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Remarks of Mr. Simmons

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REMARKS

OF

MR. SIMMONS, OF RHODE ISLAND,

ON

THE AMENDMENT PROPOSED BY

MR. RIVES, OF VIRGINIA,

TO THE BILL

“TO INCORPORATE THE SUBSCRIBERS TO THE BANK OF THE  
UNITED STATES,”

DELIVERED

IN THE SENATE OF THE UNITED STATES, JULY 2, 1841.

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WASHINGTON:

PRINTED AT THE OFFICE OF THE MADISONIAN.

1841.

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REMARKS

MR. SIMMONS, OF RHODE ISLAND,

THE AMENDMENT PROPOSED BY

MR. RIVES, OF VIRGINIA.

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IN THE SENATE OF THE UNITED STATES, JULY 2, 1861.

WASHINGTON:

PRINTED AT THE OFFICE OF THE SENATOR.

1861

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## REMARKS.

The Senate having resumed the consideration of the "Bill to incorporate the subscribers to the Fiscal Bank of the United States," and the following amendment proposed by Mr. Rives, of Virginia, viz.

"That the said corporation shall establish a competent office of discount and deposit in any State, by the assent of the Legislature of such State, whenever the directors may think fit so to do; and when established, the office shall not be withdrawn without the assent of Congress; and the said corporation shall have power to commit the management of the said offices and the business thereof, respectively, to such persons, and under such regulations, as they shall deem proper, not being contrary to law or constitution of the bank; or, instead of establishing such offices, it shall be lawful for the directors of the said corporation, from time to time, to employ any individual, agent, or any other bank or banks, to be approved by the Secretary of the Treasury, at any place or places that they may deem safe and proper, to manage and transact the business proposed as aforesaid, other than for the purpose of discount, and to perform the duties hereinafter required of said corporation, to be managed and transacted by such officers, under such agreements and subject to such regulations, as they shall deem just and proper."

Mr. SIMMONS rose, and addressed the Senate as follows:

MR. PRESIDENT:

The direct appeal just made to me by the honorable Senator from Massachusetts (Mr. Choate,) for the vote of what he is pleased to call the "Emerald Isle"—makes it proper for me to accord to him my vote in favor of the proposed amendment, or to assign to him and to the Senate the reason why I do not. And this appeal, made by one representing a constituency of similar pursuits and interests, and, as I had before supposed, entertaining similar opinions with those which I, in part, represent here, has added a responsibility to my position which I should not have felt but for this circumstance.

His reputation as a statesman admonishes me of my obligation to give to his argument and suggestions, that respect and consideration which they are entitled to, on account of their strength, and of his position and experience.—This they shall certainly have. But I must say to the honorable Senator, who allows me to call him my friend, that the vote of the "Emerald Isle," must be given, on my part, according to the dictates of duty, although she should, on this question, stand "alone in the ocean."

When I say this, I am sure we have arrived to that condition, when we can differ and still be friends. I will add, that it is as painful to me as it can be to him, to differ with any of my political friends here, or elsewhere, upon this question; but having no doubts in my own mind, and none in regard to the sentiments of my constituents, my path is plainly indicated, and I must act upon the sentiment, that "obedience is better than sacrifice." I am, therefore, constrained, by an imperious sense of duty, to vote against the proposed amendment, and will briefly state the reasons.

The amendment proposed, is intended to change the principles of the bill—this is its sole object. And the honorable Senator from Virginia (Mr. Rives) who proposed it, has urged its adoption with eminent ability. He has stated his positions so clearly, that even as unpractised a man as I am, can understand most of them, and this implies no ordinary talent in him. His motion is two-fold in its character; it is to strike out and insert; and all his propositions are distinctly referable to one or the other of the two branches of it.

