, in this way, has occurred at a very recent period, without leading to any pressure on the community. The Bank informs us, in that document, that in the month of March last, when the protested bill on the French Government returned upon it, there was, after deducting the advances it had made on that bill, "less than two thousand dollars of the whole funds of the Government in the Bank!" And yet it appears from its monthly returns that, notwithstanding this exhaustion of the public deposites, it was at that time actually enlarging, instead of curtailing its discounts.

Sir, if the removal of the deposites has produced the late severe and grinding pressure upon the community, there is a singular disproportion, indeed, between the cause and the effect. It appears from statements now before me, that on the 1st day of August last, when the Bank commenced its curtailments, the amount of public deposites in its vaults was $7,599,841; on the 1st of December, that amount was still $5,162,259, making a diminution of $2,437,582 only. By the returns of the Bank, it is shown that on the 1st of August its discounts amounted to $64,160,349. On the 1st of December they were $54,453,104, making a reduction of discounts, in four months, of near ten millions, to meet a diminution of deposites of less than two and a half millions; and this by an institution which, according to its own showing, had not only not reduced, but actually enlarged its discounts, at a time when the public deposites in its vaults, had, by rapid and large diminutions, been brought down to "less than two thousand dollars!"

It is clear, then, that the removal of the deposites *alone*, has not produced the existing distress. But it was the removal of the deposites *connected* (as we are told, from the same authentic quarter already referred to,) with the *doctrine* that the operations of the Government and the business of the community can henceforward be carried on without the Bank of the United

States—it was the intention manifested "of separating the people from the Bank, and the Bank from the people," as it is expressed, which produced the convulsion. We are then to presume, that it was to put down this *doctrine*—to demonstrate the *dependence* of the Government and nation on this great institution—to show that the people cannot be "separated" from it without ruin and confusion—that all this distress has been visited upon the country.

With like views, doubtless, an exhibit was presented of the annual operations of the Bank in the various forms of exchange, domestic and foreign, discounts, circulation of notes, &c.; showing the extent, the *alarming* extent, to which this institution has mixed itself up with, and acquired a control over, the ordinary business and interests of the country. Sir, if there be gentlemen here who do not see in this exhibit a most fearful revelation of the power and influence of the Bank, they have, I confess, much firmer nerves than I can pretend to. It appears from this portentous paper, that the operations of the Bank of the United States, in domestic exchanges alone, under one form or another, during the year 1832, amounted to - - $241,717,910

In foreign exchange, - - - - 13,456,737

Total amount of exchanges, - - - $255,174,647

Two hundred and fifty-five millions one hundred and seventy-four thousand and six hundred and forty-seven dollars.

To which must be added the loans and discounts of the Bank, which *averaged*, in that year, - - - - - $66,871,349

And the circulation of notes of the Bank, *averaging* for the same year, - - - - - $20,309,342

Now, sir, I would ask every candid and reflecting man, if an institution enjoying *such a monopoly* as this, of the general commerce and circulation of the country, incorporating itself, as it has been its policy to do, with the ordinary transactions of the community to so *fearful an amount*, exercising, consequently, a control over the fortunes and interests, the fears and hopes, of so many persons—if such an institution does not wield a power of the most tremendous and alarming character—a power altogether *unchecked* by the State Banks, for the Senate will recollect the significant statement made by the President of the Bank to a committee of this House in 1830, that "there "are very few Banks (State) which might not be destroyed by an *exertion of* "*the power of* the Bank (U. S.)" Sir, sooner or later, evil, dire evil, must have come of so tremendous a power, *unchecked* and *irresponsible*, concentrated in the hands of a great moneyed corporation. It is well that "*by an exertion of that power*," so significantly vaunted, and now so wantonly put in practice, we have been aroused to a sense of our danger, before it is too late to provide for our security.

The true seat of the disease with which the body politic is affected, is here: it is in the existence of this powerful, remorseless, and overshadowing monopoly. What, then, is the remedy? Is it by succumbing to its dictation, to add to its power—by restoring the deposites, (the grand panacea proposed to us,) to increase its resources for future annoyance, to enlarge its means of influence, and multiply the chances of perpetuating its existence? Sir, if we have not firmness to resist the panic which the Bank has made a *pretext* of the removal of the deposites for creating, how much less shall we be able to bear the more serious pressure for which it will find a *real and operative cause* in the expiration of its charter, when, to provide for its returning circulation, and the payment of its stockholders and its depositors, it must call in, instead of ten millions, the whole sixty or seventy millions of debt due to it? Sir, can any one have been so unreflecting as to suppose that we should ever be able to throw off the frightful incubus of this bloated monopoly, without a bitter and painful struggle? Has the experience of 1811, when the charter of the first Bank of the United States expired, been entirely forgotten? Then,

as now, the same scene of bringing forward the State Banks in Philadelphia, as advocates and petitioners on behalf of the United States Bank was gotten up, with this honorable distinction in favor of the present times, that then all of those banks came forward at the bidding of the United States Bank, now, some five or six of them have had the firmness to refuse. Then, there were not only memorials from boards of trade, and public meetings, as now, but there were formal deputations sent to this place, to lay their complaints before Congress, and a committee of this body was appointed to hear and investigate them. Then, too, there was a pause in the operations of trade; and the products of agriculture sustained a depression, of which the fact then stated in Congress, that flour had fallen in a few days from ten to seven dollars, may serve as a set-off to all that we have heard on this floor, for some days past, concerning the ominous decline in the price of cotton. But, sir, our predecessors had the firmness to stand up against all this terrorism, and to regard the cause of the constitution and the public liberty as dearer to the American people than the transitory state of the money market.

I hope, sir, we shall follow their example. If we yield to the panic with which we are now assailed, and restore the deposites, which the Bank has, by its misconduct, justly forfeited, the triumph of this dangerous and unconstitutional institution is complete, and its re-charter virtually decided. Do we not all here feel that these questions are one and the same? Does not the whole course of the arguments we have heard on the *modus operandi* of the removal of the deposites in producing the existing distress, and in what manner their restoration would tend to relieve it, shew that neither the removal nor the restoration are regarded, except as *signs* expressing the termination or renewal of the Bank charter; and that, in truth, it is the Bank itself, and not the deposites, which is in issue. Restore the deposites, and what will happen? Another sudden and great *expansion* of discounts by the Bank, bringing more and more of the community within its power, and at the end of two years, when its charter expires, if any resistance should then be offered to its renewal, we shall find ourselves in the merciless gripe of another Bank *contraction*, far more agonizing than the one we now endure—a crisis to which our courage and principles must certainly prove inadequate, if we have not the firmness to meet the present trial. On the other hand, if the deposites, being withdrawn, are permitted to remain so, the Bank will see in that resolution its own fate finally determined—with such an admonition, it will go on gradually to prepare for the winding up of its affairs, (for, happily, it will not have it in its power to inflict further injury on the community, without doing still greater injury to its own interests,) the State Banks, at the same time, will be enabled pregressively to extend their accommodations, and we shall finally get rid of this tyrannical and unconstitutional monopoly, at the expense of no other suffering than that to which we have already been subjected.

It is in view of this great consummation, Mr. President, the final extinction of this dangerous and unconstitutional moneyed corporation, overshadowing alike the Government and the People, that I, for one, am willing to let the measures which have been taken have their course. The honorable Senator from South Carolina, [Mr. Calhoun,] tells us, however, that the question is not Bank or no Bank, but whether we are to have a Bank organized and controlled by Congress, or a Bank created and governed by the President alone; for the honorable Senator seems to consider the State Banks which may be selected as depositories of the federal revenue, as forming, in effect, a National Bank. But, sir, if there were no other alternative to the agency of the present Bank of the United States, than the employment, *under the selection of the Secretary of the Treasury*, of State Banks, (a supposition by no means necessary in my opinion,) is it possible that State Banks, deiriving their existence from the State Governments, subjected to the habitual control and supervision of those Governments, in the appointment of whose directors, and the ma-

nagement of whose affairs, the Government here would have no participation, —without a common head, checked and controlled by rival institutions, and the share of the public deposites falling to each a boon hardly worth the trouble of its keeping; is it possible that institutions thus constituted and thus situated, could be made the channels and *instruments* of a formidable influence, like a great central corporation, "penetrating," as Mr. Jefferson says, "by its branches, every part of the Union, acting by command and in phalanx," and wielding an enormous accumulation of moneyed power? Sir, the thing is impossible. The general estimate in the operations of the Treasury is, that about one quarter's revenue remains, at any given time, on hand and unexpended. Now, sir, when the deposite of this one-fourth part of the annual revenue, reduced, too, as that revenue will be, by the effect of existing laws, shall be divided between some thirty or forty State Banks, is the small share which may fall to the lot of each, such a consideration as could tempt them from their natural allegiance to, and sympathies with, the Governments which made and can unmake them? What has just occurred in my own State, is sufficient to shew the utter incompetency of such a boon to affect the independent exercise either of the feelings or the judgments of the State Banks. But, to obviate every apprehension, I trust a system will be devised, and I do not hesitate to say, such an one ought to be devised, providing for a designation of the depositories of the public moneys by fixed rules, and under the control of Congress.

Sir, the honorable Senator from South Carolina has also told us that so long as the Government itself receives and pays away bank notes, it is an insult to the understanding to discourse of the pernicious tendency and unconstitutionality of the Bank of the United States; that while the Government, by so doing, treats bank notes as money, it not only has the right, but it is in duty bound, to incorporate a Bank of the United States; and that the question of the constitutionality of such an institution can fairly arise only when the Government shall refuse to receive any thing but gold and silver in payment of the public dues. Without stopping at present to examine the correctness of the reasoning of the honorable Senator, (reasoning, which to my mind is entirely unsatisfactory, inasmuch as it makes a great question of constitutional power to depend, not on the fixed and immutable provisions of the constitution itself, but, in effect, on the *mere will* of the Government, as it may happen to do or not to do a particular thing,) without stopping, I say, sir, to examine this reasoning, at present, I will say to the honorable Senator, that, seeing so many abler gentlemen, himself among the number, while admitting the vital importance of the object, declining the task of its prosecution, I pledge myself to present this great issue in the shape in which only the honorable Senator thinks it can be legitimately presented.

Sir, of all the reforms, social, political, or economical, required by the great interests of the country, that which is most urgently demanded, and which promises in its accomplishment the largest results of utility, security, and public benefit, is, beyond comparison, the restoration of the Government to what it was intended by the framers of the constitution to be, a *hard money* Government. We are too much in the habit, Mr. President, of regarding the evils of the paper system as necessary and *incurable*, and of being content with the *delusive palliation* of those evils supposed to be derived from the controlling supremacy of a National Bank. Nothing, in my opinion, is more demonstrable than that the great evil of that system, its ruinous fluctuations arising from alternate expansions and contractions of bank issues, making a lottery, in effect, of private fortunes, and converting all prospective contracts and transactions into a species of gambling—nothing can be more certain than that these ruinous fluctuations (and we have a striking proof of it in the present distresses of the country,) are increased, instead of being diminished, by the existence of an institution of such absolute ascendency, that when it expands

the State Banks expand with it; when it contracts, those banks are forced in self-defence to contract also. Whatever influence such an institution may be supposed to exert, in preserving the soundness of the currency, that object would be much more effectually promoted by a return, as far as practicable, to a metallic circulation. The first step towards that return is to let the Bank of the United States go down. Its notes being withdrawn, the convenience of travelling alone would immediately create a demand for gold coins, as a substitute, and enforce the necessity of correcting that under-valuation of them at the mint, which is said to have contributed to their disappearance. In concurrence with this, let measures be taken, as it is believed effectual measures may be taken, to discourage and suppress the circulation of bank notes under a certain denomination, (ten or twenty dollars,) of which the effect would be, to produce another accession to the metallic circulating medium. The ordinary channels of circulation being thus supplied with gold and silver, the Government would be prepared, without hardship to the public creditor, to require payment of its dues in specie, and thus realize a reform, than which none could be more deeply interesting, in every aspect, to the safety and prosperity of the country.

