SPEECH

OF

MR. SOUTHARD,

ON

THE REMOVAL OF THE DEPOSITES;

DELIVERED

In the Senate of the United States, January, 1834.

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SPEECH.

The Senate, on the 8th of January, 1834, having under consideration the report of the Secretary of the Treasury, laying before Congress his reasons for removing the Public Deposites from the Bank of the United States, and the following resolutions, submitted by Mr. Clay:

1. *Resolved*, That, by dismissing the late Secretary of the Treasury because he would not, contrary to his sense of his own duty, remove the money of the United States in deposite with the Bank of the United States and its branches, in conformity with the President's opinion; and by appointing his successor to effect such removal, which has been done, the President has assumed the exercise of a power over the Treasury of the United States not granted to him by the constitution and laws, and dangerous to the liberties of the people.

2. *Resolved*, That the reasons assigned by the Secretary of the Treasury for the removal of the money of the United States, deposited in the Bank of the United States and its branches, communicated to Congress on the 3d day of December, 1833, are unsatisfactory and insufficient.

Mr. SOUTHARD addressed the Senate as follows:

Mr. PRESIDENT: The amendment offered by the Senator from Missouri having been removed out of the way by the vote of the Senate, the debate returns upon the *reasons* of the Secretary of the Treasury and the resolutions offered by the Senator from Kentucky—and these present subjects of the first magnitude for the grave consideration of Congress.

For sixteen years, said Mr. S., the money belonging to the Union has been kept in a position selected by Congress, under the authority of law—in a depository suited to its safety, to the convenience of the Government, and the interests of the people. Within three or four months past this money has been removed and distributed among twenty or thirty State banks, in positions not selected by Congress, nor under its control, without consulting the representatives of the people, and in violation of their recently expressed opinion. The place of its former deposite was created for the express purpose, by the legislative power of the country; the places of its present deposite were not created by Congress, nor are they under its control, but chosen according to the discretion of an executive officer. The order for the change was given by the Secretary of the Treasury, under and by virtue of a construction of his powers and authority as Secretary; and it operates not only on the money now in the Treasury, but on all which may hereafter be acquired.

We have not, therefore, before us mere questions regarding the temporary possession of office. We are not to deliberate and decide upon the policy of sustaining this or that man, nor whether it is wise to recharter a bank, nor how we shall settle a dispute between an individual President of the United States and his advisers on the one part, and a moneyed corporation on the other. The questions rise higher—they affect the management and control of the whole treasure of the Union; and the construction which is, now and hereafter, to be put upon delegated powers, under the fundamental and written

laws of the land. Our decision, in its consequences, will be felt when present party conflicts shall be over—when aspirants for place and placemen shall have passed by and been forgotten; and they demand, at our hands, all the calmness of deliberation which the exciting circumstances in which we find ourselves will admit.

The Secretary, in compliance with the command of law, has submitted his reasons for the acts which he has performed; and the Senate, as a part of Congress, is called upon either to approve or condemn both the acts themselves and the reasons which are offered for their justification. We are, therefore, required to examine—

1. The acts which have been done.
2. The principles avowed as the authority for these acts; and
3. The reasons assigned as rendering them necessary and proper, *at the time.*

1. The Secretary of the Treasury has ordered the debtors of the Government, and the inferior officers under the control of his Department, to deposite the public money which may now be or may come hereafter into their hands, from the various sources of revenue, in more than twenty State banks, created by several of the States, and holding their corporate powers and authorities under State legislation. This order must, in its nature, be prospective, and relate not only to the money now in the public Treasury, but to all that which shall be acquired by the Government and people of the Union.

The terms on which it is to be received and kept, and by which it is to be secured, are found in the agreements entered into between the Secretary and the several banks—copies of two or three of which are appended to his report, and found in pages 36, 37, and 40. And as Congress has not authority over these banks, and this agreement is the security provided for the public money, its various items require examination. We must look into the agreement, or we cannot understand the nature and effect of the conduct of the Secretary, nor the situation in which the money now is.

By the first item, each bank agrees "to receive and enter to the credit of "the Treasurer of the United States all sums of money offered to be deposited "*on account of the United States*, whether offered in gold or silver coin, *in* "*notes of any bank which are convertible into coin*, IN ITS IMMEDIATE VICI- "NITY, or in notes of any bank which it is, *for the time being, in the habit of* "*receiving!*"

It is apparent, therefore, that they have agreed to receive *money on account of the United States only*, and not such money as, being in the hands of officers or disbursing agents, may be deposited under the provisions of the law of 3d March, 1809. If the latter shall be ordered to be placed in them, the agreement affords no protection to it. The extent of the agreement deserves attention, as it will be found that the Secretary has ordered money to be deposited there, which is not embraced in this condition. The money, also, which they are bound to receive, is not of the notes of all the selected banks, nor of any of them, unless they are convertible into coin *in their immediate vicinity*, or be such as they are in the habit of receiving at the time it is offered—in other words, such as they may choose. Notes of selected banks, in Virginia, or elsewhere, offered in payment of a debt in New York, they are under no obligation to receive, and must, of necessity, generally refuse for their own safety.

The second item provides, that "if the deposites shall exceed *one-half* of "the capital stock of the bank actually paid in, collateral *security, satisfactory* "to the *Secretary*, shall be given for its *safe-keeping* and *faithful disburse-* "*ment*," with a proviso that the *Secretary may demand* collateral security when the deposites do not exceed one-half of the capital. There is, then, no present security for the public money but the solvency of the banks. It has been placed in banks selected by the Secretary, without taking other security; and whether there is any to be given hereafter depends on the will—of whom? Of the Congress of the United States? Of the constitutional guardians of the public purse? No; but on the will of the Secretary of the Treasury alone.

And what is the value of that security, which results from the present condition and the charters of these banks? It can only be commensurate with the powers of their charters and the soundness of their condition. Do Senators know its value? Has the Secretary deigned to inform us? Did he himself know it when he acted? Are Senators informed whether there be not restrictive clauses which forbid the agreement on their part? Did the Secretary know it? He affirms that they are banks of undoubted credit, but without an examination of their charters, and, with regard to some of them, without the possibility of his acquiring the knowledge within the time in which he acted. A comparison of dates, which are before the Senate, justify this declaration. That these banks were not altogether strong and safe, is apparent from his declaration that, within a short period, "so far from being able to relieve the "community, they found themselves under the necessity of providing for "their own safety."—(p. 9.) And, within a few days, the stockholders of one of them have rejected the deposites; and we are told that one ground of their decision was, that they were incompetent, by their charter, to fulfil the conditions of the agreement; the others rested on the odious nature of the terms of the agreement itself.

By the fourth item, the bank agrees to pay warrants and drafts, and to transfer the public money without charge, "but the Secretary shall give *reasonable notice* of the time when such transfer shall be required." What is reasonable notice of the time when a transfer will be wanted? Who is to be the judge on this point? Suppose a transfer is directed from New York to New Orleans in five days, or in fifty; will it be deemed "reasonable?" The bank may say it is not, and there may be a failure to meet the wants of the Government, without apparent violation of the contract. There is no escape from this conclusion, but by regarding the *whole discretion* on this subject as within the *will* of the Secretary; and this would place the banks at his mercy, and under his unrestricted dominion.

The fifth item requires of the banks the performance of all "the services "now performed by the Bank of the United States, or which may be lawfully "required of it, in the vicinity of said contracting bank." They are to render these services *in their vicinity*, and not elsewhere. Thus has the Secretary made an entire surrender of all the advantages which the Congress of the United States, acting in their high legislative capacity, had declared that the Government should possess, except such as may be performed in the immediate neighborhood of these favored banks.

In the sixth item, taken in connexion with the third, there is another provision which strikes me as improper and dangerous. They authorize weekly returns from the banks, of their entire condition, to the *Secretary* and *Treasurer;* the submission of all their *books* and *transactions* to a critical examination by the *Secretary* or *any agent* duly authorized by him, whenever he shall require it; and the appointment by him of one or more agents to examine and report to him, the banks paying "an equitable proportion of his "or their expenses and compensation, *according to such apportionment* as "may be made by the Secretary."

There is no restriction as to the nature and extent of the examination into their *books* and *transactions, except* the "current accounts of individuals, "or as far as is admissible without a violation of their charters." *Transactions* of all kinds, of every character, are examinable by him or his agents. The restriction as to current accounts of individuals is useless, and worse than useless, if the reasonings of the Secretary, in the 14th page of his report, be correct. He there spurns the objection which relates to private accounts, and argues that these may be the very grounds on which action against the Bank of the United States is to be justified. Besides, what is the restriction resulting from their charters? It is not known—those charters were not before the Secretary, and are not before us.

In the appointment of agents, there is no limit, either as to numbers or compensation, but the will of the Secretary. One thousand, or five thousand dollars, may be given for the services of each. And report, at this moment,

assigns a large compensation to one designated agent, whose name creates no feeling of confidence in the purity with which his trust will be discharged.