I propose to pass over, for the present, the objections urged against the bill as reported; and to consider the arguments, used in favor of the provisions proposed to be inserted, first, although these were presented last, by the honorable Senator. For various reasons which the honorable Senator assigned, he assumed as admitted, that the constitutional power to establish a National Bank with branches, as contemplated by the bill, was a doubtful or questionable power—that in all doubtful questions, neither party should be required to surrender. To do this, would create ill-blood. That, by his proposition, the disputed point would not be surrendered, but simply postponed, for future decision—(the Senator from Massachusetts proposed that the postponement should be to the time of the "Greek Kalends," or as a Yankee boy would say, "the day after never")—and thus avoid all difficulties. That the provisions proposed to be inserted would involve no constitutional question, and would, therefore, produce harmony, insure the success of the measure, and accomplish every practical benefit that can be hoped from the plan proposed in the bill as reported.

Having stated the main grounds upon which the amendment is urged, as near as I am able to do, I will frankly admit, as a practical man,

(and as such the appeal is made to me,) that, if I thought these positions sound, and the plan proposed a practicable one, the question presented would be very simple, and one of expediency merely. We should have only to decide whether we would have such a Bank as experience has proved to be a good one, with a few men in doubt about our power, or hazard a change in respect to the *form* of exercising the power, in order to remove their doubts. As I would not sacrifice a practical good to a mere abstract question of power, I would decide such a question in reference wholly to the probable success of the measure itself. But if I can satisfy honorable Senators that to adopt the amendment would overturn what is now settled—surrendered, but postponed merely; and that, after doing this injury, the bill would not only be subject to the same constitutional objections, but also be inconsistent with itself, I trust they will agree that the amendment should be rejected.

I have said that I should pass for the present the objections of a constitutional character, urged against the bill as reported; but I must notice one upon which the propriety of the motion itself depends; and that is, that the constitutional power to establish a Bank is a questionable one. If this was the only view in which it was presented, I would content myself with propounding the question presented by the two propositions, to wit: which of the two Governments (the State or the National,) has, or ought to have, the constitutional power to establish the offices or branches of a National Bank? The proposition carries with it its own answer, and cannot be illustrated by argument; and yet the vote upon this amendment is to determine on which of the two Governments the establishment of such offices is to depend. But, for the present purpose, I shall regard the question of power as if it was really a doubtful one, in order to test the soundness of the argument of the honorable Senator from Virginia, and see if there is, upon the ground he places it, good reason to change the bill, so that the establishment of offices shall depend upon "the assent of the State Legislatures." The first position assumed by the honorable Senator is, that the State authority can be used without a surrender of the National. Upon the correctness of this depends all his argument upon the subject of mutual concession and compromise. This point was sought to be established, by assuming that it was analogous to the question of jurisdiction over the disputed territory upon our Northeastern boundary. As he complimented me, the last evening, by inviting my special attention to that part of his argument as *covering* the question now involved, I will, after making my acknowledgments to him, give the result of my brief examination of it.

I will state the proposition as he did, that I may meet it fairly. The honorable Senator

stated, that the question in controversy, whether the offices of the Bank shall be established within the limits of the States, by the Federal or the State authority, was one involving the right of jurisdiction, and analogous to that over the disputed territory referred to—that the adoption of the amendment would postpone the question now controverted, as the question of jurisdiction had been postponed between this and the British Governments; and that had been done by agreement, that each nation should occupy up to a line acknowledged not to be beyond its own proper jurisdiction—leaving the territory between those lines unoccupied, until the right of jurisdiction over it should be settled by agreement, or otherwise; the postponement of the question being alike desirable in both cases, as the means of securing tranquility in each.

If I admit, for the purpose of testing this argument, that the proposition is fairly stated, and that the analogy (so far as it goes) is correct, the honorable Senator will undoubtedly agree, that in doing this, I have consented to overlook, for the present, the fact, that the power to establish a Bank has been exercised, with the exception of two short intervals, by the National Government, ever since its existence; and that no such power was ever exercised by the States, as is proposed in the amendment; but, taking the proposition as presented by himself, he will see that it does not carry the parallel far enough to test the question involved in this debate. It only reaches the position we at present occupy, and aptly explains it—that is, that the General Government have undisputed power to create Banks in this District, and the States a like power to do so within their limits; this does not reach the question of the power to establish offices of a National Bank within the States. That power, like the jurisdiction of the territory, is not now exercised by any government; but I was very happy to hear the honorable Senator from Virginia say that it *ought* to be exercised; that there was *now* a necessity for a Bank for the use of the Government, and for the benefit of the people. In this I fully concur. And I thought a conviction that such an institution was necessary for the Government to carry into effect its *expressly* granted powers, would remove all the scruples of the most fastidious.