Sir, here is an object worthy to engage the most anxious labors of the patriot and statesman, and I feel persuaded that, with a tithe of the effort and talent daily expended in the ephemeral contests of party, we should see it happily accomplished. I conjure gentlemen, then, with abilities so eminently fitted for this great work, to leave the Bank of the United States to its fate—a fate already pronounced by the voice of the nation, and called for by the highest considerations connected with the safety of our free institutions—and to bring forward their powerful aid in an effort to restore the Government to its true constitutional character and destination—that of a simple, solid, *hard money* Government.

But, I shall doubtless be asked, Mr. President, if, in this instance, the public faith has been broken, and the *rights* of the Bank violated, will I not repair the breach, and redress the wrong? Sir, if such were the case, I would; but in my humble judgment, and I hope to be able to show it, the public faith has sustained no violation—the Bank no wrong: and this brings us to the consideration of the rights of the Bank, as secured by its charter. Gentlemen have argued as if the Bank, by the bonus which it paid, of a million and a half of dollars, had *purchased* a *right* to the deposites of the public money. But nothing is more obvious, from the face of the Bank charter itself, and especially from the report of the Secretary of the Treasury, [Mr. Dallas,] which transmitted and explained it, than that the bonus was the consideration, not for the public deposites, but for the *charter grant*—for the *act of incorporation*, conferring on the subscribers to that Bank, the faculties and privileges of a *body politic* and *corporate*, empowered, *as such*, to carry on the trade of banking with a capital of thirty-five millions of dollars, to hold property to the amount of fifty-five millions, to make by-laws for the government of the corporation, to establish offices of discount and deposite in any of the States or Territories of the Union, and for the express stipulation, pledging the faith of the United States that no other Bank should be established by Congress during the continuance of the said corporation.

These evidently were the "*exclusive* privileges and benefits conferred by the act" of incorporation, "in consideration of which" the bonus was to be paid,—and were they not of value enough, Mr. President, of a character sufficiently important to merit and justify the price to be paid for them? Why, sir, among them is a great sovereign power granted to this corporation—that of establishing subordinate Banks within the jurisdiction of the States, independent of the consent, and exempt from the legislation of the States in which they may be established—a power which Mr. Madison declared, in the debates on the creation of the first Bank in 1791, "ought not to be *delegated* to any

set of men under the sun." The deposite of the public moneys in the Bank of the United States can with no propriety be considered "an *exclusive* privi- "lege or benefit conferred on the Bank of the United States by the act of incor- "poration;" inasmuch as that act expressly reserves to the Government, by its financial officer, the power to deposite the public moneys in *other* Banks, if it should think proper to do so.

Let, sir, the document I have already referred to, the report of the Secretary of the Treasury transmitting to Congress the plan of the Bank, be examined, and nothing can appear clearer than that the *true* and *fundamental* contract between the Government and the Bank is that which I have stated—the grant of the important corporate faculties and privileges already mentioned, on the one side, and the payment of the bonus on the other. The provisions in regard to the deposite of the public moneys by the Government, and the transfer and distribution of them by the Bank, were treated as being of an "incidental kind," and regarded in the light of "mutual equivalents," (the one a compensation for the other) growing out of "the fiscal connexion between the Bank and the public treasury." So long as the public moneys should be deposited in the Bank of the United States, the Bank would be bound to transfer and distribute them as the exigencies of the Government should require. When they ceased to be deposited there, the Bank would be relieved from that obligation. The deposites being reserved under the discretionary control of the Government, which could continue or withhold them at its pleasure, could not rationally form a part of the consideration, for which *a fixed and unchangeable* equivalent was to be paid in the form of a bonus.

It is, moreover, to be remarked, as is shown likewise by the important document to which I have referred, that at the time of the establishment of the Bank, the deposites of the public moneys were not regarded solely as a *privilege* or *advantage* to the Bank, but also as a *duty or charge.* It is evident that they were not contemplated at the time, as a source for enlarging the discounts of the Bank, *to the extent to which they have been actually used for that purpose.* It had been stated by Mr. Gallatin, in a report made by him as Secretary of the Treasury, on the 2d of March, 1809, that "the Bank," (the first Bank of the United States) "has not, in any considerable degree, used the public deposites for the purpose of extending its discounts;" and the same course was, doubtless, expected of the new Bank. It certainly never could have been supposed or intended, that the Bank, for its *own advantage,* should lend out the moneys of the United States committed to its keeping, to such an extent as to be unable, (as it will be hereafter shown to have been on several occasions,) to meet the calls of the Government for its own funds, when required to discharge the public engagements.

But, sir, even if it could be shown, as is now contended by the Bank, that the public deposites, and not the faculties and privileges conferred on it as a banking *corporation,* were the *considerations* for which it stipulated to pay, and did pay, the bonus of a million and a half dollars, it cannot, by virtue of this alleged contract, claim the deposites *further* or *otherwise* than the *terms* of the contract have given them. Now, what are the *terms* of this alleged contract? The 18th section of the Bank charter furnishes the answer: "The "deposites of the money of the United States, in places in which the said "Bank and branches thereof may be established, shall be made in said "Bank, or branches, *unless the Secretary of the Treasury shall, at any "time, otherwise order and direct;* in which case," &c. &c. What are the true nature and extent of the right given by this section? Is it an absolute and perfect right to the public deposites; or rather is it not a right to them, (if right it may be called,) *only* so long as the Government, by its financial organ, the Secretary of the Treasury, may not "otherwise order and direct." If it be "otherwise ordered and directed," the right, by the *terms* of the contract itself, ceases.

I admit that this discretionary authority in the Secretary of the Treasury is not a mere capricious volition. It is to be exercised for *reasons*, which shall appear to him to be sufficient, and to be reported to and judged of by Congress. But an extraordinary attempt is now made against the clear import of the language used, to limit the power to the single case of the public funds being deemed *unsafe* in the keeping of the Bank. If such had been the intention, nothing could have been easier than to have adopted a form of expression adapted to the object, and to have declared that "the deposites, &c., shall be "made in the Bank of the United States, *unless the Secretary of the Treasury "shall, at any time, consider them unsafe there.*" But, instead of this restricted phraseology, which would so naturally have occurred, if the intention had been such as is now supposed—the discretionary power of the Secretary is reserved in the broadest and most general terms which the language can supply—"*unless the Secretary of the Treasury shall, at any time, otherwise order and direct.*" By what astringent process of interpretation, words of so large a scope have been contracted into so narrow a meaning, I am at a loss to conceive.

The honorable Senator from South Carolina, [Mr. Calnoun,] has contended that a power over the deposites, even if it had been retained in the fullest manner by Congress itself, "is, *from its very nature*, limited solely to the safe keeping of the public funds." But, sir, if the public deposites be so important a benefit as they have been represented, to the Bank, nothing seems to be more natural than that the power of withdrawing this benefit, should be reserved by the Government, as a *means of control over the conduct of the Bank*, as well as to provide for the safety of the public moneys. That such was a proper and important end of the power, seems to have been clearly the opinion of the honorable Senator himself on another occasion. While a bank bill providing, among other things, for a subscription of twenty millions of its stock by the United States, was under consideration in the House of Representatives, of which the honorable gentleman was then a member, a motion being made to strike out so much of the bill as provided for this subscription by the United States, it was objected to the motion that the Government ought to hold a due proportion in the stock of the proposed Bank, in order to guard itself against the operation of an unfriendly influence. In answer to this objection, and in support of the motion, the honorable Senator, as I find his speech reported in the volume in my hand, made the following just observation: "But "there was another mean of protecting the Government against the Bank, more "potent and certain than any such provision. Let the United States retain the "*power over its deposites*, and over the receipt of the Bank notes in payment of "duties and debts to the Government, and *it would possess a sufficient control "over the Bank.*" Here, it is evident, the honorable Senator considered the power over the public deposites as an important means of control over the general conduct of the Bank, as well as a necessary provision for the safety of the public funds; and in this opinion I entirely concur.* The power being reserved in the *broadest* terms by the charter of the existing Bank, it is applicable to all the rightful purposes of such a power, and the Secretary of the Treasury, in the exercise of it, may and ought to look to the general conduct of the institution, as well as to the safety of the public funds.

That such has been the uniform construction of the authority, both by the Treasury Department and by Congress, appears abundantly from the proceedings and correspondence of Mr. Crawford and Mr. Ingham on the one hand, and from the reports of the Committee of Investigation in 1819, and of the Committee of Ways and Means in 1830, on the other. We must, therefore,

*A discussion subsequently took place between Mr. Calhoun and Mr. Rives on this topic, for which see Globe of 24th January.

look into the conduct of the Bank, to see how far the Secretary of the Treasury is justifiable for having ordered the removal of the public deposites. The Senator from South Carolina, [Mr Calhoun,] remarked that it was not the conduct of the Bank, but the conduct of the Secretary, which was under review. The honorable gentleman, however, will permit me to say that, as the justification of the Secretary depends on the reasons furnished by the conduct of the Bank for the exercise of his authority, an inquiry into the conduct of the one necessarily involves a review of the conduct of the other.

[Here Mr. CALHOUN rose, and said he did not deny the right of the Secretary to bring the conduct of the Bank under review, *so far as the safety of the deposites was concerned, but no farther.*]

I hope I have shown, replied Mr. R., that from the nature and terms of the authority reserved to the Secretary of the Treasury, the *whole* conduct of the Bank, in the discharge of all its duties, is properly open to consideration; and I shall now proceed to inquire into its conduct in several instances, which appear to me to furnish ample justification for withholding from it the deposites of the public money. In confining myself to these instances, I do not wish to be understood as thinking there is nothing else in the conduct of the Bank worthy of blame, or justly incurring the animadversion of the Government. On the contrary, I think there is much more; but I confine myself to those instances, because I believe that they alone are abundantly sufficient to justify the withdrawing of the deposites; and because I am unwilling to occupy the time of the Senate unnecessarily with details of this sort.

The conduct and duties of the Bank, Mr. President, may be viewed in two great relations: 1st to the Government; 2d, to the community at large.

In the first of these relations, its duties are two-fold—as fiscal agent of the Government, to receive and distribute the public moneys, and to have them *ready* for the public service, whenever and wherever they may be called for by the Government—and as a corporation deriving its existence from the law, to observe and conform to all the conditions and securities imposed by the act of its creation. Now, sir, let us first inquire how it has performed the first named of these duties. Has it been always ready and prompt to render up the public moneys committed to its keeping, when they have been required to meet the public engagements? This consideration I hold to be of the highest importance. It is not sufficient that the public moneys should be ultimately *safe* in the hands of the Bank, or in other words, that the Bank be ultimately *solvent*. But it is necessary that it should be ready to meet *promptly* and *faithfully* every call made upon it by the Government for the public funds, when required for the public service. This is daily exemplified in the affairs of private life. When an individual has accumulated a sum of money which he wishes to put out at interest, to await an expected call, or an opportunity of profitable investment, it is a leading consideration with him to put his money in the hands of some one who will not merely be able to pay in the *long run*, but who will pay *promptly and certainly*, whenever called upon.