Thus is this most important power—this unlimited control—assumed by the Secretary. The consequences of such provisions need scarcely be exhibited before the Senate. The last item authorizes the Secretary to discharge the banks "*whenever*, in his *opinion, the public interest may require it*"—whenever whim, caprice, party policy, the Executive order, may demand it. This is the tenure by which the selected fiscal agents of the Government hold their offices—these the terms on which they are to discharge their duty to the public!

In presenting this agreement, the Secretary has neglected to tell us when it was executed with much the greater number of the banks. The dates of only three or four of the contracts are here. When he was about to present himself before Congress, with his reasons for the removal of the public money, was it fair to make this omission? One of these reasons is the curtailment of issues by the Bank of the United States, at a specific period. The dates of these contracts, and the action of the Department in relation to them, were necessary in forming a just estimate of the conduct of the Bank in this particular; and yet the Secretary conceals this important information, which must have had a direct effect upon the action of the Bank.

To my apprehension, it is apparent that, in ordering the deposites of the public money to be thereafter made in these State banks, the Secretary has been grossly negligent of his duty. He had not made the necessary inquiries; he acted without the proper information; and we are now called upon to justify his conduct, when it affects the whole treasure of the nation, and puts it in jeopardy. Between the 18th, when the decision was made—the 20th, when the notice was given in the Globe—the 26th, when the order issued—there was not time for obtaining the information and forming the contracts. Nor was one of them made before the order was given. No financier, however skilful and prompt, could have made the inquiries, and executed the instruments, which the interest of the whole people demanded on the occasion. There can be no relief to the Secretary from the fact that an agent had previously been appointed. Of that agency, and its effects, I shall be disposed to speak hereafter. His appointment could have been made only about the last of July, or first of August, but a few days before the order was given—time enough, perhaps, to inquire about some of the banks in a few of the commercial cities, but as to all the rest, from Maine to Louisiana, he had no opportunity to examine into their condition and their charters; and if he had, the Secretary, under the circumstances, could only have acted under his dictation and instructions, as agent of *the* agent. When the Secretary affirms their undoubted credit, I mean not to impeach or call it in question; but I am not willing to rely on the mere assertion of such a fact, when involving the most important consequences to the country. If he has acted as he seems to have done, he has been guilty of a gross dereliction of duty. He has made his selection, entered into his contracts without proper caution: and then, in violation of law, taken money from the Treasury, to enable the other party to maintain its solvency, and perform its part of the agreement. Resort to illegal means to maintain the ability of the banks is a strange evidence of their competency to discharge the duties assigned to them.

There is another cause of deep dissatisfaction with this act. Where is the authority of the Secretary to make this great contract, in which millions are concerned? If he had no legal right to make it, the contract is void, and your security, such as it purports to be, is gone; and every thing in relation to the safety of the public money rests on the honor and honesty of the receiving banks. I am willing to trust them as far, perhaps, as others. But this is not the kind of security which the laws demand. If the Secretary had the authority, whence is it derived? Where is the law that confers it? I can find none. The 6th section of the act of 1st May, 1820, (3 Sto. 1777,) directs that "no contract shall thereafter be made by the Secretary of State, *or of the Treasury*, or of the Department of War, or of the Navy, except *under a law*

authorizing the same, or *under an appropriation adequate to its fulfilment;*" and excepting, also, for the subsistence and clothing of the army and navy, and by the quartermaster's department, which may be made by the Secretaries of those departments. Was this contract, then, authorized by a previous law? or is that difficulty to be overcome by the argument of the Secretary, that he was authorized to remove the deposites, and that "the power to remove necessarily draws after it the power to select the places where the public money shall be deposited?" This is a *non sequitur* in itself, and does not go far enough for his justification. The power to direct the deposites to be removed does not necessarily draw after it the selection of the places in which, and the terms upon which, it shall be kept. Unless Congress have conferred both powers on the same individual, they do not exist. The Secretary, like every other officer, is but the agent of the law—to act by the law, and not without law. The duty of deciding upon the propriety of a measure may be imposed on one officer, and its execution be intrusted to another; one may be required to decide when money shall be removed, while the responsibility for its safe-keeping rests upon another. This is the case in numerous instances, and in all the Departments. It is especially so in regard to the finances. The law establishing the Treasury Department gives to the Secretary the general duty of arrangement and direction, but creates other officers for execution. An exhibition of their relative duties will be required in the course of my remarks; for the present, it is sufficient to state that the Treasurer, and not the Secretary, is the officer bound to receive and keep the money, wherever the place of safe-keeping is not expressly prescribed by Congress. He, and not the Secretary, is to decide in what particular places it shall be kept, and the conditions and contracts under which it shall be kept. The argument of the Secretary, that he must select the places, is not only inconclusive, but, if true, it does not go to the extent necessary for his justification. He must not only have the right to designate the places, but he must have the right to make the contracts by which the money is to be kept. Believing that he has no such power, I cannot but regard his act as a direct and open violation of the law of the land. He was in too much haste to execute his purposes *before the meeting of Congress*, to permit him to do what his duty demanded that he should do, and in that haste assumed powers never granted, and has put your whole Treasury at hazard. You have no law nor any valid contract by which it is secured.

The extent of power and influence which this act draws to the Secretary, and through him to the Executive, upon his avowed principles, is enormous, dangerous to the interests of the people and the liberties of the country. It places all the selected banks, and through them many other State institutions, at the mercy of the Secretary of the Treasury. He may, at will, require security for the public money, or he may require none. He may require the payment of heavy expenses, and compensation for his agencies, and fasten them on whom he chooses. He may decide, at pleasure, which of them must transfer money from one extreme of the Union to another, and when and where they shall transfer it—acts which they may, and probably will, be incompetent to perform; and he may discharge them, without warning, from the service of the Government. All this he may do for causes entirely unconnected with the business of the Treasury, and in no way concerning the public interest. There is no responsibility upon him—they have no means of resistance. And his power of favoritism, in the deposite of money, distribution of duties, and compensation, is as unlimited as his power of injury and injustice; and he has every possible temptation to its exercise for the worst of purposes. Subservience to his will will become the ready and sure road to benefits. Sir, the very act is calculated to create an army of servile sycophants and supporters. Whether it will produce that result is yet to be shown. The promptness with which the representatives of some of the banks have volunteered their defence of him, and the manner in which his favor was received by at least one, gives no very auspicious augury as to the result, but too clearly indicates the effect upon their dispositions. The Secretary was

very promptly informed of "the high sense entertained by the directors of "one of the banks, of the *honor* conferred upon it by *so distinguished a mark* "*of his confidence*," p. 37—a quick stooping to degradation.

This state of things is prescribed, not by the Legislature, but by a Secretary, and is not dependent upon and regulated by law, but by *his discretion*. And the man who presumes thus to act tells Congress that his acts are under the control of the President. He says, in effect, "I have no official will—"the President may order me as he pleases—the whole is at the command of "the President." If there has been a larger or more dangerous stretch of Executive power and influence, I have not discovered it. If Senators are prepared to meet the consequences of such an assumption, they have but to approve the reasons of the Secretary. The day is not long passed by, when it would have met the deep-toned execrations of the present supporters of Executive infallibility.

The law which created the Bank, which directed where and how the public treasure was to be kept, and what was to be done, did not *so* regulate this subject. The intercourse between the Government and the Bank, in relation to the public money, was fixed and authorized by law. The acts directed to be done, or omitted, were, *under it*, matters of *legal right*, not of *Executive favor*. The law was paramount and triumphant. There was no temptation to favoritism or corruption. But, under the recent innovation, while such unlimited powers are exercised by the Secretary and the Executive, there must be favoritism and corruption. I have no faith to bestow on the purity of individual virtue, acting without law, in the midst of such temptations. Much less can I approve of conduct in a Secretary so violative of all law, and leading so directly to encroachments which are dangerous to the liberties which we enjoy.

Mr. President, another act of the Secretary, in connexion with the removal of the deposites, and in pursuance of the same purposes and objects, is the order to public officers, and agents who are in possession of public money, under bonds for its faithful disbursement and safe-keeping, to place it in the banks designated by him. In a communication to the President of the 5th of October, 1833, page 40, the Secretary states, that "he *has* designated certain "local banks," but without naming them, in certain cities, "as depositories "of the public money," and that "arrangements are in progress to make a "similar change throughout the United States;" that "public money, when "placed at the disposition of a public officer, in order to be applied to the "public service, remains the money of the United States while it continues "in the hands of the disbursing agent, and is, consequently, *subject to the* "*control of the Secretary of the Treasury, as to the place of its deposite.*" And he thereupon proposes that all such money shall be deposited in one of the banks having the deposites of the public money, if there be any such bank at the place of disbursement, and the nature of the disbursement will permit. The proposition was approved on the same day, and a circular addressed to the other departments for their direction.