But to return to the territory. The occupation of it represents the exercise of this questionable power. Let us continue the parallel. There is a necessity to occupy the territory. Suppose our Government should adopt for that purpose a measure similar to the one proposed in this amendment, and authorize a company of men to occupy it, with the assent of the British authorities, and the men obtained that assent; I would ask, under whose jurisdiction the territory would be after these proceedings? The occupation is made by us to depend on English authority, and the territory, by that act, goes under *her* jurisdiction. And let me tell the honorable Senator that, in my judgment, there is.

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not an American wood-chopper along the whole of our Northeastern line, who would deign to cut a log or trap a beaver upon that territory, under any authority emanating from the British Crown. He would instinctively feel that it was a surrender of the right! He would not care, nor do I pretend to know, what the national law, as laid down by Vattel, might be in such a case, but we should all feel that this would be the law of nature.

And, Mr. President, such will be the judgment of the whole American people if you adopt this amendment. They will say you have surrendered the power of this Government to the States. The common-sense view of the settlement of a question between sovereigns involving the exercise of power is, that the right passes to the one, which, by the acts of both, is allowed to exercise it. I would ask the honorable Senator from Virginia, who enjoys a high reputation as a statesman, if he would consent, while this question of jurisdiction was pending between the two Governments, that ours should do an act like this, in reference to that territory? Would it not, in his judgment, determine the question against us? But suppose this Government had been in possession, and exercised jurisdiction over the disputed territory, for forty years, as fully as they have exercised this power to establish the offices of a Bank, would he advise our Government to give up the possession, and to retreat within a line which nobody could dispute about, as the best course to relieve the question from embarrassment, and have it amicably settled?—Or, would he regard the question as relieved from all embarrassment, and as settled, by continuing the same jurisdiction over that territory which we had exercised from the commencement of the Government? It is perfectly plain, in every aspect in which the question can be viewed, that instead of our merely forbearing to exercise this power, or postponing it, as the honorable Senator supposed, we should, by the adoption of the amendment, do all we could do to surrender it. Such a conclusion is irresistible. The only consideration, then, which he presented to us, who preferred the bill as reported, has failed; for the proposition itself rested upon the ground, that the power should not be given up or surrendered.

But, if we could do this, and could divest this Government of this power, and vest it in the States, this amendment would not remove the supposed constitutional difficulty; because the amendment itself embraces a provision to employ an agent, or to establish an agency, in any State, without the assent of the State—which agent or agency is authorized to transact all the business of the Bank, except the business of discounting; and it is urged that it may do every thing but discount promissory notes. Now, it appears to me perfectly clear that it would require the *same* power to establish an agency to receive deposits, circulate the notes of the Bank,

and deal in bills of exchange, that it would establish an office to do this, and include also one other banking power, that is, to discount—a power, too, which will give the most relief in most of the States. To have power to do the one and not the other, is a distinction in the constitutional powers of Government that, it does not appear to me, the human mind can conceive or comprehend.

I commend to the honorable Senator the views here taken of his argument upon the disputed territory, and upon the provision in his amendment authorizing agencies to be established; and ask him if it is not clearly shown that both the considerations upon which he urged his motion have failed? The power would be surrendered, and the constitutional difficulty not removed.

I also believe it would be found as difficult to carry out this plan, in practise, as it has proved to be to defend it in argument.

The amendment proposes to establish an institution which would be impracticable—one to do business in one State with an office under State authority—and in another with an agency under National authority. A Bank cannot exist without both the authority and protection of Government; it must necessarily be under the jurisdiction of one government or the other. It cannot be under both. No such concurrent jurisdiction is given by the Constitution over any subject committed to the charge of the General or State Governments. We must make either a local or a National Bank. If we make a local Bank for local purposes only, it can operate only where we have a right to exercise local legislation. If we make a National Bank for national purposes, the national authority and protection must necessarily accompany it in its extended sphere of duty and usefulness. A Bank, with a national charter, put under State jurisdiction, would be an anomaly in our system. In undertaking this we should surrender a power that might be usefully exercised by this Government, but cannot be by the States. The power, on their part, to exercise any prerogative of sovereignty over the corporation, such as taxing or otherwise controlling it, would defeat its own purpose, by preventing the stock from being taken, and the corporation from having an existence; and the attempt, on our part, to inhibit the exercise of such a prerogative, would defeat the object we profess to have in making this concession to State sovereignty.