Has the Bank of the United States, sir, displayed these fundamental qualities of *promptitude* and *fidelity* in rendering up the public funds, for the public use, when called for by the Government? I confidently appeal to the history of the postponements of the 3 per cents. redemption, to sustain me in the assertion that it has not. It is in the recollection of the Senate that early in the spring of 1832, it had been determined to pay off six and a half millions of the 3 per cent. stock on the ensuing 1st day of July, and that a correspondence took place in the month of March, between the Treasury Department and the Bank, with a view to that operation. It soon became evident that the Bank was not in a situation to meet the operation—so largely had it used the public funds in an unprecedented extension of its discounts, (as will be seen hereafter,) to promote its own interests and views. In this state of things, various pretexts and suggestions were urged by the Bank to induce the Government

to postpone the contemplated payment; and a postponement to the month of October, was finally yielded, the Bank undertaking to pay the interest on the debt in the mean time, and holding out expectations, *which it did not fulfil*, of accommodations to the importing merchants to enable them the better to pay the accruing revenue to the Government. The Bank has resorted to a great deal of *special pleading* to show that, notwitstanding the arguments it so zealously urged on the Government, it neither "sought for" nor "requested" the postponement. But what said the Committee of Investigation of 1832, before whom the matter was thoroughly discussed and examined? "The committee "are *fully* of opinion that though the Bank neither '*sought for*' nor '*requested*' the postponement," (returning thus the language of the President of the "Bank,) "yet if such postponement had not been made, the Bank would not, on "the 1st of July, have possessed the *ability* to have met the demand, *without* "*causing a scene of great distress in the commercial community.*"

Now, Mr. President, while the Bank was thus unable to meet the demand of the United States for their own money, what was the state of the account between it and the public Treasury? Why, sir, on the 1st of April, 1832, when the notice was proposed to be issued of the contemplated payment, there was in the Bank to the credit of the Treasury, for public moneys on deposite, the sum of $9,513,000, and on the 1st of July, when the payment was to have been made, the sum of $9,811,000, more than three millions of the public money over and above the sum proposed to have been called for!

But, sir, this was not all. When the month of July arrived, the Government determined, and issued notice of its intention to pay, on the first of October following, two-thirds of the whole amount of the 5 per cent. stocks, and the remaining third on the 1st of January thereafter. The Bank, feeling that it could not, with any plausibility, appeal to the further indulgence of the Government, but being still unprepared to meet its call for the public funds, instituted a *secret* negotiation, and actually consummated an arrangement with the foreign holders of the stock, not to come forward with their certificates at the periods designated, to leave the amount due to them still in the Bank, on an agreement that the Bank should pay them the interest, but the Government continuing bound, in consequence of the detention of the certificates, for the principal of the debt. Here the conduct of the Bank, from a *negative*, became a *positive* delinquency. It was no longer a mere want of readiness and ability to pay up the public funds, when required for the public service, but an active and unwarrantable interposition, contrary to every principle of its duty as fiscal agent of the Government, to thwart it in a great object of public policy—the early and final extinguishment of the public debt.

When the existence and result of this secret negotiation became accidentally known, the Bank endeavored to undo what had been agreed to be done, and to procure the surrender of the certificates, which it had previously made an arrangement to have held up. But this in no manner lessens the impropriety and unwarrantable character of the original act, and leaves the Bank justly exposed to the full force of the imputations of faithlessness and illegality, which its conduct, in this transaction, has incurred. It avails as little to refer to the declaration of the Committee of Ways and Means of the House of Representatives, at the close of the last session of Congress, that as "the "matter is now substantially closed by the surrender of nearly the whole of "the certificates, it no longer presents a *practical* object of inquiry, or to call "for, or admit any *action* of *Congress* upon it." The same committee explicitly pronounced the condemnation of the transaction, in declaring, as it did, "that the Bank had exceeded its legitimate authority, and had no warrant for "it in the correspondence of the Secretary of the Treasury." In the state of the question now presented to us, this transaction being referred to by the Secretary of the Treasury as one of his reasons for ordering a removal of the public deposites, it necessarily becomes "a *practical* object of inquiry," de-

manding the serious *consideration*, if not "the action of Congress;" and none, in my estimation, could more signally illustrate the delinquency of the Bank in its relations of fiscal agent to the Government. While these secret negotiations were going on to withhold the public funds from their legitimate destination—the payment of the public debt—it appears that there was in the Bank on the 1st day of October, 1832, after deducting the whole amount of debt designated for payment on that day, a clear surplus of the public revenue of $3,222,792.

Upon a calm review of these transactions, Mr. President, I think it must be admitted by all, that the Bank, by an improper use of the public money for its own advantage, had disabled itself to meet, with promptitude and punctuality, the calls of the Government for the public funds committed to its keeping, that it had not only failed to have those funds forthcoming, when required for the public service, but that by a secret and unwarrantable intervention between the Government and the public creditor, it had sought to prevent the application of those funds to the extinguishment of the public debt, and that, in both respects, it had violated its clearest duties as fiscal agent of the Government.

Let us now see if it has not equally violated the other duty indicated as appertaining to its relations to the Government—that of fulfilling the conditions and guarantees provided and imposed by the charter itself, for its correct administration. The charter provides that, for the management of the affairs of the Bank, there shall be twenty-five Directors, of whom five are to be chosen by the President of the United States, with the advice and consent of the Senate; and it is farther provided, as *a fundamental article of the constitution of the Bank*, that "not less than seven Directors shall constitute a Board for the transaction of business." The design of these provisions, undoubtedly, was to secure, in all the operations of the Bank, an adequate and responsible representation of the interests both of the Government and of the stockholders, and such a knowledge on the part of the Government, through the Directors chosen by it, of the proceedings of the Bank, as would serve as a check to malpractices and abuses, and as a security for the public interests, of every kind, connected with the institution. But the actual management of the Bank has been so conducted as to evade and frustrate all these essential guarantees provided by the charter for a correct administration. Instead of the affairs of the Bank being transacted by a Board of *at least* seven Directors, at which every Director might, and when occasion required, would be present, the most important business of the institution is transacted by small committees chosen by the President, and conducting their proceedings in secret; and from these committees, thus engrossing the active administration of the Bank, the Directors chosen by the Government have been systematically excluded. It is the remark, sir, of a most able and distinguished man, of one whose knowledge both of banking and finance, is unsurpassed in this, as it probably is in any other country, (Mr. Gallatin,) that "the *mystery* with which it was "formerly thought necessary to conceal the operations of Banks, has been one "of the most prolific sources of erroneous opinions on that subject, and of "*mismanagement* on their part." This dangerous and exploded mystery, the Bank of the United States has sought to revive, and in doing so, has furnished just cause for the jealousy of the Government and the nation.

The President of the Bank, according to the by-laws of the corporation, being, ex officio, a member of these committees, as well as having the sole appointment of them, he directs and controls their proceedings at will; and his responsibility is reduced to less than a name, not only by the mystery which envelops those proceedings, but by the fact that through the number of proxy votes which he gives, (in violation of the spirit of the charter at least, which restricts the highest number of votes of any individual stockholder to thirty,) he chooses also what Directors he pleases. In the actual administration of

the Bank, then, every guarantee provided by the charter is set at nought The representation allowed to the Government in the affairs of the Bank, is virtually nullified—instead of the open management of its concerns by a responsible Board of Directors, the most important business of the Bank is transacted in the conclave of small committees controlled by the President alone; and in him, in fact, has been realized that *concentration of all power in the hands of one man*, (so far as the affairs of this great corporation are concerned,) the apprehension of which, in regard to the constituted authorities of the nation, has elicited so much patriotic eloquence in the progress of this debate. In whatever aspect, then, I look at the conduct of the Bank in its relations with the Government, whether as fiscal agent bound to administer the public funds for the public convenience, or as a subordinate corporation created by the Government, and bound to conform to the fundamental regulations imposed by the law of its creation, I think it has equally failed in its duties, and forfeited its title to the confidence of the Government.

I will now, Mr. President, briefly inquire what has been the conduct of the Bank in its relation to the community at large. In this relation, its proper functions and duties are to give safe and prudent aids to sound industry and enterprise, to abstain from encouraging a spirit of wild speculation and overtrading, and above all, to abstain from all interference with the politics of the country. This last duty was on a former occasion recognised by the President of the Bank himself "as fundamental in the constitution of the Bank." The inquiry in what manner the Bank has discharged these duties, imposed by its relations to the community, necessarily brings under review that unprecedental extension of its accommodations to individuals from $42,402,304 to $70,428,070, in the short space of sixteen months, between 31st December, 1830, and 1st May, 1832. This extraordinary increase of Bank facilities must inevitably have produced, and did produce, a most pernicious spirit of overtrading in the country. It was effected too, as we have seen, by an unwarrantable use of the public funds in the keeping of the Bank, to such an extent as utterly to disable it to meet the calls of the Government for those funds, when they were required for the public engagements. But, in addition to these just and strong objections, it is alleged both by the Secretary of the Treasury in his report to Congress, and by the President in the paper read to his Cabinet, that there is every reason to believe this extraordinary expansion of the business of the Bank was made with an express view to a political object—to bring more and more of the community under its power, to be exerted at the critical moment of an election, in which it felt a deep interest.

I must say, Mr. President, that this allegation is sustained by evidence of the strongest probability, while the attempts of the Bank to explain so extraordinary an expansion, on other principles, have been entirely unsatisfactory. It is true, that in this interval, the Bank received from the Government reimbursement of a loan of about eight millions; but even if it had been proper at such a period, (little more than four years before the expiration of its charter, and when it was aware of the intention of the Government to use the public deposites as fast as they accrued, in the payment of the public debt,) to re-invest this sum in the permanent form of accommodation, which, it is understood, much the greater part of this extraordinary extension of its business assumed, it surely did not require an increase of private loans to the amount of twenty-eight millions, to invest eight millions. It is also alleged by the Bank that, during this interval, it had called in its funds from Europe to an additional amount of about four millions; but it has failed to tell us, sir, why it had thus called in its foreign funds. The question would naturally occur, Was it to aid in the great political operation at home attributed to it, involving, as was supposed, the critical issue of the renewal of its charter or was it for other purposes?