Whence does the Secretary draw his belief, that money in the hands of an agent, for which that agent has given bond and security, and for the disbursement and safe-keeping of which he is accountable, is public money which *he* has a right to control, and take the responsibility for it away from the agent? Where did he obtain this authority? Is it in virtue of his high office? He has, by this order, placed all the disbursing officers under the control and check—not of the Treasurer—not of the Comptroller or Auditor—not of the whole Treasury Department—but of himself and the President alone. He has also thrown the hazard of loss on the Government. If the disbursing officers obey the order, and the money shall be lost, the loss must fall upon the Treasury, or gross and shameful injustice be done to them and their sureties. Suppose a case—and it may be fact and history more than supposition—that there are several large disbursing officers in Washington, who have kept their money in the Patriotic Bank, and they have been compelled to transfer it to the Bank of the Metropolis, and it should be lost, either in whole or in part, by the failure

or depreciation of the latter—what must be the consequence? The release of the officers to the extent of the failure. No honest Government would compel them or their sureties to suffer: it must fall on the Treasury. They are not left to judge of their own interests and responsibility, but required to place their money in a bank which the law did not create for that purpose, and which the law does not control for that purpose. Nor has the Secretary bound these banks, by his agreement, to receive or take care of this money. It is neither "entered to the credit of the Treasurer," nor "deposited on account of the United States."—p. 39. He has looked neither to the responsibility of the bank nor the agents. Is there not, then, absurdity, illegality, if not gross oppression, in the act? He seems to have no limit to assumed power over the public treasure, and no guide but the disposition to pour every thing into the lap of the favored banks.

But he here also seems to have violated positive law. By the 4th section of the act of the 3d of March, 1809, paymasters, pursers, and other agents are directed, when practicable, to keep the money in their hands, "in some in-"corporated bank, to be designated for the purpose by the President of the "United States," &c. The President alone has the power of designation, and they are to obey his order, and his only, when he shall give one. Here the Secretary declares that he himself *had* designated some banks, and it is not known whether the President was even informed which they were, and that he was proceeding to select others; and the order is, that the agents shall make their deposites in such as he had selected, and in whichsoever he might select. It was an order to place their money wherever the Secretary might please, and to change it when he pleased. Was this a performance of the duty of the President under the law? He may perform his duty through the instrumentality of his subordinates in the Departments; but if he is commanded to do an act, does he obey the law when he authorizes a subordinate to do as he pleases; approves what he has done, without knowing what it is; and sanctions beforehand whatever he may do in relation to it? Is there no longer any authority in law? Is every thing swallowed up in Executive discretion? I admit, sir, that this and a hundred other laws in our statute book are folly and arrant nonsense, if the doctrine recently contended for be true—that the President, in virtue of his authority to see the laws executed, has a right to look to *all* cases of *discretion* in Executive officers, to command them to obey his will, and to dismiss them if they do not obey it. He might as well, under that doctrine, and without the aid of law, not only order agents where and how to keep their money, but when and how to obey the orders of a Secretary in regard to it, and discharge them for neglect. But that doctrine is unsound. It is the essence of despotism, the substitution of a single will in place of the will of the whole; and whenever it shall be approved by the American people, they will be slaves, who may sing pæans to their despot over their chains, but they will not thereby render them less strong, nor, in the end, less galling.

But, Mr. President, the Secretary has not been satisfied with his orders for the disposition of the future revenue of the nation; but he has drawn money out of the Treasury, and used it without regard to legal provisions. He has given drafts, not signed by the Comptroller of the Treasury, to the Union Bank of Maryland, for two or three hundred thousand dollars; one to the Girard Bank for half a million; another to the Bank of America; another to the Manhattan Bank; and another to the Mechanics' Bank; each for the same sum, amounting, in all, to more than two millions of dollars. How much more may be in the same situation we are not informed. Senators will find in the appendix to the pamphlet on their table (pages 43, 44, and 45,) a correspondence explanatory of this matter. *When* these drafts were made and issued we do not precisely know. The Secretary, in his "reasons," did not condescend to inform us respecting them. He concealed the facts. I considered it, when his reasons were read to the Senate, and I saw the correspondence of the Treasurer and Cashier—I consider it now—as a disingenuous concealment of an important fact, not merely useful, but indispensable, in forming an opinion in regard to his conduct. He gave orders to draw more than two

millions of dollars out of the Treasury, and yet does not inform Congress that he had so done. He plays a game of hazard with your money, and does not think it of sufficient importance to apprize you of it, or recollect that respect for you and your control over the Treasury demand an explanation. We have however learned, without the aid of the Secretary, from another source, that these drafts were made, or at least some of them, and in the hands of the cashiers, about a month before the 5th November last. As to their *character*, we are informed, not through the Secretary, but by the letters of the Treasurer of the United States to the cashier of the Bank of the United States, that "they *were not of the usual kind;*" "they were *issued by direction of* "*the Secretary of the Treasury, to be used in the event of certain contingen-* "*cies, upon failure of which they were to be returned to the Treasury, and* "*cancelled.*"

And in the recent report of the Secretary, of the 30th December, in answer to a call made upon him, which has been read, but which, being in the hands of the printer, we have had no opportunity of examining, it is stated that "*he* "*has transferred money, in some instances, from the Bank of the United* "*States to the selected banks, in order to enable them to defend the commu-* "*nity against the unwarantable attempts of the Bank of the United States* "*to produce a state of general embarrassment and distress.*"

They were, then, drafts, signed by the Secretary and Treasurer, for the money legally deposited in the Bank of the United States, to the amount of two millions three hundred thousand dollars, placed in the hands of the cashiers of several banks, to be used by them, if they saw fit. They were to be used on certain contingencies. What contingencies? They were not explained to us. Who was to judge of those contingencies—the Secretary? No; the banks. What security had the Secretary that they should not be misused? None. They were in the hands of the cashiers. Payment might have been demanded, and the money squandered; or the cashiers escaped, and no possible claim could have been sustained against the banks under the agreement, or against the securities on the cashiers' bonds. The banks could not be answerable until the money was received by them, and credited on their books; the conditions of the cashiers' bonds embrace no such trust. The Secretary has drawn, and authorized to be drawn, out of the Treasury between two and three millions of money, and placed it, without security, upon the contingency of certain individuals, believing that the Bank of the United States improperly pressed the community, (a fact on which he was not to decide,) to be used, if, in the management of the business confided to them, they should think that they were pressed, or be unable to relieve the community. What a precious guardian over the Treasury of the country! What respect has he shown for the provisions of law!

These two millions and more were held by the cashiers of those banks to support their credit. It was a *loan* of so much of the public money for that specific purpose. Can any man make more or less of it? It was to pay no debt. It was to meet no claim against the Government. It was to do nothing which the laws of the Union had directed. It was a *loan*, to be used or not, at discretion of the parties, to sustain their credit, and enable them to transact their business.

Has the Secretary of the Treasury a right to loan two or ten millions of dollars for such a purpose? Are Senators prepared to say that such a power is in his hands, and to approve its exercise—and *such* an exercise—without the pretence or affectation of security? Suppose one of these cashiers had, during the month, drawn the money and escaped; the Bank of the United States would have been discharged for that amount, and even the cashier's bond would not have been broken. Your money would have been cast upon the waves, with no hope of its being drawn to the shore again. Your resort might, perhaps, have been to the bond of the Treasurer of the United States. The money was still on his books as belonging to the Government, as he tells you, and he was responsible for it until legally discharged; but you would have speedily found a credit given. It might have been done with much less disregard of law than has been exhibited.

If such acts be approved, you have no guard upon your Treasury. The President or the Secretary may permit a cashier to draw from it millions upon millions of dollars; and, if he escape, your only remedy is like that against the deserted soldier—to mark him "*run*."

But, sir, in what an aspect does this present the Secretary of the Treasury before us! He first performs an act, highly questionable, to use the mildest phrase, in ordering the accruing moneys to be deposited elsewhere than Congress directed, and then performs this illegal act. To guard against the natural consequences resulting from his own improper conduct, he comes before us and apologizes for this act, by telling us that he had done something else which rendered this unavoidable.

If such things can be done under our present laws with impunity, if Congress and the people of this Union have been so utterly negligent as to leave the public Treasury thus exposed, it is time that the evil was repaired, and stronger guards thrown around it. But, in my apprehension, Congress and the people have not thus neglected their duty. There are guards enough to prevent a Secretary from thus thrusting his hands into the Treasury, and scattering it to the winds. Not the want of law, but the violation of law, has produced these results.

The argument of the Senator from Kentucky was conclusive and irresistible, to my mind, on this point; and I do not wish to detain the Senate by a feebler and more tedious exposition. The constitution, in sec. 9, art. 1, has solemnly declared that "*no money shall be drawn from the Treasury* "*but in consequence of appropriations made by law.*" The law organizing the Treasury Department, on the 2d September, 1789, immediately after our Government went into operation, in the fourth section, declares, "That the "Treasurer shall receive and keep the moneys of the United States, and dis- "burse the same, upon warrants drawn by the Secretary of the Treasury, "countersigned by the Comptroller, recorded by the Register, *and not other-* "*wise.*" These drafts are direct violations of both the constitution and the law. They were to take money out of the Treasury; they were not in consequence of appropriations made by law; they were not to pay debts or to satisfy appropriations or claims; they were not signed by the Comptroller, nor in the forms of the law.