If it be necessary to invoke the aid of State sovereignty to carry out national objects, of this or any other character, let the negotiation be conducted by parties worthy the object of it—let it be carried on between sovereigns, not by a corporation, on the one part, and a State on the other. We have already heard enough of such negotiations; but I believe it is not necessary. The people settled this question when they adopted this Constitution, and so it has been prac-

tised upon ever since. To make the alteration now proposed, would involve the subject in many real difficulties, and not escape that which the friends of the amendment propose to avoid, and which, I think, an imaginary one.

Mr. President, I have thus far examined this question as it was presented by the advocates of the amendment, and it appears to me they will admit that it is perfectly plain that if all the objections which they urge against the bill, as reported, really exist, the adoption of the amendment proposed will not remove them. If the constitutional power of this Government to establish the offices of this Bank is questionable, it appears to be equally so to establish agencies to do the same business, or, if slightly, not *substantially*, different. If it is impolitic and unwise, upon any disputed question, to drive "either party to the wall," and compel him to surrender, as the Senator admonishes us, it is shown that, by the amendment, a surrender of the whole question is to be made, by the great body of the people, to a very few. In fine, that every consideration presented to induce us to adopt the amendment has failed. I now desire to examine some of the grounds of objection to the reported bill; for, if they can be removed, the advocates of the amendment may support the bill, as they will now agree that *we* cannot support the amendment, and yet all agree that something must be done.

I desire to say a few words, to show why I think the power to establish a National Bank should not be regarded as a doubtful or questionable one. I shall attempt no *argument* upon the constitutional question. No, sir, I shall not so far forget myself, or that I am addressing Senators distinguished for learning and of great experience. But I desire their permission to recite a few *facts* of our history, upon which my convictions rest, that this Government does possess the constitutional power to establish a Bank, and that this has been constitutionally determined. I desire this, because I believe the same facts which have convinced me, will convince every other plain man in our country who has been brought up, as I have been, at the plough, and who has no motive but to see this question as it really is.

We have already been told, on this floor, by the enemies of a Bank, that they intend to excite and arouse the people upon this question.—For what purpose, the manner in which it has been announced here sufficiently explains.

The first fact then, to which I shall advert, is given by Mr. Madison in the introduction, I think, to his history of the debates in the Convention which formed the Constitution. He says he inserts it with others, that we may the better understand what led to the calling of that Convention. This is a publication of that day, urging the necessity of such a Convention, for the purpose of conferring on Congress the power to establish a National Bank. It appears then, that to give this very power was a leading ob-

ject of the Convention. And I have been taught from childhood to believe, that the men who composed that Convention never failed to accomplish any laudable objects they undertook.—This is a pervading opinion with all classes in this country. You cannot find one man, unless he be a partizan, who has some selfish purpose to answer, who does not believe this. Name any member of that Convention to any man you meet—name Washington—and say when you speak that name, that he went to that Convention for that object—and it will not be in the power of all the demagogues of our land to convince this man that he came away without accomplishing it, or without believing he had accomplished it.

I agree that patriotic men may doubt whether, by the rule of construction since adopted, all this is clearly *expressed* in the instrument itself; but as to the first point, the intent, none can doubt. The high and noble objects of these men, and their character for success, has given them an enduring fame. All the people regard them as the fathers of our country. The Constitution they gave us, the institutions which have grown up under it, caused our prosperity, and made us what we are. A feeling of gratitude toward them, of just pride in their fame, and in the institutions they have given us, animates every American bosom, and forms a mutual guaranty for the stability of these institutions. It surely behooves an American Senate to countenance and cherish that feeling—it forms the most reliable tie that binds us together as one people.