We have been further told by the Bank, that the years 1831 and 1832 were years of extraordinary foreign importations, and that unusual facilities of bank accommodation were required to diffuse these imports through the country. But the Bank ought to have recollected that these very importations had been unduly stimulated by the improper and unprecedented extension of its discounts; and that the distinguished authority, [Mr. Rush,] whose testimonial it had vauntingly cited in reference to another question, had, in the very report from which that testimonial is extracted, declared that one of the most important duties and functions of the Bank is, "by confining its issues within "prudent limits, to *restrain excessive importations, and to keep them within the "true wants and capacities of the country.*"

But, sir, another most extraordinary explanation has been attempted by the Bank. It says that while this expansion of its discounts was going on, and until July, 1832, when the President put his veto on the bill for re-chartering it, "it was unknown whether it [the Bank] would have *the least reason* to be opposed to his election." Why, sir, one could not but be *amused* at this dramatic exhibition of political simplicity, on the part of this veteran tactician in the field of politics, if it were not for the reckless self-contradiction which accompanies it. When, sir, in the very book in which it makes this declaration, it characterises the first message of the President in December, 1829, as an *assault* upon the Bank—when it had adopted, in November 1830, and in March 1831, resolutions for the distribution of tracts and pamphlets, "to counteract," as it says, "the schemes for the destruction of the Bank," originating in that message—when in the same book it expressly justifies those resolutions of 1830 and 1831, on the ground of self-defence against the hostile attempts of "*politicians*," (meaning of course the President and his friends,) to *destroy* the institution—that it should after these things gravely tell us it *did not know*, all this time, that it "would have the *least reason* to be opposed to the election" of the present Chief Magistrate, is certainly an extraordinary experiment upon *our* simplicity, if it be not an amusing display of *its own*.

Considering, then, Mr. President, that the attempts of the Bank to explain this unprecedented increase of its discounts at the period referred to, have failed to justify it by proper and sufficient reasons—that it stands condemned, on the contrary, by sound maxims of banking, and of a safe, correct, and prudent management—but that on the other hand, there were obvious *political* motives for it, notwithstanding the professed ignorance of such by the Bank—that it was co-incident in point of time, with the application for a renewal of its charter, and also with the pendency of a contested election, in the issue of which its own fate was supposed to be involved, and that the part of the Union which was the principal scene of the Bank operation, was at the same time the *debatable* ground of the political contest. When all these circumstances are considered, it does seem to me to be difficult to resist the impression that this extraordinary operation of the Bank was directed to a political object; an impression strongly confirmed by the unequivocal manifestation of a *political* spirit by the Bank in other of its proceedings. I allude, of course, to the active devotion of the funds of the Bank, under resolutions giving the President an unlimited control over them for that purpose, to the "preparation and circulation" of pamphlets and other writings; which, whatever may be the disguise in which they are sent forth, have been, many of them, party publications of the most acrimonious character.

These proceedings have been attempted to be justified on the ground of self-defence. But there is a radical fallacy in the appropriation of this plea by the Bank. The Bank has no right to consider itself a *party* to the question of the renewal of its charter. It is a great question of national policy, to be decided by high considerations of the public good, in which the interest of the Bank, as such, cannot legitimately enter, in the slightest degree. Like every other public question, its discussion and its decision should be freely left to

the constitutional organs of the public will, and to the ordinary and copious channels of public information; that public interest, which should alone govern its decision, being an ample guarantee that every argument and consideration in favor of the Bank, which either justice or policy could suggest, would be fully presented to the public mind. On that ground the Bank especially had every reason to be content to stand. A majority of both Houses of Congress had declared themselves in favor of a renewal of its charter—the larger portion of the press was also favorable to the same object. There was no danger, then, that its side of the question would not be fully presented to the nation, through the usual and legitimate modes of enlightening public opinion, without its coming forward, with its vast *preponderance* of moneyed power, to operate in the cause.

But even those who have attempted a justification of these proceedings of the Bank have admitted that the publications "prepared and circulated," under its patronage, should be limited to a *defence* of its conduct. What, however, have been the character of many of those publications? The honorable Senator from Missouri, [Mr. Benton,] gave us, a few days ago, some idea of the tone and spirit of one of them, "the addresses to members of the State Legislatures," of which some hundred thousands of copies, it seems, had been circulated by the Bank, a portion of which, under its all-pervading agency, had found their way into the retired valleys and mountain hollows of his own State. The drift and object of these were plainly to operate on pending elections, by every species of appeal which might be made available for the purpose. We have been presented, sir, in another quarter, [Mr. Polk, in the H. of Reps.] with specimens of others of these publications, disseminated, in like manner, far and wide, by the potent influence of the money of the Bank—judging of which, by the specimens given, we must all acknowledge them to be in the bitterest and most inflammatory style of party denunciation and invective; seeking much more to rouse and enlist the passions and prejudices of the people in the party contests of the day, than to enlighten and convince their judgments as "to the nature and operations of the Bank."

But, sir, I will not pursue these details. The fact, which they serve to illustrate, is manifest, and known to all. The Bank has openly entered the political arena as a partisan—a great moneyed corporation, contrary to the ends of its institution, and in violation of its clearest duties, vests in the hands of its presiding officer, an *unlimited and irresponsible control* over its vast funds, to enlist the co-operation of the press, through it and by other means, to influence the elections, and thus, if possible, to mould the action of the government to its interested and ambitious purposes. If an example of such "fearful omen" to the morals and liberties of the country could have passed without the stern and indignant rebuke it has met from the Government and the People, it would have marked, indeed, a fatal degeneracy.

From this general review of the conduct of the Bank, in its various relations to the public, I hope I have shown, Mr. President, that *it*, at least, has no just cause to complain of the animadversion with which it has been visited in the removal of the public deposites. I trust also, sir, that I have shewn that in the act of the Secretary of the Treasury, ordering that removal, there was no want of *legal* authority. Here, then, believing as I do, that our highest duties to the Constitution and to the public liberties forbid our doing any thing, not required by law and justice, which would tend to strengthen this dangerous and unconstitutional institution, (and such, I think, would be the inevitable tendency of a restoration of the deposites,) I might have been content to terminate my view of the subject. But grave questions of constitutional law have been made in regard to the rights and powers of the chief executive officer on this occasion, which ought not to be shunned. Questions of this sort, whenever they arise, should be firmly met, and fully and fairly canvassed as nothing can be of deeper interest to the people and to the States

of this confederacy, than the ascertainment of the true principles of that Constitution which they have "ordained and established."

On this branch of the subject, there is a discrepancy of opinion among those who have, nevertheless, united in censuring the conduct of the administration. I understand the Senator from South Carolina, [Mr. Calhoun,] distinctly to admit the constitutional power of the President to superintend and *control*, if necessary, the action of the Treasury Department, in reference to this question; while the honorable Senator from Kentucky [Mr. Clay] utterly denies this power, and considers the conduct of the President as a palpable usurpation. [Here Mr. Calhoun rose and said, that though he did not consider the conduct of the President an usurpation, he considered it a gross abuse of power.] Sir, (said Mr. R.) the only question presented by the resolutions under consideration, is a question of the *existence*, not of the *abuse*, of power. Those resolutions directly affirm, that the President "had *assumed* the exercise of a power not *granted* by the constitution and laws." Whether the conduct of the President was, under the circumstances of the case, an *abuse*, depends upon what had been the conduct of the institution whose supervision was intrusted to a department declared by the Senator from South Carolina to be under the superintendence and control of the President; and if the views which I have already presented, of the conduct of that institution, have any foundation, all will agree that if the President possessed the power, the occasion had occurred when it ought to be exercised.

I will now, Mr. President, examine the several positions which have been taken by the Senator from Kentucky, [Mr. Clay,] in relation to this question of constitutional power. The honorable Senator first affirms that, by what has been done with regard to the removal of the public deposites from the Bank of the United States, the Executive has usurped the power over the *Treasury* and the *public purse*, which the constitution has exclusively vested in the Legislative Department. In enforcing this position, sir, he has presented to us, with his characteristic eloquence, the alarming consequences of an union of the power of the sword and of the purse in the same hands. As no topic is better calculated to arouse the jealousies of a free people than this, it becomes us to analyze and examine it, and to see how far it has any just application to the subject under consideration. Sir, it is a great maxim of constitutional liberty, in that country from which we have derived so many of our institutions, that the powers of the sword and the purse should be kept separate and distinct; and as the maxim comes to us from thence, we cannot better ascertain its scope and meaning, than by seeing how it is understood and practised there. In England, the power of the sword is in the hands of the King. He can declare war, make peace, raise armies, equip fleets. But the supplies for the prosecution of the war, for the support of the army and navy, can be obtained only by a vote of Parliament; and thus the power of the purse is lodged in the hands of the representatives of the people. This is considered the great security of English liberty—that the King, who holds the power of the sword, has no power over the public purse. But what is this power of the purse, which is thus jealously and wisely withheld from the Executive Magistrate? Why, sir, evidently the power of drawing money from the pockets of the people, and of designating the objects to which it shall be applied.

The power of the purse, then, of which we have heard so much in the course of this discussion, and so much, I must be permitted to say, that is vague and indeterminate, is, in the true constitutional sense, the power of taxation and appropriation—the power of raising money by taxes, of determining in what manner and to what amount they shall be raised, and to what objects they shall be applied. This great power here, as in England, is exclusively vested, as it ought to be, in the immediate representatives of the people. The Constitution expressly declares that "*Congress* shall have power to lay and collect taxes, duties, imposts," &c. and that "no money shall be drawn from

the Treasury but in consequence of appropriations made by *law*." These are the provisions of the Constitution which confer and define the power of the purse. But while the general powers to raise and appropriate money for the public service were vested in Congress, it certainly never could have been intended that Congress itself was *to collect, to receive, to keep, to disburse*, the public money. These are subordinate ministerial functions which must, of necessity, be performed by Executive agents, under the general provision of the law. In England, sir, where, as we have seen, the power of the purse is fully and effectually vested in Parliament, it is, nevertheless, the *Exchequer* and the *Treasury*, Executive departments, which manage the collection and expenditure of the public revenue under authority of law. So with us, sir, the ministerial functions of collecting, receiving, keeping, disbursing, the public money, have been invariably devolved on the Executive officers of the Government.

It is true, sir, that Congress, in the exercise of its legislative powers, may and ought to, (as far as is consistent with the public interests, which might in certain cases require a discretionary power to be lodged with the Executive,) prescribe a place of deposite for the public moneys, when collected; but if no such prescription be made by the legislative authority, it devolves necessarily on the Executive department charged with the collection and safe keeping of the public moneys, to determine where they shall be deposited and kept. Such was the case, in the most unlimited sense, previous to the passage of an act in 1800, which required that, at certain places, the bonds taken for the payment of duties should be deposited in the Bank of the United States, or its branches, for collection. Before that time, the Treasury Department caused the public moneys to be deposited wheresoever it thought proper—in some instances in the hands of public officers; in others, in the State Banks, and in others again, in the Bank of the United States and its branches. This it did at its perfect discretion, without its ever being imagined that, in so doing, it encroached on that power of the purse, which the constitution had lodged in other hands.

When the present Bank of the United States was established, its charter contained a provision that the deposites of the public money should be made in it or its branches, *unless the Secretary of the Treasury should, at any time, otherwise order and direct*. If the Secretary of the Treasury, in the exercise of the discretion thus reserved to him by the law, should order the public moneys to be deposited elsewhere, he certainly *usurps* no legislative power over the public purse. He merely executes a subsidiary trust in regard to the place of keeping the public moneys, which has been expressly confided to him by the legislative department itself.