It is true, sir, that a boast has been made, and not now for the first time, that new guards have been thrown around the Treasury in these days of reform, (or whatever else it suits the partisan to call it,) and that the Treasury is now more secure, on this account, than in former times. What are these new forms—new guards? It is said that a change has been made in the warrants; that now all the proper officers sign them; and that they are sent with the name of the Treasurer; so that no fraud can be committed. A short explanation will show the fallacy and deception of this boasting. The act establishing the Treasury, as we have seen, prescribes the mode and manner in which the officers are to sign, to draw money out of the Treasury. From the moment of the passage of that law to the present, as I believe, the form of warrants has been substantially the same, unvaried in substance, and in strict conformity with the law; containing the name of the payee, sum, appropriation, &c. signed by the Secretary, countersigned by the Comptroller, recorded by the Register, and signed by the Treasurer. No alteration has taken place in these respects.

After the officers, with the Treasurer, had signed them, either the warrants themselves were delivered to the claimants, or sent for them to the place of payment; or, in place of the warrants, checks of the Treasurer were sent.

To the branch bank here the warrants usually went, and were returned to the Treasury on weekly or other settlements; to places at a distance the checks or warrants were sent as was found most convenient. In both cases, however, the Treasurer either kept the warrants, or they were returned to him, on settlement with the paying bank, *and he kept them as his vouchers.* The only difference of which I am aware, that has been made, is, that, in 1829, the Treasurer was directed always to send the warrants; and thus they

are in the custody, for a time, not of the Treasurer, whose vouchers they are, but of the bank which pays them. It is only a difference as to the party who is to hold the voucher, until a settlement has been made. But as to security, there is no difference. Nor was it a matter of the slightest consequence, so long as the Bank of the United States, created by and responsible under the law, received, and paid, and kept the warrants. Now, I ask, where is the extraordinary merit of this luminous invention? Four years ago we heard it sounded from Maine to Georgia, as evidence of skill and paternal care over the Treasury, and watchfulness against fraud; another reason for deep personal devotion to a man who knew no more of the matter, at the time, than you or I. Of such stuff, sir, is popularity sometimes made; and such are the trifles, lighter than air, imposed on partisan credulity.

The drafts of which I have spoken were a violation of the constitution and the law, and were given in despite of these warrants, not only in their original but their amended shape. These new and boasted guards against petty frauds were insufficient to protect your Treasury against the more stupendous inroad of Executive—discretion. They might prevent the filching of a few dollars, but could not restrain the unlocking of the Treasury, when millions were to be subtracted.

These drafts also violated the agreement between the Bank and the Treasury Department, made by Mr. Crawford in September, 1819, by which a notice of thirty, sixty, or one hundred and twenty days was to be given, when money was to be transferred to different places—an agreement which has not, I believe, been insisted on by the Bank in ordinary cases. They were secret drafts—a fact which this officer had not the courage, or, if he had the courage, had not the candor to state to Congress. They were to be paid upon sight, instantaneously, whenever the holders chose. A demand for more than two millions might have been made upon the Bank at any moment; and, if not instantaneously paid, it must have been dishonored, and the pure and generous purpose avowed by the agent accomplished. And now, sir, the Bank is charged with dishonesty for guarding against it. It knew—it could scarcely fail to know—from the plainest indications, that drafts were out; but their amount, and when and where they would be presented, was not known, and could not be, unless the Secretary, or one of his subordinates, had given the information. It was concealed, because the object required concealment. And when, under such a state of facts, the Bank prepared to meet the blow of its covert enemy, fall *when* and *where* it would, it is accused by the Secretary of misconduct, and a violation of its charter. The accusation is worthy of the maker of contingent secret drafts. Sir, if this conduct be sustained, you have no guard upon your Treasury. Your President and Secretary may take from your vaults whatever they please, and when they please, and dispose of it where they please, and you have no remedy. I repeat the inquiry—are Senators prepared to justify the act?

The apology made for this violation of law and duty is, that they were *transfer drafts*. What, Mr. President, is a transfer draft? It is this, and nothing more. A direction from the Department to the Bank to send a particular sum of public money from one place to another, where the Government needs it. If it has money in Philadelphia, which it wants in Lexington or Norfolk, it is a direction to send it to Lexington or Norfolk, that the checks or warrants of the Department may be paid there. It is a draft, simply designed to change the *position* of the money, but not to change the *custody of* the money. In its change, and in its new location, it remains under the same custody, upon the responsibility of the Bank, and so continues, until it is drawn from its new location, in regular warrants from the Department, for the payment of debts. If lost in the transfer, in passing from one position to another, or after the transfer, and before it is paid out, it is the loss, not of the Government, but of the Bank. The transfer itself is the act of the Bank. It may be directed, but it is not and cannot be performed, either by the Secretary or by the Treasurer. They may, as we have seen, draw money out of the Bank, and, after it is drawn out, use it as they please,

and violate law while they do it; but under the charter, the Bank must make the transfer. It is a gross *misnomer* to call these drafts transfers. Who ever before heard of a transfer draft to change money from one side of a street to another? from one end of a town to another? to take money from one bank to loan to another to sustain its credit, or enable it to do even the high and meritorious act of *protecting the community from oppression?* Drawing money out of the Bank, or Treasury, for any purpose, is no transfer. The Bank loses its possession. It is a payment by it—a payment of money out of the Treasury; and then the responsibility for loss falls, not on the Bank, but on the Government. A transfer can only be made while the same legal responsibility exists before, at, and after the transfer. These contingent drafts were *payments* of so much for the Government; and these payments were not made in the forms, nor according to the requirements of law. Sir, they may be called by any name that our *contingent* Secretary may select; but he ought not, by giving wrong names, to be permitted to deceive the public. He has violated the plain requirements of law, and should be held responsible for it. The law is ample to guard the Treasury; it requires only to be faithfully administered. It is proper here to remark, that all these contingent drafts were not used; a part was returned to the Treasury. They were made, it is said, to sustain the selected banks, and protect the community from the pressure of the Bank of the United States. Now, if it was proper to draw them for that object, and if the Bank has continued its oppressions, as is hourly alleged, why were they not all used? Does no more pressure on the community exist? Has the Bank done no more evil than that which could be repaired by two millions of dollars? Is the Secretary sincere in his exhibition of the conduct of the Bank? Has he power to use the public money to resist it? and does he use only a part, when he might arrest wrong and oppression by using the whole? Was that his object? *Credat Appella!*

Before I pass from this subject, I must be permitted to remark, that the *time* which the Secretary chose draws none of my respect towards him or his act. He knew at the time that he could not complete it before the meeting of Congress. He is even now, while we are deliberating, pursuing his object, and completing his arrangements. He *knew* that Congress would not approve the removal. For three years the question respecting the Bank has been agitated in various forms; and at the *last session* this very subject was brought before Congress on the controlling recommendation of the President, and when his political friends were in a large majority; and Congress refused to yield to his wishes, and declared the deposites safe. Yet, in less than six months afterwards, the Secretary spurned their opinion, and did the act, and now comes to Congress to approve the contempt which he has heaped upon them, and expects fawning for the kick which he has given them! Sir, why did he thus scorn the opinion and will of Congress? It was, sir, that another, and, if possible, more signal act of scorn for the legislative power might be exhibited to the world. The deposites could not be removed by the joint action of the Executive and Legislature, without a *majority* of the latter in favor of the removal. But if that was made by the authority of the President or Secretary alone, they could not be restored; as a single word, VETO, would prevent that majority from accomplishing their wishes. Two-thirds would then be required; and this, the word, the wishes of the President, and the force of party, would prevent. The act was therefore done; done before the meeting of Congress, for the sole purpose of preventing Congress, the majority of Congress, the Representatives of the people, from exercising their judgment and powers in relation to this question, and the management and control of the public treasure. It needs no development of the guilty purposes of guilty agents to see that this was the governing motive in selecting the *time*—for the haste with which the removal was made. In sixty-six days, Congress, authorized by the constitution and laws to decide this matter, would have been in session; and the act, I repeat it, was *then* performed to prevent the action of Congress. Sir, the power of Congress has been scorned—disregarded; and, through them, the people, whom they represent, abused. A

trick, a cunning device, has been resorted to, to cheat the legislative power of the country of its rights. Those whom the people appointed guardians of the public treasure have been defrauded of their constitutional authority. The Secretary knew that Congress was approaching. Why, then, did he do this act? Why does he now insult Congress by continuing thus to act, while we are here to attend to our constitutional duties? Search the records of history, from the earliest times to the present, and you can find no act of lower cunning, or haughtier scorn, by any usurper, towards the legislative body. Who, before this, has ever dared thus to contemn the power which the people had, by their solemn charters, bestowed on their Representatives? None, sir, none. If it be the will of the people thus to surrender their own powers in the hands of their constitutional Representatives, and justify the trespass upon them, so be it: I will not be accessory to the justification. If the charter of the Bank were to expire in fifty days, it would be due to the relative powers of our Government, and the honor of Congress, to order their immediate restoration.

THURSDAY, JANUARY 9, 1834.