Subsequent events clearly show that these men thought they had accomplished the object of giving to Congress this power to establish a Bank. The very first Congress comprised one or more of the *same* men in it, from eleven out of twelve of the States, who had been of that Convention, and it was they, with others, then fresh from the people which had just adopted the Constitution, who created such a Bank. Can any one doubt that they knew well what had been done in Convention, and what powers the people had conferred upon Congress, by the instrument which had then just been framed and adopted? It would be as reasonable to suppose that men would not know the children they had reared, who had grown up (as this Constitution had) under their own eyesight and guardianship. This act of the first Congress under the Constitution stands at the head of that line of legislative proceedings, in favor of this power, which was referred to by the honorable Senator from Virginia, and which he thought could be met with an equal "opposing force" of legislation against it. In 1816, another similar act passed. I omit one which did not receive the Executive sanction, and need not enumerate the many enactments which were passed within the forty years during which these two acts were in operation—all asserting the validity of this power, and making a phalanx of

legislative force in defence of its constitutionality. I may here be permitted to review the legislation *in opposition* to this *power* which the honorable Senator has arrayed with great skill, and has asserted with confidence, to be equal to all that is enrolled in support of it, some of which I have referred to. This legislation consists of two acts, proposed for the renewal of the charters of the two Banks. As these two propositions never became laws, the honorable Senator will admit, that they never had any authority, for any other purpose, whatever of strength they may give to his argument. But I admit that some inferences may be drawn from the failure of the two bills, which were proposed to recharter the Banks: the facts are, that the first failed by the casting vote, of the President of the Senate; the second passed both Houses of Congress, by very strong majorities. It will be recollected that it is his display of *legislative* authority, or force, upon this question which I am examining. The result is, that upon the question of rechartering the Banks (and no other adverse legislation is pretended to exist) the authority is balanced. Congress having in one instance refused, and in the other given its sanction to a law for that purpose.— But suppose Congress had invariably refused to give its sanction to laws for rechartering National Banks, will the honorable Senator pretend that it would afford any authority for denying the power to *establish* such Bank? Is it any thing like a set off, against the sanction given to that power by the legislature that *established* one? He must perceive that in the considerations which would control that question, this power might not be included at all. I am free to confess I would not vote for the recharter of such a Bank, unless driven to it, by an apprehension of a disastrous revulsion in the currency and business of the country; and this I should not apprehend, if there existed a proper spirit in reference to them, on the part of this Government, and which would induce the seasonable establishment of a new institution to supply the place of the old. The recharter of a Bank, I consider (in a great degree) to be inconsistent with its character as an institution connected with the American Government. Such a Bank has, in part, the character of an officer of Government; it is to collect, safely keep, and disburse all the revenues of the Government; it has another and a collateral power, which is, to furnish a sound currency, as the medium for carrying on the business of the Government, and of the people. These not only give it profit, but invest it with honor and dignity; elements highly important to its usefulness in all respects, for it is mainly owing to this, that men of the highest character, undertake the conduct of its affairs—(and we have seen the melancholy effects of the withdrawal of these from one, which might have been extensively useful with them.) From these views, it is manifest that such an in-

stitution would necessarily come within that principle, which is applied to all (except judicial officers) who enjoy places of honor and profit under this Government; I mean the republican rule of "*rotation*." Considering its *utility* merely, there are objections, too, to a recharter. Twenty years is not only as long as the same men ought to enjoy the advantages referred to, but as long as they can be the most beneficially exercised by them. In that time, another generation comes up, with whom they have not that sympathy which is essential to the most harmonious, and therefore, the most successful business intercourse. Such considerations were sufficient, and I have no doubt did, with others, prevent the recharter of the old Bank, by the legislature, aided, perhaps, by the doubts of some upon the question of constitutional power.

The refusal to recharter can, with no more propriety be urged as a denial of the constitutional power to establish a Bank, than the refusal to re-elect an officer when his time was out, could be urged to show that by that act it had been determined to abolish the office. In reference to a Bank, I would prefer the establishment of a new one to the recharter of the old. I would thus distribute the stock anew among the People. In this way, a Bank will be owned by those upon whom, and for whose benefit it is to act. In taking leave of the legislative action of the Government, which the honorable Senator has presented, first as an opposing force, and then as an account "nicely balanced," I venture to say, that in the ledger which contains every legislative act, there is not an entry which is not on the side, and in favor of the constitutionality of this *power*; not an item can be found as a set off, or which can operate as a drawback upon it.