But, sir, it has been argued that by the act incorporating the Bank of the United States, with the provision abovementioned, the Bank was, in effect, constituted the *Treasury of the United States*, and that in removing the public deposites from the Bank, money had been drawn from *the Treasury*, in violation of the constitutional declaration on that subject. If the act incorporating the Bank could, by possibility, have had the effect attributed to it, of converting the Bank, by some strange metamorphosis, into the National Treasury, still it became the Treasury *sub modo* only—that is, only so long as the Secretary might not order the public moneys to be deposited elsewhere. When the Secretary should order the public moneys to be deposited elsewhere, then, in virtue of the very provision referred to, the Bank ceased to be the Treasury. But there is a total want of logical precision in this notion of the Treasury. The error is in annexing an idea of *fixed locality* to it; whereas, in the true constitutional and financial sense, it is not a *place*, but a *state* or *condition*. It is the condition of moneys belonging to the Government, and being in the custody or legal possession of the officer charged with their safe keeping. Wherever moneys are placed to the credit, and subjected to the control, of the public Treasurer, there they are, both in legal and common intendment, in the public Treasury.

In a report of the Secretary of the Treasury, made on the 9th day of January, 1811, I find the term used in such a way as to show conclusively the sense in which it is habitually employed in the finances of the Government. A resolution had been adopted by the House of Representatives, on the 19th December, 1810, requiring the Secretary of the Treasury, among other things, to report "what will be the probable amount of the deposites in favor of the "United States in any of the said Banks," (U. S. and State,) "or their "branches, and which of them, on the 1st of March, 1811." The Secretary of the Treasury, in answer to this call, reported: "It is probable the amount "of specie in the *Treasury* will, on the 1st day of March next, exceed "$2,500,000, and that the proportion deposited in the Banks, other than that "of the United States and its branches, will not materially vary from what it "is at present." Here we see, Mr. President, that the Secretary of the Treasury speaks of the whole of this sum, though distributed in various Banks, both of the United States and the States, as being *in the Treasury*, because, whether in one or the other, it was equally in the legal custody and under the control of the *Treasurer*.

A similar illustration is furnished by the very law establishing the Treasury Department. The 4th section of that act declares that "all receipts for mo-"neys received by *him*" (the Treasurer) "shall be endorsed upon warrants sign-"ed by the Secretary of the Treasury, without which warrant so signed no ac-"knowledgment for money received into the *public Treasury* shall be valid." Here, it will be perceived that the receipt given by the *Treasurer* (endorsed on the warrant signed by the Secretary of the Treasury) is treated as synonymous with receipt into the *public Treasury*. When the Treasurer thus executes his receipt, the money, wherever it may be, stands to his credit, and is subject to his control, and is *consequently* in the public Treasury. It continues *in the public Treasury* so long as it stands in his name, though, in the mean time, it may be repeatedly shifted from place to place; and it goes *out of the Treasury* only when it passes from him to some creditor of the Government, to whom it is paid under a warrant of disbursement. Another illustration of the same kind is furnished by that clause of the act which makes it the duty of the Treasurer, on the third day of every session of Congress, "to lay before them a true and perfect account of the *state of the Treasury;*" by which, certainly, it is not meant that he should lay before Congress an account of the state of any Bank or other place where the public moneys may be deposited, but "the amount of the public moneys, wheresoever deposited."

I fear, Mr. President, that I may have been a little minute in these explanations; but, sir, the charge of violating the public Treasury, and of eloigning the public money, is a very grave one, and might well justify the tediousness of a little detail in developing a misconception and confusion of ideas, on which alone the charge rests. If these explanations have not been entirely fruitless, I may now confidently appeal to gentlemen to say, where is there any thing to give even a color of plausibility to the charge that the public moneys, in being removed from the Bank of the United States to other places of deposite, have been taken *out of the public Treasury?* Are they not still (and equally as before their removal) in that legal and responsible custody of the Treasurer, which constitutes in fact, the public Treasury? Do they not stand in his name and to his credit in the State Banks, as they did in the United States Bank? Are they any more accessible to misapplication, or unauthorized uses now, than they were then? Are they exempted, where they are, from any of the safeguards and barriers which the law and the constitution have thrown around the public moneys? Can you reach them, in the State Banks, any more than in the United States Bank, without those precautionary forms which have been established for the protection of the public Treasury? Can a single shilling be disbursed now, any more than heretofore, without warrant drawn by the Secretary of the Treasury, countersigned by the Comptroller, and record-

ed by the Register? And yet, sir, from the sweeping and vehement denunciations we have heard, one would suppose that the whole public treasure was now at the unlimited disposition of the President, to be expended by him in any way and for any purpose he might choose, free from all restraint of law and form of law.

To what a degree, sir, must the sagacious mind of the honorable Senator from Kentucky [Mr. Clay] have been inflamed by a gratuitous, however patriotic, indignation against the President, to have invoked, as applicable to this occasion, the solemn warning of Patrick Henry, in the Virginia Convention, against the union of the *purse and the sword*, which that gifted orator and patriot pronounced to be destructive of freedom. Glowing, sir, as was the imagination, and fervid as the oratory of that great man, he never could have seen in the simple ministerial operation of transferring the public moneys from one place of deposite to another, in pursuance of an authority given by law, that formidable assumption of the *power of the purse*, which, united with that of the sword, he denounced as fatal to liberty. If the honorable Senator had read a few brief sentences immediately preceding the passage he quoted, he would have seen in what sense Mr. Henry spoke of the power of the purse and the sword. He would have seen that Mr. Henry, uncompromising adversary as he was of the new constitution, was arguing against the powers proposed to be vested in *Congress*, of taxation, of raising armies, and of control over the militia. What said the orator, sir? "*Congress*, by the power of *taxation*, by "that of *raising an army*, and by their *control over the militia*, have *the sword* "in one hand, and the *purse* in the other. Shall we be safe without either? "*Congress* have an unlimited power over both—they are entirely given up by "us." Then followed, in immediate juxta-position, the passage quoted by the honorable Senator. "Let any one candidly tell me when and where did "freedom exist when the sword and the purse were given up from the "people," &c.

It is obvious, then, Mr. President, that Patrick Henry spoke of the power of the purse in the sense in which I have already explained it, as the great power of taxation, and its incident, that of appropriation—and not the subordinate ministerial functions of collecting, receiving, keeping, *depositing*, the public moneys under authority of law. We see, also, in what sense he spoke of the power of *the sword*, as that of raising armies, and of general control over the military force of the country. It is in this sense, as we have seen, that the King of England is said to hold the power of the sword. But there is no color, not the slightest, for saying that the President of the United States holds the power of the sword. He cannot raise armies, equip fleets, declare war, organize, arm, discipline, and call forth the militia. All these powers, which constitute the power of the sword, are expressly vested in Congress. He is, by the constitution, it is true, commander-in-chief of the army when it is *raised*, and of the militia when they are *called forth* by Congress; but this no more gives him the power of the *sword*, in the true political sense, than the function devolved upon executive agents of collecting and receiving the public taxes, after they have been imposed by Congress, gives him the power of the *purse*. This ominous conjunction of the *sword* and the *purse*, then, in the hands of the *President*, is a creation of the imagination, which, like other "raw heads and bloody bones" of the day, can frighten only while it is unapproached and unexamined.

[Here Mr. CLAY rose and said, if the Senator will inspect the passage, the expression will satisfy him, that it has some pertinency. Patrick Henry was against the union of the purse and the sword in the hands of the General Government; it was the whole power of the country: and under such an union, liberty was gone. My argument was, that if, when the purse and sword are in the hands of the entire Government, checked and balanced as it is, by means of its various departments, there is still danger, how much more immense

when they are in the hands of one of them, when all did not furnish a competent security for liberty. Mr. C. also said, that in his remarks on the union of the purse and sword in the hands of the President, he did not allude solely to his seizure of the public money, but to the power which he had claimed and exercised, of saying to one Secretary, "You must get out of office, if you will not do as I bid you," and to another officer, "I dismiss you, unless you consent to be governed and controlled by me."]

It still seems to me, continued Mr. Rives, that the honorable Senator has failed to show the applicability of his quotation from Patrick Henry to the power exercised in the removal of the deposites. The honorable Senator now recognises the broad and only true sense in which Mr. Henry spoke of the powers of the purse and the sword, and argues if those powers, when possessed by the whole Government, were thus dangerous to liberty, how much more so must they be when united in the hands of a single branch of the Government. To make this reasoning just, then, and the quotation applicable, it must be shown that, in the same sense in which those powers are possessed by the whole Government, or rather by Congress, they have been exercised or attempted to be exercised by the President. But, surely, sir, the honorable Senator will not contend that the President has exercised or attempted to exercise the power of *taxation*, which Mr. Henry spoke of as the power of the purse, or, on the other hand, that he has exercised, or attempted to exercise, the power of *raising armies* and *calling forth the militia*, which Mr. Henry considered the power of the sword.

In regard to the other portion of the honorable Senator's observations, touching the abuses which the President *might* commit in saying first to one, and then to another Secretary, that if you will not do so and so, I will turn you out of office, I can only say that the argument comes just forty-five years too late. In the very first Congress which met under the Constitution, it was decided, upon the fullest consideration, that the President, according to the true principles of that instrument, possessed the power of removal from office, and that power was expressly recognised in the acts constituting the Executive Departments. The very argument which the honorable Senator now uses, and every other which he has so earnestly pressed on this branch of the subject, derived from possible abuses, was then repeatedly and strongly urged against the power of removal in the President. But they were all over-ruled on the ground that the Constitution, in "vesting the executive power in the President," had made him *responsible* for the conduct of the Executive officers employed under him, whom, therefore, he ought to have the power to control, and that this *responsibility* of the President, thus established, was, in fact, to use the language of Mr. Madison, the highest security "for liberty and the public good."

But, sir, this matter deserves a fuller examination, and brings under review some opinions expressed by the honorable Senator a few days ago, which, as they involve the fundamental theory of the constitution in regard to the Executive branch of the Government, I will proceed to consider more in detail. The honorable Senator took especial exception to the principle asserted by the President in the paper read by him to his Cabinet—"that the *constitution* has "devolved upon him the duty of *superintending* the operation of the Executive "Departments." He contended that the *constitution* had given him no such power—that by *law* those departments may, and in certain cases have been, placed under the superintendence and direction of the President—that so far, and no farther, he has, *by law*, the superintendence of their operations; but that the *constitution* has devolved on the President no right of superintendence over the Executive Departments.

Now, sir, on this assertion, I must respectfully join issue with the honorable Senator; and I call to witness the fathers of the constitution, and those who have had the largest and most enlightened experience in the administration of its highest trusts. The fundamental theory of the constitution in regard to the

Executive power, is, 1st, Its unity, 2dly. Its responsibility; to secure which last, in an undivided and the most efficient manner, was the great argument in favor of the first. In governments of the monarchal kind, the Executive head is exempt from all responsibility. But in our republican constitution, the chief Executive Magistrate is under a triple responsibility, through the medium of election, of impeachment, and of prosecution in the common course of law.

He is not only responsible for his personal acts, but the "Executive power being vested in him," he is responsible for the whole Executive Department; and this responsibility of the President was considered the great security for the proper and safe administration of that Department. Mr. Madison, in the debates which took place in '89 on the President's power of removal, said, "It is evidently the intention of the *constitution* that the First Magistrate "uld be responsible for the Executive Department." Again, in the course of the same debate, he said, "The principle of unity and responsibility in the "Executive Department, is intended for the security of liberty and the public "good."