Mr. SOUTHARD continued his remarks, as follows:

Mr. President: I yesterday attempted to present my views of the *acts* performed by the Secretary of the Treasury, and of the laws and principles applicable to them; and made some remarks on the *time* selected by the Secretary as calculated to prevent and avoid the action of Congress. The purposes of the Executive have been confirmed by subsequent acts. Within a week, while we are deliberating on this question, we are told, that orders have been issued forbidding the Bank, or some of the branches, to pay the pensions; and transferring this service to others. It was originally assigned to the Commissioners of Loans and the agents for paying pensions, by the act of the 4th August, 1790. It was afterwards transferred, by law, to the Bank of the United States, by the act of 3d March, 1817. By this transfer, the Government was relieved from an annual expense of not less than forty thousand dollars. The Bank is now forbidden to perform the duty, and the Executive, *of his own authority*, or his subordinate, has constituted the selected banks *Commissioners of Loans* and *Agents* for this purpose. The law expressly commanded what is now forbidden. Your statute is repealed, and official duties imposed by Executive mandate. I ask for his legal authority. I demand to know if there is to be no limit to these trespasses upon the legislative power? An attempt to transfer these duties was made three or four years ago, resisted, retracted; but is now repeated in more offensive form, as the natural result of the previous misconduct in removing the deposites.

I have stated that a large amount of money had been drawn from the Treasury, and distributed among the favorite banks. Surely, at a time when the Secretary was loaning the public money so freely, all the Departments of the Government ought to have been full-handed, without need of pecuniary aid. Yet it so happens that one of those Departments, without authority of law, has borrowed, upon six per cent. interest, more than four hundred thousand dollars. By a report of the Postmaster General, just laid upon our tables, we are informed that he has borrowed, since the 28th December, 1832, $350,000, which is unpaid; and $50,000 more, which has been paid; and overdrawn to an unascertained amount, but supposed, *by estimate*, $50,000 more; and we all know that contracts with the Department are unsatisfied, to a great extent. The *time* when these loans were made, and the banks by which they were made, are worthy of observation, as explanatory of some parts of the conduct of the Secretary.

One hundred thousand dollars were loaned of the *Manhattan Bank*, between 28th December and 1st April, *while Congress was in session, and immediately after its adjournment*. For four years preceding this event, Congress and the country have been regularly assured, *even by the President himself*, that this Department was in a flourishing condition, and managed with great economy

and skill, by a most faithful officer; and those who doubted or denied were denounced in no very measured terms. At the opening of this session, in that very month of December when a part of this money was borrowed, the President assured Congress, from the report of the Postmaster General, which he transmitted, "that that Department continued to extend its usefulness, without "impairing its resources, or lessening the accommodations which it affords in "the secure and rapid transportation of the mail." Sir, have Congress been fairly and honestly dealt with on this subject? Has not imposition been practised? I do not say intentional, so far as the President is concerned. He may have been, and probably was, utterly ignorant of the true state of facts. But the truth has not been told; the people and Congress have been deceived. While praises were bestowed, and we were ordered to believe them, *that Department was insolvent.* And *while Congress was in session,* it borrowed money, without the permission or knowledge of Congress, and in disregard of law and duty.

On the 28th April, 1833, $50,000 were borrowed of *the Western Bank of Philadelphia.* On the 5th June, $50,000 more of *the Bank of Maryland.* On the 25th October last, at the *time of the loan by the Secretary of the Treasury to the banks*—on the 1st November, immediately after the Secretary's loan, $50,000 of *the Commonwealth Bank of Boston;* and on the 31st December last, *four weeks after Congress was in session,* $100,000 of *the Manhattan Bank.*

Some of these, perhaps all, are among the favored banks. Some of them held the contingent drafts, and others were in correspondence with the agent of the Treasury, when these loans were made by the Postmaster General. The *time,* on which the Secretary dwells so emphatically, is no longer to be wondered at. It corresponds well with the wants of the Government, if it does not with the rights of the Bank and the interests of the community. Are these things to be tolerated and approved? Sir, the fraud of this whole matter is stupendous and appalling; the disregard of law, and contempt of the legislative branch of our Government, intolerable. Are Senators prepared to approve it all by their votes?

Having looked at the acts of the Secretary, it becomes necessary to examine the principles which he avows, and the reasons he has given for their justification. It is due to him, and much more to ourselves and our institutions, that this examination should be full and rigid.

I must be permitted here to remark, that, in my examination of these principles and reasons, I have not permitted myself to regard the question before the Senate as an issue between the President and the Bank of the United States. If the President on one side, and the Bank on the other, have formed an issue, let them try it. It does not become the Senate to try it for them, or to become a party to it. We are not to look at the consequences upon an individual, whether he hold the office of President or not. To the incumbent of that office, who is speedily to pass from power, it can avail little, personally, unless he acts under strong passions and prejudices, and seeks the perpetuation of official power in the hands of favorite partisans. We are not to look at the consequences to this Bank, except so far as its rights may have been assailed by a violation of the terms of its charter. It will soon cease to exist, if it be not the will of Congress that its existence be prolonged for the purposes of Government—and that will be a question of magnitude and difficulty enough for the day when its decision may be required. But we are to look to the effects upon the Government and institutions of the country, and the rights and interests of the people. We are investigating principles and reasons immensely more important than the interests or wishes of any President and of the Bank combined—of a magnitude deeply affecting the future well-being of a great nation. The supremacy of the law, the sacredness of the constitution, the rights of the people, are matters concerned in the issue before us; and we are to look to it that these do not suffer by the misconduct or the malignant passions of rulers.

I propose to admit, for the present at least, that the reasons offered by the Secretary are sincere, and that he acted upon his own judgment, not by the

command of his superior. It requires, indeed, some faith to make the admission, when we reflect upon the argument of the Senator from Kentucky, and add to it the language which we find in the letter of Mr. Duane, of the 23d September, that he "was to consider himself directed to act on the responsi-"bility of the President," and that, if he would stand by him, it would be "the happiest day of his life." It requires still more faith, when we compare the paper read to the cabinet with the reasons of the Secretary. The language, the ideas, the facts, the reasoning, all indicate a common origin—the dictation one head—be that head whose it may, whether the President's, the Secretary's, the agent's, or some unknown person. Without stopping to inquire either into the similarity or parentage of these documents, or into the feeling which could have produced this state of happiness on accomplishing such a purpose, after such a life of usefulness as he has led, and the acquisition of so much glory as we are assured he has won, I take the act as the Secretary's, and the reasons as his justification. If he has acted incorrectly, the mandate of power can furnish no apology.

The Secretary assumes, without proof, certain principles as true. If they are false and unsound, no system of honest logic can deduce safe conclusions from them. He creates some difficulty in their examination, by a confusion and alternation in the use of the terms "Secretary of the Treasury," and "Treasury Department," as if they conveyed the same meaning. There is great distinction between them. The Treasury Department is a creature of the law and the constitution, and consists of several officers, whose separate and respective duties are prescribed; of whom the Secretary is but one, and with no more undefined and unlimited powers than the others. Each has his sphere of authority and service; and neither can properly interfere with the rest, except in the mode and to the extent which the law has established.

In page 2 of the report, it is affirmed that "the Treasury Department "being intrusted with the administration of the finances of the country, it "was always the duty of the Secretary, in the absence of any legislative pro-"vision on the subject, to take care that the public money was deposited in "safe-keeping, in the hands of faithful agents, and in convenient places, ready "to be applied according to the wants of the Government." The principle, thus announced, in its length and breadth, is unsound. If it be true that the Treasury Department is intrusted with the administration of the finances, does it follow that the Secretary alone is to perform the high functions thus claimed, *in the absence of legal provision?*—that he is to discharge important *legislative* powers and duties? Certainly not, unless the law creating him authorizes it. He doubtless means, that the power claimed is a necessary emanation from the nature of his office. 'It pre-existed the Bank char-'ter, and was reserved by it. If Congress do not legislate respecting the 'places of deposite and safe-keeping, he must supply their defects.' With all the respect which I can feel for the Secretary, the position seems to me to be absurd, and an assumption of undelegated authority. The act establishing the Department, and creating his office, gives him no such power. [Here Mr. S. read the first and second sections of the act of 2d September, 1789; the first establishing the Department, the second creating the office of Secretary, who was to be deemed head of the Department.]

Does this claimed power arise from the first duty enjoined, "*to digest and* "*prepare plans for the improvement and management of the revenue, and for* "*the support of public credit?*" He is but to digest and prepare the plans, not to execute them. They are to be sanctioned by Congress, and their execution to be directed by Congress—the high legislative power which is to determine respecting the revenue.

From the second—"*To prepare and report estimates of the public revenue,* "*and the public expenditures?*" The same comment applies to it.

From the third—"*To superintend the collection of the revenue?*" The revenue itself, and the mode of its collection, must, of necessity, be directed and prescribed by the Legislature; and the Secretary can have no duty in regard to it, but to superintend its collection in the prescribed mode, and see that the will of Congress is obeyed and executed.