As the action of the Executive Department of the Government, is included in the laws already referred to in support of this power, I might omit to state the fact, that nearly, if not quite every President has, in some way or other, given his sanction to its constitutionality. The two who approved and signed the charters of the two Banks, are so prominent that they need not now be named.

Having already explained that the refusal to recharter is no denial of this power, I will only say that in the veto message of General Jackson the constitutional power to establish a Bank (as I understand) is recognised and asserted.

The remaining fact, to which I at first alluded, and the controlling one upon this question, is, that the Supreme Court (the Judicial Power) have repeatedly and unanimously decided that Congress have the constitutional power to establish a National Bank; and this is the only constitutional mode of determining the question. Such has always been the pervading conviction of this people, as their conduct has shown. The decisions have been uniform—always recognized, and submitted to by every State court,

by every State Government, and by the whole people. If, after this, men will contend that it is still an open and a doubtful question, they by it insist that *no* question can be settled under our Constitution. None can ever have more conclusive sanctions than this power has received. And I now ask the honorable Senator from Massachusetts—who has urged us to act upon this, as an unsettled question, and to postpone its settlement, that we may give to property invested under a charter from this Government, greater security, and a more “quiet life”—if we should not greatly impair the security for all kinds of property, by doing an act which brings into question the validity and the controlling effect of the decisions of that court? To vote, as is now asked of me, upon the ground that a question decided by that court, as this has been, is not yet settled—would be acting in a direction which would break up the very foundations upon which the security of all property rests. It would remove the only reliance it has for a “quiet life” among us. This is a controlling consideration with me, in the vote I am to give.

It is from no want of respect to the rights of the States, that I refuse to vote for a proposition to make the action of a National institution depend upon State authority; but, because I am satisfied with the division of powers between the States and National Governments, as it was made by the fathers of the system, and has been settled by the practice of more than half a century.

I have been brought up to contend for every right of the States. I believe the General Government has powers, too, which it can, and is bound to exercise for the benefit of the people. If my views, as to these last, have been strengthened of late years, it is from lessons taught by a master mind, one equal to the subjects it has grasped—and worthy the age we live in—*Massachusetts* will not wonder at my faith and confidence.—Notwithstanding this confidence, I desire to treat the doubts expressed by others upon this question of constitutional power, with proper de-

ference. This is dictated by the profound respect I feel for those who entertain them—but I must say, to the honorable Senator from Virginia, that I cannot comprehend the reasoning, by which even a doubt upon this point can be sustained, nor can I conceive that a well-balanced mind can refuse assent to propositions so clear, as these appear to me to be—or can hold out against the overpowering force of this accumulated authority.

As all means known to the Constitution have been resorted to, to settle this question, one of two things must be admitted, either that it is now settled, or that it never can be, under that instrument, and therefore, that we have *no* Constitution for such a purpose. This is as far as I am willing to look in that direction. All that lies beyond I leave to the consideration of the Hon. Senator from South Carolina (Mr. CALHOUN,) who said to us, the other day that, a revolution had begun. I should be sorry that any *whig* measure should give countenance to such a doctrine.

The honorable Senator from Virginia will perceive that with these views, I cannot regard this as a doubtful question, or a proper one for compromise. He will therefore excuse me from any participation in it as such.

To give such a vote and to give it upon such grounds, I must give up the whole history of my country; I must turn my back upon all the lessons of experience; I must disregard the authority of its great names, (and Virginia names too.) I must put out the light that reflects from their tombs upon every page of this Constitution, and strike down that Judicial Star, that indicates the true polarity, and which I had hoped would direct the course of decisions through all coming time. And yet more, I must be instrumental in thrusting the Constitution of my country, its institutions, and the cherished *order* which surrounds them, into the tumultuous arena of party politics, and, (if I may borrow language recently and patriotically used) thus “commit them to a fate that fills the imagination with horror.”

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