The President being thus responsible by the *constitution* for the conduct of the Executive officers, he has, from the *constitution* also, as a necessary consequence, the right to inspect, *superintend*, and control their proceedings: and this right of superintendence is expressly and repeatedly recognised, on *constitutional* grounds, in the great debate in the first Congress, to which I have already referred. I will give a few only, of many similar extracts, in which it will be seen that this right of superintendence, as a *constitutional* right, is distinctly and unequivocally asserted. Mr. Madison said, "is there no dan-"ger that an officer, when he is appointed by the concurrence of the Senate, and "has friends in that body, may choose to risk his establishment on the favor of "that branch, rather than rest it upon the discharge of his duties to the satisfac-"tion of the Executive branch, which is *constitutionally* authorized to *inspect* "and *control* his conduct."

Mr. Lawrance: "In the *constitution*, the heads of Departments are consi-"dered as the mere assistants of the President in the performance of his exec-"utive duties. He has the *superintendence*, the *control*, and the *inspection*, of "their conduct," &c. &c.

Mr. Ames: "The Executive powers are delegated," (of course, by the *constitution*) "to the President, with a view to have a responsible officer to *su-"perintend*, *control*, *inspect*, and *check*, the officers necessarily employed in "administering the laws."

We see, then, Mr. President, that throughout these debates, which, as a contemporaneous exposition, as well as from the distinguished ability of the men who participated in them, must be regarded as an authority of the highest order, that the right of the President to *superintend* the Executive Departments, was treated as a right flowing from the fountain of the *constitution* itself, and existing anterior to, and independent of legislative provision. Sir, that this is the true character of the right, nothing could more strikingly show than the *form* in which the question of the Presidential power of removal was finally settled by the Congress, whose debates are here referred to. In the original shape of the bills for the organization of the Executive Departments, it was provided that such and such Secretaries should be appointed, "*to be removable by the President.*" It was suggested, however, that a clause of this sort might be considered as implying that the power of removal was granted by *the law*. To preclude such an influence, it was proposed to substitute a mere incidental recognition of the power, serving to show that the power was considered a pre-existing one, derived from the *constitution* and not from the *law;* and this was done in the section providing for cases of vacancy in the head of the Department, by a simple declaration that "*whenever the principal "officer shall be removed from office by the President of the United States*, or "in any other case of vacancy," the chief clerk shall, during such vacancy,

nave the charge and custody of the records, &c. &c. of the Department. The original clause was stricken out, and this incidental recognition of the power substituted, as will be seen by reference to the acts constituting the Executive Departments; and this was done expressly on the ground, which the language sufficiently imports, that the power of removal from office by the President, was a pre-existing power, flowing from the *constitution*, and not derived from the *law*. The power of superintendence, involved in that of removal, stands, as we have seen, on the same ground.

Sir, I beg leave now to call the attention of the Senate to an authority which, as that of one of the earliest and most uncompromising foes of tyranny, and the great champion of popular rights, as he is the acknowledged founder of the democratic party in this country, cannot fail, I trust, to command the respect of those who, like the honorable Senator from Kentucky, profess to be fighting the battles of liberty on this floor. I allude, of course, to Mr. Jefferson. While no one more steadily opposed the undue accumulation of power in the hands of the chief Executive Magistrate, it will be seen that no one more unequivocally maintained the constitutional right of the President to superintend and control the action of the Executive Departments. I will read, sir, an extract from a letter addressed by him to M. de Tracy, the author of an able and enlightened commentary on the great work of Montesquieu. He is expressing his difference of opinion from M. de Tracy on the question of a *plural* or *single* Executive, declares a decided preference for the latter, and after appealing to the history of the French Directory to show the evils and disadvantages of the former, he proceeds to notice the organization of our single Executive thus:

"The failure of the French Directory, and from the same cause, seems to "have authorized a belief that the form of a plurality, however promising in "theory, is impracticable, with men constituted with the ordinary passions. "While the tranquil and steady tenor of our single Executive, during a course "of twenty-two years of the most tempestuous times the history of the world "has ever presented, gives a rational hope that this important problem is "at length solved. Aided by the counsels of a cabinet of heads of Depart-"ments, originally four, but now five, with whom the President consults, either "singly or all together, he has the benefit of their wisdom and information, "brings their views to *one centre*, and produces an *unity of action* and direction "in *all the branches of the Government*. The excellence of this construction "of the Executive power has already manifested itself here under very oppo-"site circumstances. During the administration of our first President, his "Cabinet of four members was equally divided, by as marked an opposition "of principle as monarchism and republicanism could bring into conflict. "Had that Cabinet been a Directory, like positive and negative quantities in "algebra, the opposing wills would have balanced each other, and produced a "state of absolute inaction. But the President heard with calmness the opinions "and reasons of each, *decided* the course to be pursued, and kept the Govern-"ment steadily in it, unaffected by the agitation. The public knew well the "dissensions in the Cabinet, but never had an uneasy thought on their account; "because they knew also they had provided *a regulating power*, which would "keep the machine in a steady movement."

This passage, sir, requires no comment. It is evident that Mr. Jefferson considered the power of the President to control, and "*decide* the course to be pursued by each" of the Departments, as the fundamental principle of our Executive organization—that *it* only can secure the necessary "unity of action and direction in all the branches" of the Executive administration—and that, in short, it is the "*regulating* power which keeps the whole machine in steady movement." In a subsequent part of the same letter, he speaks of "this *power* "*of decision in the President*, as that which alike excludes internal dissen-"sions, and repels external intrigues."

[Mr. Clay here inquired of Mr. Rives, if this letter was written before or after Mr. Jefferson was President.]

Mr. Rives answered that it was written in January, 1811, in the philosophical retirement of Monticello, when he had withdrawn from all the disturbing scenes of public life, and, as a patriot and sage, employed his leisure in meditating the lessons of his long experience, and recording them for the instruction of posterity. But lest the honorable Senator may suppose, (as his question seems to imply,) that the possession of power had given an undue bias to the mind of Mr. Jefferson, (than whom there never lived a man more thoroughly imbued with an innate love of liberty,) he shall speak for himself. In the letter from which I have already quoted, he uses the following language:

"I am not conscious that my participations in Executive authority have "produced any bias in favor of a single Executive: because the parts I have "acted have been in the subordinate, as well as superior stations, and because, "if I know myself, what I have felt and what I have wished, I know I have "never been so well pleased as when I could shift power from my own "on the shoulders of others; nor have I ever been able to conceive how any "rational being could propose happiness to himself from the exercise of power "over others."

In the letter from which I have read, we have seen Mr. Jefferson's *theory* of the constitution with regard to the Executive, and the *practice* of Washington. Let us now see, sir, the principles upon which he conducted his own administration of this high office. In a few months after his accession to the Presidency, in November, 1801, he addressed a circular to the Heads of Departments, the members of his Cabinet, for the purpose of laying down the rules which were to govern the official relations between him and those Departments. He begins with repeating what was the practice, in this respect, of General Washington's administration, of which he had himself been a member—that the several Heads of Departments regularly transmitted to the President the communications addressed to them in relation to the concerns of their respective offices, with the answers proposed by them to be made, and received from him in return, the signification of his approbation, or else the suggestion of such alterations as he might think necessary—and then proceeds: "By this "means, he was always in accurate possession of all facts and proceedings in "every part of the Union, and to *whatsoever Department* they related; he "formed a *central point* for the different branches: preserved an *unity*" (this despotic unity again, sir,) "of object and action among them; exercised that "participation in the gestion of affairs which his office made incumbent on him; "and met himself the due *responsibility*," (General Washington and Mr. Jefferson too, it seems, were so reckless and daring as to meet the *responsibility* of their offices,) "*for whatever was done*. During Mr. Adams's ad- "ministration, his long and habitual absences from the Seat of Government "rendered this kind of communication impracticable, removed him from any "share in the transaction of affairs, and *parcelled out the Government*, in fact, "among four independent heads, drawing sometimes in opposite directions." He then expresses his intention to adhere to the system, in this respect, of Washington, and adds—"my sole motives are those before expressed, as gov- "erning the first administration in chalking out the rules of their proceedings; "adding to them only a sense of the obligation imposed on me by the public "will to *meet personally the duties to which they have appointed me*."

Here, sir, we have the interpretation of Washington and Jefferson in the most authentic of all forms, *(their own practice,)* of the duties and powers of the Presidential office, creating in the Chief Magistrate himself a responsibility "*for whatever is done*" in any of the Executive Departments, and giving him, by consequence, a power to superintend, control, and shape the action of those Departments. To these high constitutional models, realizing the well-ordered unity and responsibility of a single Executive, the present Chief Magistrate has

sought to conform his administration, rather than by indolence, neglect, or shrinking from *responsibility*, to *parcel out the Government* among five or six independent Heads of Departments, thus converting it into a discordant and practically irresponsible directory.

The honorable Senator from Kentucky has also taken exception to the President's reference to the clause of the constitution which declares "the President shall take care that the laws be faithfully executed;" the President having referred to it as giving him the power to *superintend* and direct the conduct and operations of the Executive Departments. The honorable Senator contends that the true and sole operation of this clause is to empower the President, when the laws are forcibly resisted, to overcome that resistance by force. He says that he has made, and caused to be made, numerous researches into the contemporaneous constructions of the constitution, and that he can find nowhere any color for the President's interpretation. Now, sir, I must be permitted to say that the honorable Senator's interpretation of this clause is far more latitudinarian than that of the President, and ascribes to it an operation infinitely more dangerous and extensive. The President, sir, has no power of himself, under the constitution, to execute the laws by *force*. This depends upon Congress, to whom the power is expressly given to "call forth the militia to execute the laws," &c. It is true, the President, by the constitution, is Commander-in-chief of the army and navy, and of the militia, when called into actual service; but, as such, he is a mere instrument in the hands of Congress, by whom the objects and purposes for which he is to employ the forces under his command must first be designated.

The construction of the honorable Senator, then, is one of far more dangerous latitude than that of the President. The clause in question, sir, can have no referencce to the execution of the laws by *force*, which is a matter exclusively under the control of Congress. It must refer to the *faithful* execution of the laws by other means—by the intervention of officers appointed for the purpose, whose *fidelity* in the discharge of their duties may be secured by the superintendence of the chief Executive officer. The honorable Senator has said, that in the various researches he has made, and caused to be made, he has found no trace of this construction. If he had taken the trouble to turn to the most obvious source of information on the subject—the proceedings and debates of the first Congress on the organization of the Executive Departments—he could not have failed to see that this clause was appealed to in the sense and for the purpose which the President has done. I will not fatigue the Senate by multiplying citations from a portion of our legislative and constitutional history, which is, doubtless, familiar to the minds of all, but will content myself with one or two brief extracts from a speech of Mr. Madison on that occasion, an authority for which I know the honorable Senator from Kentucky entertains, as all must, the highest respect. While discussing the question of the President's power of removal from office, he says: "But there is another part of "the constitution which inclines, in my judgment, to favor the construction I "put upon it; the President is required to take care *that the laws be faithfully* "*executed*. If the duty to see the laws faithfully executed be required at the "hands of the Executive Magistrate, it would seem that it was generally intend-"ed he should have that species of power which is necessary to accomplish "that end. Now, if the *officer*, when once appointed, is not to depend upon "the President for his official existence, but upon a distinct body, I confess I "do not see how the President can take care that the laws be faithfully exe-"cuted."