There are other duties mentioned in this section; but they can have no connexion with the power claimed by the Secretary. From what branch, then, of his official duties does the power arise? From none. It is as purely a legislative power as any which ingenuity can devise—vested in Congress, of a high character, and with which no inferior officer can interfere, except so far as he may be expressly directed. Such direction is not pretended. All his general authority exists in that law. His office has neither been enlarged nor contracted from that day to this. He seems to have forgotten that he is the creature of the law, with such capacities as it gave—that he is not *the Department*, and has not all the power vested in the Department, but that there are other officers with their powers and duties. One of these is the Treasurer, and to him this very duty of safe-keeping is expressly assigned. The fourth section requires the Treasurer to "*receive and keep*" the public money, and compels him to give bond in $150,000 that he will receive and keep it safely. Like all other officers and agents, who hold public money, he, and not the Secretary, is bound with sureties, "to take care that the public money is de-"posited in safe-keeping, and in the hands of faithful agents, and in conve-"nient places, ready to be applied according to the wants of the Govern-"ment;" which wants may be indicated to him through the Secretary. *Place* is a necessary part of keeping; if it fails in safety, the officer—the Treasurer—must answer for it, unless the law directs the place, and then the officer is not responsible.

The history of the Department corresponds with this view. Before any place was designated by Congress, the Treasurer kept the money where he saw fit, and was answerable. When the Bank of the United States was chartered, in 1817, Congress required that it should be deposited in it, and for its safety, while there, the Treasurer is not bound to answer. But if, from any cause, it be taken from thence, without the order of Congress where it shall be kept, the rights, and duties, and responsibilities of the Treasurer revive; and in their exercise he cannot be controlled by the Secretary, who may, indeed, direct him that the Government needs the money in any given place, (as Baltimore, for instance,) but for its transfer and keeping there, until used for the Government, he must himself respond. An order from the Secretary to place it in any given situation, or to let it out of the place prescribed by Congress, can be no protection to him against the forfeiture of his bond. The contingent and other drafts which removed the money were not legal authority. If the money be lost, his bond is broken. Such, if he had consulted them, would, I am confident, have been the advice of the two Secretaries who preceded the present one.

The power in dispute is a legislative power—purely legislative. Congress has the right to say who shall exercise it; and, having granted it to the Treasurer, it is a usurpation by the Secretary, for which no reasons can apologize, no necessity excuse. He has assumed the very essence of legislation—to deal with, to control, to manage, the purse of the nation. And even if it be proved that the power was executive, it would not relieve him. An executive power, to be exercised, must be conferred; if not conferred on *him*, he has no right to assume it. But, sir, the Secretary proceeds to tell us, in substance, that this power was reserved by the Bank charter, without limitation or restriction; that Congress cannot interfere with the subject until he has acted; that, in his action, he is to judge of the general interest and convenience of the people; that, although the money is safe in the Bank of the United States, yet, as it has violated its charter, it was his duty to remove the deposites; and that the President has the supervision and execution of the laws, and therefore a right to control him in the duty which he has to discharge in relation to this law.

This is a simple statement of his opinion; and it will be at once perceived that, as he considers his right original, from the nature of his office, so that of the President results from his general authority to see the laws executed.

'The right is reserved by the Bank charter.' Then it existed before the Bank charter. It is unlimited and without restriction. Then Congress has

no authority of interference. The Secretary expresses his wonder that Congress should have given him such a power. In this wonder I cordially join him, if his notions have any resemblance to the truth. But I am aware of no such surrender of power by Congress to him or any other executive agent. His error is, that he has assumed, without proof or argument, that which did not exist. And I must here be permitted to remark, that, while the Secretary complains of the Bank enlarging its discounts, in order to compel Congress to recharter it, he assumes this ungranted power, and exercises it, to compel Congress to act in unison with his views; he turns round and does an act, which he believes, and which is boasted of before the whole nation, as changing the deliberation of Congress from the question of removal to that of restoration; as compelling the majority of Congress to yield up its rights, and subjecting it to the veto power. Whether the complaint against the Bank be well founded or not, the assumption of the Secretary is unpardonable. And if his complaint be true, Congress has been, between these conflicting parties, placed in a predicament neither honorable to its character, nor salutary to the exercise of its powers, unless it shall firmly sustain its own authority, which I trust it will do. The constitution and laws demand that it should.

With regard to the supervision of the Executive, I remark, whether the Secretary acted under the command of the Executive or not, his own responsibility is not changed. His responsibility is created by the law, and can neither be thrown upon nor assumed by another. "The President commanded, and I did it"—"Do, and I will protect you, and it will be the happiest day of my life"—are no apology or justification. They do not, in the least, remove the guilt of misconduct. The President *cannot*, under our laws, and agreeably to our system, take upon himself that which the law has laid upon another, whatever may be his choice or his desire. There are only two modes in which responsibility and its consequences can be removed from a guilty agent. One, where the commander, at the head of his forces, with sword in hand, protects his subordinate—a mode better fitted for Eastern despotisms than American liberty; the other, where he possesses popularity so overwhelming, that, when he says a thing, it is therefore believed; when he does it, it is therefore applauded. Such a man may say "Do, and I will protect you;" my approbation shall be sufficient to make others approve; my popularity shall be your shield. I will admit, sir, if it will be any gratification, that no man who ever lived had better right to say, I will take this responsibility on myself. We have seen enough to assure us that before his popularity, even constitutional principles have given way in men who were deemed honorable and honest. None ever made his followers change opinions more rapidly. None ever trampled on covenanted rights more, and found more ready sacrifices in adulation and applause. But, sir, let us beware. It is that very kind of popularity which leads most directly and easily to the prostration of liberty. It is the paved road to despotism, which offers no obstacle to the progress of the victor.

Mr. President, if there does now exist in this country a power which can, by its single volition and word, relieve officers acting under the constitution and laws from their responsibility, and this with regard to the Treasury itself, we already have an absolute, unencumbered despotism, beyond which no other can advance. What is despotism, but the existence in the hands of a single individual of the power and right to say to all subordinate agents, you are to act on my responsibility, and by my opinion? Can the Russian go further? Can the Turk? Are Senators prepared to sustain the principle? If they are, and it be sustained, we have had a revolution already; "hitherto bloodless," as the Senator from Kentucky has remarked, but it will not in its continuance be bloodless, when the people, amidst throes and convulsions, shall seek the restoration of their rights.

Sir, if the language to which I have adverted can be used to your Secretary, it may to your Comptroller, your Register, your Auditor, your Treasurer; and the Executive can dispose of the treasure at his will. Every possible obstacle is removed from before the vaults of your Treasury. I have always

understood the system of our Government, and so I have read the short but eventful history of my country, that it was the fixed purpose of those who fought for, and of those who created, our institutions, so to arrange them that the purse and the sword should be forever disunited; and the Executive should not, by possibility, touch or control one dollar of the public treasure, unless he was not only permitted, but commanded by law. There was not, during the periods in which our State and General Governments were formed, one single approved opinion which did not recognise this doctrine. Separate the purse and sword!—separate them!—was the language of those times—their union is despotism! This principle is on every page of our history, and was intended to be carried out in the formation of the legislative and executive branches of the Government. Their powers were defined as much with this as any other view.

And, sir, the law creating the Treasury Department was formed in the same spirit. It was necessary—could not be avoided—to leave it, in some sense, an Executive Department; but every provision was inserted which could tend to make it subservient to the Legislative, and not the Executive will. The Department of State, created in July, 1789; the War Department, created in August, 1789; and the Navy Department, created in April, 1798, are purely executive. The officers at the head of the two former are commanded, in the same words, to "perform and execute such duties as "shall, from time to time, be enjoined or intrusted to them by the President of "the United States, agreeable to the constitution," relative to matters pertaining to their Departments. The officer at the head of the latter was commanded "to execute such orders as he should receive from the President of the United States," relative to matters connected with the naval establishment. And they all communicate with the President, and not with Congress. The Legislature makes its calls in regard to their duties, and gives its orders through the President, and receives their answers, and the reports of their conduct and situation from him. Not so the Treasury Department. It takes care of the public money. But how? As the Legislature directs. It disburses the public money. But how? As the Legislature commands. It reports the state and condition of the Treasury, and the situation of the finances. But to whom? Not to the Executive, but to Congress. Congress calls for information, plans, systems of finance. But on whom, and through whom? Not on or through the Executive, but immediately and directly upon the Secretary. He is required to look to the disbursement of the public money. But by whose orders? The President's? No, sir, no; by the command of law. He cannot himself take one dollar out of the Treasury, but in the forms prescribed—the countersigning of the Comptroller; the record of the Register; the signature of the Treasurer; and "*not otherwise*"—words useless in the construction of the act, except to show the rigor, and caution, and anxiety of those who framed it, in regard to the use of the public funds, and their desire to prevent all Executive interference with the Treasury. Why was not the bond to receive and keep the money given by the Secretary, if he was meant to be the keeper of the money? Why are all who hold and disburse money required to give bonds, if the Secretary can dispose of it as he pleases? Why did the Treasurer select his own places and agents for keeping the money before Congress prescribed the place and the agents, if the Secretary had the power? The design of our laws is obvious; the relative duties of the officers are apparent. They must not be set aside and repealed, because the Secretary may imagine that the interest and convenience of the people demand it. Of that interest and convenience Congress, and not the Secretary, will judge. If one dollar of the money drawn out shall be lost, the tribunals of the country will teach the Treasurer that he, and not the Secretary, must find it; and the Executive mandate will be insufficient for his protection. The design and the words of the constitution and the laws, in separating the Treasury Department, as far as practicable, from Executive control, will in them meet its just illustration and support.

But it is said that this course of reasoning is of no avail, because the Presi-

dent has the power of dismissing all except judicial officers, and, therefore, has power to discharge the Secretary, unless he thinks as the President thinks, and acts as the President directs; and that, by this means, he has control over all the actions of all the officers under the Government. Is this, sir, true? Is this power of dismission thus supreme and irresistible? If it be, it is a strange anomaly in a free Government, and under free institutions; and no time should be lost in erasing it.

I do not mean, at this time, to discuss the *existence* of the power of dismission, or to question its constitutionality. The resolutions do not seem to me to call for it; and the time may shortly come, when we shall be driven to the investigation, by an imperious sense of our obligations and duties. It is the practice under it, and the principles and motives by which its exercise should be regulated, if it does exist, to which I would call the attention of the Senate.

It was first brought into discussion on the organization of one of the Departments, in 1789. Parties were divided upon it, and then first measured their strength and intellect. The majority of the Federalists were in favor of its existence in the President alone, without the co-operation of the Senate, the co-ordinate power in appointments. The Anti-Federalists, afterwards called Republicans, were opposed to its existence, and believed they saw danger in its exercise. Gerry and others pointed out, with the spirit of prophecy, the malignant use which *might*, and, in corrupt times, probably would, be made of it. Madison and others, in the purity of their own hearts and purposes, did not believe in the danger. They thought that its exercise, for any motive but the support of law, and the faithful administration of official duties, would justly subject the President to impeachment. They did not foresee the coming events which were to take place at the close of forty years from that day. There was not then a man in the Congress of the United States who believed that this power could or would be used for mere personal or party purposes, for personal or party revenge; much less to obtain control of the Treasury of the country, by the discharge of the officer placed over it by Congress, because he would not consent to exercise his discretion in the mode which the President might dictate, and within seventy days of the meeting of Congress.

The Federalists prevailed in that discussion by a small vote, and the practice since has been in conformity with the decision. The power has been exercised by all the Presidents, but to a very limited extent, except by the present. In no instance—by none of them—upon the avowed ground that none but personal partisans of the President should be permitted to hold office, that the triumph of party drew after it, as its appropriate incident, the dismission of incumbents who did not join in the elevation of the single occupant of Executive power, although their merits were undisputed. Sir, this is an odious enlargement and perversion of a questionable power. The spoils of party, thus secured, are the triumphs of corruption over virtue and the constitution. The power of dismission, if it be exercised at all, should be exercised for *competent cause;* and that competent cause must exist in the law, and by the commands of the law; must be connected with the actual discharge of the duties required by law; to prevent the performance of acts expressly forbidden by law; to secure the performance of acts expressly commanded by law; to relieve from fraud and mental incapacity to discharge the duties arising under circumstances which could not otherwise be controlled. It is, perhaps, a useful, but temporary agent, to guard against evil, until the legislative body, in its several branches, shall be enabled to act. But where discretion is vested by Congress in an agent, it can never, with propriety, be applied in such way as to control the will of Congress—to take from their agent and trustee the right to judge of their wishes and intentions. The Executive can never say *how* the officers of the law shall discharge their duties. If it exercise the power of dismission, it must be after and for their acts, and to remove them from doing further mischief.

If the President may say to *one* officer, you must do your duty in this or that mode, he may so say to every other. If to a Secretary, then to a mar-

shal, who holds his office by the same tenure. And by like exercise of authority as that which we are now considering, he may direct a marshal *how* he shall execute his writs, and whom he shall summon on juries; and thus, not our Treasury only, but our fortunes, reputations, lives, are in his hands. Where, then, where is our security?—where our protection?—where our legal liberties?—where the trial by jury, the last and most efficient guardian of the citizen in his dearest interests? It is subject to the control of power; its value is destroyed; it is gone forever. There is no right or privilege which this construction of the power of dismission will not reach. It changes all the provisions of your laws into the will of one man; you have remaining only a theory—a pretence of freedom, with the essence and practice of tyranny. You may boast of your liberties, but they are in the hands of an individual. You may pass laws, and define the actions of your officers, but the execution of the laws will not be regulated by yourselves, but by the whims, the caprice, the passions, of one man; and all your purposes may be defeated by his word. Unite to this construction of the power of dismission the exercise of the veto, which the constitution has granted, and human ingenuity cannot devise a purer system of unrestrained, unlimited power. The Executive has swallowed up the Legislative functions, and there remains but the feeble barrier of the Judiciary, which must speedily fall before it. Are the People of this country—I ask with the earnestness which I feel—*are* they prepared to sanction such doctrines—to meet such results? If they are, they are already prepared and fitted for slavery. Will Senators sustain such principles?

If the exercise of this power be now permitted, it will be no apology to aftertimes, to posterity, that we believed the existing President would not abuse it. It is not necessary for us to assert that he would. We settle principles, not with reference to any one man and his merits, but to the principles themselves, and their effect upon our institutions and liberties. Besides, who knows who shall succeed, or the extent to which the successor may carry this dangerous power? There is not a man on earth to whom I would confide it in the extent now claimed by the advocates of the Executive. And if, at this moment, there be party devotion strong enough to sustain it, then is your Government already revolutionized. The conclusion of my own mind, and which I desire to convey to those who, with myself, are to decide this question, is, that it is an abuse of power by the President to dismiss an officer charged by Congress with a trust, because he will not consent to execute it by the Executive standard of construction—because he does not do the will of the President, but the will of Congress; and I regard such an act, not as a triumph over a Secretary, not as a triumph over a Bank, the mere creature of the law, but as a triumph over the law itself; a triumph over the rights of the People; a triumph over the constitution and laws of the land.

But I return to the power which the Secretary says pre-existed in him, as Secretary, and repeat, that it could not pre-exist, in him, because there was *no absence of legal provision;* for it was given by law to another officer. The Treasurer, *in the absence of other legal provision*, is bound "to receive and keep" the money, and to select the places of deposite, as a part of receiving and keeping. He must keep it safely; the places must therefore be on his responsibility. If the power existed before the 16th section of the Bank charter, it existed in the Treasurer, and not in the Secretary.

I recur again to the principle of the Secretary. He says it is a power *reserved* without limitation or restriction; of course, it is not created nor enlarged by the Bank charter. It is now what it was before that law was passed. He argues, that this charter is a contract; that there is no limitation to the power in its words; and that—what?—therefore that there *is no limit to his power, nor to the motives by which he shall be governed in exercising it.*

If this be true, as respects the Secretary and the United States' Bank, it is true in no other instance in law, usage, or the concerns of human life. In construing contracts, whether general in their words or not, we confine ourselves to their objects, and do not go beyond the subject-matter to find motives for construction or action. We are governed by the intent of the parties, and by what they have respectively agreed to do; and our construction

must be reasonable as regards both, and not such as may suit the convenience or interests of only one of them. If they have confined their contract to certain specified objects, we cannot look to other objects to find reasons to govern our decisions upon these. If a party performs the conditions of his contract, no conduct of his, in relation to other matters, can affect our decision. The trustee, or umpire, who is appointed to decide upon a contract, and admits that its terms have been kept by one of the parties, and yet decides against him because he has acted incorrectly in matters which are not mentioned, exceeds his authority, violates his duty, disregards the injunctions of law, and acts dishonestly. In the instance under consideration, where there are mutual covenants by the Government and the Bank, and the Secretary is authorized to decide in relation to one of them, there is no principle of common law or common justice which will authorize him to look beyond the covenants, out of the contract, to find motives to govern him. The parties meant, honor and good faith require, that his action should be confined to the terms and objects of the contract. He must look to them for his motives, and the grounds of his action. He must make a decision, reasonable in its character, and equally regardful of the rights and interests of both.

Any other individual, *not in office*, might have been agreed upon by the Government and the Bank to perform the duty of deciding upon the removal of the deposites. Does any man imagine, will any man affirm, that he would have been at liberty to find motives out of the charter for his decision?—to have exercised an unlimited license, which should be regulated by feelings or objects not embraced within the contract?—to have subjected himself and his actions to the will of the President alone?—that his power would have been unlimited and unrestricted, except by the wishes of the Executive, and that they should conclude him? I cannot persuade myself that one Senator would maintain these propositions. Then why shall they be maintained in relation to the Secretary of the Treasury? Is the contract changed by the fact that he is the individual agreed upon to perform the trust? The logic which shall sustain the distinction will merit admiration for its ingenuity, but not applause for its support of law or morality. It is precisely because it is a contract—and one, too, of a high and solemn character, affecting the faith and honor of the Government—that the Secretary is not permitted to take its words alone, without regard to its objects, and infer a license of action and decision which knows no restraint. He was bound, by every principle of fairness and duty, to look into the history of that contract; to examine the purposes of the parties; and to limit himself by its spirit and intentions, and by the *actions* of the *parties* in relation to *its stipulations*.