Again, in the same speech he says: "I conceive that the President is suffi-"ciently accountable to the community; and if this power is vested in him, it "will be vested where its nature requires it should be vested; if any thing in its "nature is executive, it must be that power which is employed in *superintend-*"*ing and seeing that the laws are faithfully executed;* the laws cannot be exe-

" cuted but *by officers appointed for that purpose;* therefore, those who are " over such officers naturally possess the executive power." It is obvious then, that Mr. Madison viewed that clause in the light in which it has been referred to by the President; that the faithful execution of the laws committed to him was to be effected by "officers appointed for that purpose," and that *fidelity* in the discharge of their duties was to be secured by a power of *superintendence* and control over them on the part of the Chief Magistrate, who was made responsible for their conduct, and specially charged with the duty of seeing that the laws be faithfully executed.

I will now, Mr. President, advert to an argument of the honorable Senator from Kentucky, which, I confess, struck me with considerable surprise. In order to sustain his position that the *Constitution* had not given the President a power of superintendence and control over the Executive Departments, he contended that in certain cases, the heads of those Departments were responsible to, and compellable to act by, the Courts of Justice; and in support of this principle, he relied on the decision of the Supreme Court in the case of Marbury and Madison, an extract of which he read to the Senate. I was the more surprised, sir, at the doctrine and the authority coming from the honorable Senator of Kentucky, because he professes an adhesion to the creed of the republican party of that day; and yet it may be confidently affirmed that there never was a decision of that tribunal which gave more dissatisfaction to the republican party than that did, and especially to the great chief and leader of the party, who has recorded, in various parts of his writings, the most earnest and energetic condemnation of it. With all the deference I entertain for that exalted tribunal, I must say that the doctrines of Marbury and Madison appear to me utterly unsustainable, and such, I believe, would be the judgment of all parties at the present day. The Senate, sir, doubtless recollect the circumstances of the case. Mr. Adams, on the eve of quitting the Presidency, had appointed, with the concurrence of the Senate, numerous officers, and, among others, certain Justices of the Peace for this District. Their commissions had been signed by him, and the Seal of State, perhaps, affixed to them; but they had not been delivered to the parties, when Mr. Jefferson came into office. Mr. Jefferson finding them still in the Department of State, when he succeeded to the Presidency, and considering the appointments either as improper in themselves, or improperly made, and that commissions, like deeds, were incomplete and revocable till delivery, determined to withhold them. The parties applied to the Supreme Court for a mandamus, directed to Mr. Madison, then Secretary of State, to compel the delivery of the commissions. The Court decided that, though they had no jurisdiction to grant a mandamus in the case, (it not being embraced among those cases of original jurisdiction committed to them,) yet that the parties had acquired, by the signing and sealing of the commissions, without delivery, an absolute and legal right to the offices in question, which might be enforced against an independent department of the Government by a judicial tribunal.

I must leave it to Mr. Jefferson, in his own strong language, and with a reasoning which appears to me irresistible, to show the fundamental and dangerous errors of this decision, now relied on by the honorable Senator from Kentucky. In a letter addressed to Mr. Hay, Attorney of the United States for the District of Virginia, during the progress of Burr's trial, at Richmond, he writes thus:

" I observe that the case of Marbury vs. Madison has been cited, and I " think it material to stop at the threshold the citing that case as authority, " and to have it denied to be law. 1. Because the judges, in the outset, dis- " claimed all cognizance of the case; although they then went on to say what " would have been their opinion had they had cognizance of it. This, then, " was confessedly an extra-judicial opinion, and as such, of no authority. " 2. Because, had it been judicially pronounced, it would have been against

" law; for to a commission, a deed, a bond, *delivery* is essential to give validi-
" ty. Until, therefore, the commission is delivered out of the hands of the
" Executive and his agents, it is not his deed. He may withhold or cancel it
" at pleasure, as he might his private deed in the same situation. The con-
" stitution intended that the three great branches of the Government should
" be co-ordinate, and independent of each other. As to acts, therefore,
" which are be to done by either, it has given no control to another branch.

" The Executive and Senate act on the construction that until delivery from
" the Executive Department, a commission is in their possession and within
" their rightful power; and in cases of commissions not revocable at will,
" where, after the Senate's approbation, and the President's signing and seal-
" ing, new information of the unfitness of the person has come to hand before
" the *delivery* of the commission, new nominations have been made and
" approved, and new commissions have issued.

" On this construction, I have hitherto acted; on this I shall ever act, and
" maintain it with the powers of the Government against any control which
" may be attempted by the judges in subversion of the independence of the
" Executive and Senate within their peculiar department."

This answer of Mr. Jefferson, sir, to the Supreme Court, appears to me to be conclusive and irrefragable. It shows that the doctrine of Marbury vs. Madison was wrong, not merely with regard to the merits of the particular case, but dangerously wrong in another aspect, in asserting a claim of the judiciary, (which is now reiterated by the honorable Senator from Kentucky,) to control an independent branch of the Government, in matters confided by the constitution to its separate and responsible action. As this last aspect of the decision involves a question of the gravest import—one affecting that fundamental principle, not merely of our constitution, but of free government in general, which prescribes the separation and mutual independence of the three great departments, Legislative, Executive, and Judicial—a question too, in regard to which the imputed opinions of the present Chief Magistrate have been freely commented upon in the course of this discussion, I beg permission of the Senate, while I have the writings of Mr. Jefferson in my hand, to read what was uttered by this great Republican oracle on this important subject. In a letter addressed by him in 1819 to Judge Roane, himself one of the most profound constitutional jurists of our country, he expressed himself thus:—

" My construction of the constitution is very different from that you quote.
" It is, that each department is truly independent of the others, and has an
" equal right to decide for itself what is the meaning of the constitution in the
" cases submitted to its action; and especially where it is to act ultimately
" and without appeal. I will explain myself by examples which, having oc-
" curred while I was in office, are better known to me, and the principles
" which governed them. A legislature had passed the sedition law. The
" federal courts had subjected certain individuals to its penalties, of fine and
" imprisonment. On coming into office, I released the individuals by the
" power of pardon, committed to Executive discretion, which could never be
" more properly exercised than where citizens were suffering without the au-
" thority of law, or, which was equivalent, under a law unauthorized by the
" constitution, and therefore null. In the case of Marbury and Madison, the
" federal judges declared that commissions signed and sealed by the President,
" were valid although not delivered. I deemed delivery essential to complete
" a deed, which, as long as it remains in the hands of the party, is as yet no
" deed; it is in *posse* only, but not in *esse*, and *I withheld delivery of the*
" *commissions.*" (Yes sir, *I*, the President, not the Secretary, withheld the commissions.) " They cannot issue a mandamus to the President or Legisla-
" ture, or to any of their officers—(the constitution controlling the common
" law in this particularly.) When the British treaty of 1807 arrived, without
" any provision against impressment of our seamen, I determined not to ratify

" it. The Senate thought I should ask their advice. I thought that would " be a mockery of them, when I was predetermined against following it, " should they advise its ratification. The constitution had made their advice " necessary to confirm a treaty, but not to reject it. This has been blamed " by some; but I have never doubted its soundness. In the cases of two per- " sons, *antenati*, under exactly similar circumstances, the federal court had " determined that one of them (Duane,) was not a citizen: the House of Re- " presentatives, nevertheless determined that the other, (Smith, of South " Carolina,) was a citizen, and admitted him to a seat in their body. Duane " was a republican, and Smith a federalist, and these decisions were during " the federal ascendency. These are examples of my position, that each of " the three departments has equally the right to decide for itself what is its " duty under the constitution, without any regard to what the others may " have decided for themselves under a similar question."

Without entering at this time, sir, into any discussion of those important principles, I will only say, that if the present Chief Magistrate has sinned against the constitution by any doctrines which he has advanced, or is supposed to entertain, on this subject, he has sinned in company with the great apostle of American liberty and of the rights of man.

To sum, up then, in a few words, the results of what has been said, I think it has been shown that, according to the true theory of the constitution, the President of the United States, in whom the " executive power is vested," is made responsible for the conduct and proceedings of all the Executive Departments—that, as a necessary consequence of that responsibility, he has a constitutional right to inspect, superintend, and control, the operations of those Departments—and that at the very organization of the Government, immediately succeeding the adoption of the constitution, the correctness of these principles was acknowledged in the most formal manner, and after the fullest discussion, by an explicit legislative recognition of the power of the President to remove from office any of the functionaries of the Executive Departments—a power which has never since been questioned.

But to avoid the application of these principles to the subject under consideration, the extraordinary novelty has been advanced that the Secretary of the Treasury is not an *executive* officer. How then has it happened, Mr. President, that from the origin of the Government to the present day, he has been associated with the Heads of the other Departments in the Cabinet of the President? By what title could the President of the United States require of him, as we know has been often done, " his opinion in writing upon subjects relating to the duties of his office," which the constitution authorizes him to do only " of the principal officer in each of the *Executive* Departments?" Do gentlemen expect us to forget the most familiar facts which have been passing under our eyes, for nearly half a century, in order to sustain their novel theories? On what, then, sir, is this new doctrine founded, that the Secretary of the Treasury is not an executive officer? Is it that in the mere *title* of the act for the establishment of the Treasury Department, it does not happen to be styled an Executive Department? The acts for the establishment of the other Departments are styled, it seems, in the *title*, (forming no part of the law itself) " An act to establish an Executive Department, to be denominated the Department of War," and so likewise of the State and Navy Departments, while the act for the establishment of the Treasury, is simply styled in its *title* " An act to establish the Treasury Department."

" Now, sir, if this difference in the title was not the result of mere accident, as I am inclined to think it was, for I find that the title was the same as of the other acts, in all the preliminary and intermediate proceedings, down to the very passage of the act, (after which, according to the parliamentary custom, a formal entry is made on the journal to this effect: " Ordered that the title of the act" be so and so;) if, sir, I say, this difference was not merely acciden-

tal, it is sufficiently explained by the different *organization* of the Treasury Department, compared with the other Departments. The *organization* of the other Departments is simple and homogeneous, consisting, in each, of one principal officer, the head of the Department, and of *clerks* employed under him, to perform, as he shall direct and arrange it, the business of the Department. But, on the other hand, the organization of the Treasury Department is complex and diversified. It consists not only of one principal officer, the head of the Department and his clerks, but of various other officers, of a high and important grade, whose respective functions are classified and arranged by the law itself—such as the Comptroller, the Auditor, the Register, the Treasurer. The functions of some of these officers, of the Comptroller and of the Auditor for example, seem to partake somewhat of the judicial character; and it will be seen in the debates on the organization of the Treasury Department that this idea was suggested in relation to the Comptroller particularly, by Mr. Madison, who, for that reason, proposed to modify differently the tenure of his office. The same idea, we have seen it stated in the newspapers, in regard to the character of the Auditor's functions, has recently furnished, in my own State, the ground of an able and ingenious argument against the constitutionality of a particular act of Congress. In the organization of the Treasury Department then, embracing officers of this description, whose functions appeared to partake, in a considerable degree, of the judicial character, doubts might have arisen as to the propriety of denominating the whole Department an Executive Department; though certainly, in regard to the head of the Department himself, his functions are obviously and exclusively *executive.*

What, sir, are those functions as prescribed by the act for the establishment of the Treasury Department? To report and prepare plans for the improvement and management of the revenue, &c.; to prepare and report estimates of the public expenditure, &c.; to superintend the collection of the revenue; to decide on the forms of keeping and stating accounts, &c.; and to grant warrants for money to be issued from the Treasury, in pursuance of appropriations by law; and to execute services relative to the sales of public lands, &c. All these functions, I think, sir, must be allowed to be *Executive.* The only other duty prescribed by the act is to make report and give information to either branch of the Legislature, &c., respecting all matters referred to him by them, or which shall appertain to his office, &c. It is this circumstance, it seems, of reporting to *Congress* which is considered as divesting the Secretary of the Treasury of the character of an *Executive* officer. But, sir, does not the President himself, the chief Executive officer, report to Congress? Is he not required by the constitution to "give, from time to time, to *Congress,* information of the state "of the Union, and to recommend to them such measures as he shall judge "necessary and expedient;" in other words, to *report to Congress* both facts and opinions, just as the Secretary of the Treasury does? Do not the other Heads of Departments, also, report, whenever required, to Congress? Are not resolutions adopted almost every day in the one house or the other, directing them to report on some matter or other?

The circumstance of reporting to Congress, then, surely, cannot divest the Secretary of the Treasury of the character of an *Executive* officer; which character he has borne in the practice of the Government, and in the understanding of the community, as well as in the view of the law, from the adoption of the constitution to the present day. As little, sir, can the omission to *denominate* him an Executive officer, in the *mere title* of the act establishing the Department of which he forms a part, have that effect, (explained too, as that omission is by the circumstances to which I have adverted,) if the *functions* assigned to him by the *act itself* be, as I think all must admit them to be, *Executive* in their nature. But there is still another criterion, if another were necessary, for ascertaining the character of his office. I mean its tenure. The Secreta-

ry of the Treasury holds his office by precisely the same tenure as every other Head of a Department. He is removable by the President, precisely in the same way as other Secretaries are: and that removability is declared in the act creating the Treasury Department, in identically the same terms and manner that the removability of the other Secretaries is declared in the acts constituting their respective departments. By reference to the debates of Congress in '89, on the power of removal by the President, it will be seen that the removability of public officers by the President, was considered as depending solely on the circumstance of their being *Executive* officers or otherwise. All *Executive* officers were regarded as mere assistants and substitutes of the President, in the exercise of that *Executive power* which the constitution had vested wholly in him, and as such, ought to be, and were removable by him at pleasure. The act establishing the Treasury Department, therefore, in expressly recognising, as it does, the removability of the Secretary of the Treasury, by the President, virtually declares him to be an *Executive* officer.

The power of removal, existing alike in regard to the Secretary of the Treasury and the other heads of Departments, may be rightfully exercised for reasons so various, that it is impossible to reduce them to any general classification. The President, who possesses the power, is to judge, in the first instance at least, of the reasons for its exercise. In the debate of '89, so frequently appealed to on this subject, Mr. Madison said, "If a head of a "Department *shall not conform to the judgment of the President*, in doing "the executive duties of his office, he may be displaced." The honorable Senator from New Jersey, [Mr. Southard,] who spoke a few days ago, cited the opinion expressed by Mr. Madison in the same debate, that the President might be impeached for a wanton removal of a public officer. Sir, I do not doubt it: but I beg leave to remind the honorable Senator of a correlative opinion delivered by Mr. Madison on the same occasion—that the President might be properly impeached also for *neglecting* to remove a public officer, when the public interest demanded it. And this, sir, suggests the true mode of *testing* the question which has been raised of the President's constitutional *power* to remove the late Secretary of the Treasury, for his refusal, (in the language of Mr. Madison just cited,) "to conform to the judgment of the President" on the subject of the public deposites. Let us reverse the case which actually occurred, and suppose that the Secretary of the Treasury, instead of the President, had desired a transfer of the public deposites—that he did so without any sufficient reason, and was about to commit them to Banks of questionable solvency or of notorious insolvency. If the President, entertaining a different opinion of the expediency and propriety of the measure, had stood by, and renouncing the salutary control which the constitution had placed in his hands by the power of removal, had permitted his Secretary quietly to consummate his purpose, on the ground that the President had no right to interfere with a discretionary power entrusted by Congress to a head of a Department, what then would have been said? We should have heard, sir, denunciations not less loud and vehement than those which have been uttered on the present occasion, thundered against him, but upon a different principle. We should then have been told, sir, that the President had been recreant to his high trust—that he had been armed with the power of removal expressly to protect the public interests from the faithlessness or incapacity of public officers, and that in failing to exercise it, he had weakly and wickedly betrayed his duty to the constitution and to the country.

Having thus reviewed, Mr. President, the doctrines, to me, I must say, novel doctrines, of constitutional law which have been advanced by the honorable Senator from Kentucky, [Mr. Clay,] I will detain the Senate but with a few words more. The honorable Senator told us, with a deep and mournful pathos, that we are in the *midst of a revolution*. I agree with him, sir; we ARE in the midst of a revolution—a happy and auspicious revolution, like the

"civil revolution of 1800," which, according to Mr. Jefferson, was "as real a "revolution in the principles, as that of '76 was in the form, of our Govern- "ment." A like salutary revolution "in the principles of the Government," we have seen accomplished during the last five years of its administration. In that time, sir, we have seen the Government brought back to its "republican tack," from the deviations of latitudinous power into which it had fatally fallen. We have seen an unconstitutional and corrupting system of internal improvements, under the patronage of the federal authority, arrested, and those great local interests remitted to their natural and safe guardians, the Governments of the States. We have seen the Bank, the "first-born" of federal usurpations, foiled in its efforts to perpetuate its existence, and to confirm its triumph over the sanctity of the constitution. We have seen, finally, the American System of the honorable Senator himself—a system which we of the South have felt to be one, not of *protection*, but *oppression*—we have seen that, too, partially overthrown and abandoned. Here, indeed, is a happy and glorious revolution for those who have cherished the cardinal principles of limited constitutional construction, of freedom of industry, of equality of public burthens. And for these great results, we are indebted to the firmness, the vigor, the patriotism, of the individual who now presides over the administration of the Government, sustained by the virtuous confidence of a free people.

We have, sir, the authentic and positive declarations of the honorable Senator from Kentucky himself, made on this floor during the last session, that it was owing to the known and determined opposition of the Chief Magistrate to the protective system, sustained as it was foreseen he would be by an increased popular support in the present Congress, that the honorable Senator consented to yield what he did of that system in the compromise of last winter. The other great reforms of national policy have been accomplished by the direct agency of that higher power which the constitution has placed in the hands of the President, as a shield, among other purposes, for the protection of the just rights of the States, and which he has faithfully and firmly wielded for that object. Used, sir, as that power has been, I cannot sympathize in the sentiments of indignant reprobation with which its exercise has been denounced by the honorable Senator of Kentucky. It is a power, sir, which has been exerted in the best constitutional times of England, and of our own country. In England, William the Third, a veneration for whose memory is pronounced by a late writer on the constitutional history of England to be the true test of English whiggism, exercised it—an exercise rendered necessary, and justified, we are told by one of the historians of the times, by the existence of "a strong party *in the House of Lords*, who entertained *deep designs*." Our own Madison, sir, than whom there never lived a man more virtuous, more conscientious, more scrupulous in the use of power, nor yet one firmer in the discharge of duty, did not hesitate to exercise it. The limited opportunities of research I have had, have disclosed no less than half a dozen instances in which he resorted to the veto; four of those during the first term of his presidency—and one of them, (the veto of the "Bonus bill for Internal Improvement,") the very last act of his public life; thus rendering an appropriate and impressive homage to the *constitution*, on retiring from its highest trust. I cannot see, then, in the use of the veto by the present Chief Magistrate, any cause of alarm for the liberties of the country.

I confess, sir, I consider those liberties far more seriously threatened by the unconstitutional institution with whose grasping ambition we are now struggling. If, sir, it shall triumph in this vital struggle, then, indeed, a fatal revolution will have been accomplished. The time will have arrived, which was foretold by the great republican statesman, [Mr. Jefferson,] whose prophetic and instructive warnings were read to us by the Senator from Missouri, when a moneyed power, *self-constituted* and *irresponsible*, will have supersed-

ed the *delegated* and *responsible* Government of the People in its action. Gentlemen in the course of this debate have declaimed much on the dangerous influence of money. But the only money whose influence they seem to regard as dangerous, is the money of the People—money raised and appropriated by the representatives of the People—disbursed by responsible officers—locked up by the "strong bolts and bars of the law" from corrupt use! But they seem to be wholly insensible to the danger of money in the hands of a great corporation, wielding an immense capital at will, without control, without responsibility.

Let Congress, sir, abstain from unconstitutional appropriations; let the public expenditure be restrained to the simple and economical wants of republican government; let the accountability of public disbursements be enforced; and we shall have but little danger to apprehend from the money of the people. But, sir, we shall by those means have provided but a poor security against the danger of money, if, at the same time, we invite its concentration in the hands of an organized association, and give it thus artificial faculties of united action and accumulated power.

A profound thinker, sir, with whom I have had the good fortune to serve in the public councils, but who is now in private life, and to whom it affords me sincere gratification to have this opportunity of paying the tribute of a cordial and respectful remembrance, [Mr. S. C. Allen, of Massachusetts,] has beautifully and philosophically said, that "associated wealth is the *dynasty* of modern States." Sir, it is so. This modern dynasty is now seeking to establish its sway over us in the worst of all forms—that of a great legal corporation, ramified and extended through the Union, directed by irresponsible authority, controlling the fortunes and the hopes of individuals and communities, influencing the public press, dictating to the organs of the public will.

I may be permitted, Mr. President, to recall to the recollection of the Senate the solemn language of a great patriot and statesman of another country, on an occasion not unlike the present. It was on the memorable impeachment of Warren Hastings, sir, that Edmund Burke, with the profound sagacity which belonged to his genius, held the following impressive language to the highest judicial and legislative body of his country:

"To-day the Commons of Great Britain prosecute the delinquents of India. "To-morrow the delinquents of India may be the Commons of Great Britain. "We all know and feel the force of money, and we now call upon you for *justice* "in this cause of money. We call upon you for the preservation of our *manners* "—of our *virtues*. We call upon you for our *national character*. We call "upon you for our *liberties*."

Sir, an American Senator, applying to his own times and country the solemn appeal of the British patriot, might well say: To-day the Congress of the United States sits in judgment on the monopolists of the Bank. To-morrow the monopolists of the Bank may be the Congress of the United States. All history hath taught us the dangerous power of moneyed corporations, and we now see and feel that power exerted in the most dangerous of all forms, in assailing the purity of our republican manners, undermining the stability of our institutions, and awing the deliberations of our public councils. Sir, the American People—yes, sir, the *People*—when their true voice shall be heard, call upon us for *justice* in this great cause of money violating and trampling upon the guarantees of freedom. They call upon us for the preservation of the *public morals*, exposed to a new and daring corruption. They call upon us for the vindication of our *national character* from the scandal of practices before unknown in our history. They call upon us for the rescue of their *liberties* from the grasp of a selfish and unrelenting moneyed despotism. They call upon us, sir, for the performance of these high duties, and worthily will the trust, will the call be answered by the firmness, the constancy, and the patriotism of their Representatives.