The Secretary could not act correctly without doing this, nor can Senators truly estimate his conduct without a similar examination. I hope the Senate, therefore, will bear with me, while I make a brief reference to the history and objects of this contract, with a view to just conclusions upon the Secretary's principles, and reasons, and actions. The contract is the charter of the Bank of the United States, *created by Congress, of its own unsolicited will*, to accomplish certain defined and specified objects of national interest—*the whole* of those objects being perfectly understood and explicitly stated.

It was unsolicited by those who subsequently became interested in its provisions. None of them applied for it—none asked it as a favor to them. It was a voluntary act of the Government, so far as they were concerned, though not voluntary, I admit, in relation to the necessities of the Government itself. It was FORCED *on* Congress, but not by the stockholders, as the best mode, in their opinions, of removing the evils under which the nation was at that time laboring. It was suffering incalculable injuries from the insecurity, and inequality, and unsoundness of the currency, and from the want of a fiscal agent to aid in the financial action of the Government, and to manage its pecuniary concerns with advantage. To remove these evils, some modern quackery, some combination of State banks on safety-fund principles, or something else of that kind, might have been resorted to; but the wise and discreet men who then filled public stations were not skilled in

such devices, and they determined to create a bank with a capital competent to the objects, and bound to exert its influence to remove the suffering, and perform the fiscal action which was necessary. In 1815, they formed a charter, with these objects. The then President, Mr. Madison, returned it to Congress, with his reasons for not approving it. He waived his constitutional objections, but returned the bill on the ground that it would not answer its objects, in restoring a sound currency, and performing the duties required of it by the Government. At the next session, the public difficulties had increased to an alarming extent; and there was no alternative, action could not be postponed, and the present Bank was created, designed to effect two objects. 1. The restoration of a sound state of the currency; 2. The management of the concerns of the Treasury—the creation of a fiscal agent. To effect these, Congress prescribed its own terms; and held out to all the people of the Union a pledge of its faith, that if they would subscribe to the Bank, and undertake the responsibilities which it imposed, the benefits of that charter should be fully and faithfully yielded to them. All those who chose did subscribe; Congress offered—it is not too much to say—solicited them to undertake it. Shall it now be said that for slight causes—for any causes but a failure to keep the contract on their part—that these subscribers shall be deprived of their benefits?—that there is an unrestrained license in the Secretary of the Treasury to disregard the objects of the contract, and, looking without it, to cheat them of their privileges whenever he pleases, and for whatever cause he pleases? It would be worse than *Punic Faith*. Congress is bound, in honor, to prevent it, if attempted by any officer, for any cause but a violation of the agreement; and that violation established by law in the mode agreed upon by the parties.

The benefits offered were, the act of incorporation, by which their joint funds might be used for their profit; a partnership by the Government to one-fifth of the whole amount, and relative proportion of directors; and the deposite of the public money, on which they could discount while it remained there. The duties demanded on the other hand were, to pay one and a half million of dollars; to pay specie; restore the currency—an Herculean task; to keep the public money safely, and furnish it for the Government wherever it was wanted, from one extreme of the Union to the other, without expense or loss. There was no added condition, that the owners of the stock should surrender their rights as freemen, should be of this or that party, should support this or that man for President. Congress presented no such terms then, and it will be false to itself if it permits them to be prescribed now. The terms of the contract were all explained, and I know of no honest or just principle which can justify a refusal by the Government to fulfil the conditions, and leave the public moneys in the Bank, so long as the Bank shall fully satisfy all that it promised to perform as the terms on which it was to keep them. The bargain was offered by the Government, made by the Government, and must be kept by the Government. Whether it shall do so is of comparatively little moment to the personal and pecuniary interests of the stockholders. By bad faith towards it, a number of orphans and widows, and the helpless, may be injured, and their wrongs be remembered in the account against national injustice; still the great mass of stockholders can probably bear it without much suffering. But this evil is swallowed up, and may be forgotten, in the more extensive injuries which will result from violated faith, from disordered currency, from lost confidence, at home and abroad.

The Bank was bound to the performance of certain duties; if it failed, a remedy was provided in the contract. After it had discharged them, it had a perfect right to seek its own profit, by all fair and honorable and legal means. It was bound to do so, on every correct principle. The Government itself, as a partner, had a right to expect it. It appointed its directors to look to this object; and it was for this, and this only, that they were appointed. Not to take care of the deposites—not to give secret information—not to be spies and informers—not to control the whole management of the

Bank, and complain if their opinions did not prevail. They represented one of the partners; and the sole effect of their dissatisfaction should be, if Congress concur with them, to sell their stock and cease to be partners—not to withdraw the deposites, while they were safe, and all the duties of the Bank, in relation to them, fully discharged. The interest of the nation in the stock, and the propriety of leaving the deposites there, are constantly confounded by the Secretary, the directors, and others; but are distinct in their nature, and the principles applicable to them. It may be wise in the Government to sell its stock, when it finds it to be its interest to do so; and yet every regard for good faith may require that the deposites remain. Mismanagement—less profits than might fairly be made—might justify the one, but not the other, if *the deposites be safely and correctly used.*

The Secretary, acting for both parties, or for Congress alone, could not properly reason otherwise on this subject than Congress should reason; and he ought not to have confounded the stock with the deposites, in his action, as their representative, or trustee, or umpire. Did it occur to those who passed the law, or to those who subscribed, that the concerns of the Bank were to be regulated by these directors, and its transactions governed or influenced by them, further than their opinions and votes would reach? Did it occur to them that they were to act as informers, under *Executive appointment and order?*—secret spies, who were to give information to the President, without the rest of the directors being aware of it? Sir, no man would have subscribed his money on such terms. No honorable mind then dreamed of such degradation of principle and action. On the contrary, Congress and the subscribers knew that it would be important and necessary, at some periods, for the Government to be informed respecting its proceedings and transactions, as they would affect the stock, the deposites, and fidelity to the terms of the charter. They therefore expressly provided modes in which this knowledge should be acquired—by monthly and other reports, by committees of Congress, by agents expressly appointed for that object. But they did not provide for placing the directors under the secret orders of the Executive, to make partisan reports and partial statements, on such facts as they could secretly obtain, without the knowledge of the other directors. There are ample means in the power of the Government to know every thing which is done, and which is either proper or important to be known, without their humbling the Government directors, by turning them into agents, to discharge the lowest services to which men can be degraded. The very order to the directors to do this service was a trespass on the rights of the Bank—a violation of the contract.

Mr. President, has the Bank performed the conditions of the contract? If it has, the Secretary had no right to take away the deposites, no matter how unlimited the words by which his power is recognised. That it has performed them fully, amply, there can be no just question. I am not its advocate or apologist. To almost all who have ever been in its direction, I am a stranger: with not five of them have I been on terms of intimate acquaintance. I have never had a dollar from its vaults, and never but once have I been within its walls. I have no cause for partiality towards it, and have never been affected in my interests by it, except in the way that every other citizen of the Union has. I am here to pass upon its rights; to do justice, and nothing more; and to this I am bound by the highest and most solemn earthly obligations. And I cannot perceive in what it has failed to comply with its engagements to the Government. It has fulfilled them all, and more. It has paid the million and a half of dollars into the Treasury; it has transferred the funds of the Government wherever it has been requested, without risk, without expense. More than three hundred millions of your money has passed through its hands, without the loss of a single dollar. It restored your currency, in four or five years, from a depreciation of from five to twenty per cent., until Congress, by its committees, have declared that it was as sound as that of any country. All its duties have been performed; all the facilities which the Government asked or expected have been furnished; so that Secretary

after Secretary, administration after administration, have bestowed upon it the highest eulogiums. Senators have only to refer to the documents published to the world by this body, to confirm these assertions.

In transferring your funds, it has saved millions to the Government; in restoring the currency, it has cast millions into your Treasury. By one single operation, you saved between six and seven millions. It received twelve millions of State bank notes in 1817; and you promptly paid, by that means, nine millions of debt several years before it could otherwise have been discharged. The Bank of Columbia gives an example of this process, and of the losses to which you would have been subjected. It owed you more than a million of dollars; about one-half was transferred to the Bank, and immediate credit given for it, and the Bank has thereby lost more than $100,000. It became trustee for the balance, to collect it for the joint benefit of itself and the Government. There is, perhaps, $400,000 still due, on which you may yet lose $150,000. And you will lose all—if I am correctly informed, every dollar—which was not so transferred. It was by a process similar to this, in other cases, that this abused Bank restored your currency, and saved your money.

Sir, it is now, even when the Secretary assumes the discharge of his high power, admitted by him that your money in the Bank is safe. It is admitted by all, even by the reader of the state paper to the cabinet, that the deposites are safe—nay, too safe: for there is too much specie in its vaults. Where, then, is the failure in performing the covenants which can justify the removal? Shall we adopt the doctrine of the Secretary, and say that any motive, any object, may justify the act, whether connected with the conditions of the contract or not? In what an odious light this principle exhibits Congress! As a mere cheat, sir! The amount of the argument is this, and this the language which Congress must use, if it approve the act: It is true, we offered you the deposites to tempt you to enter into the contract; you accepted; but we cunningly inserted a provision that our agent might deprive you of them whenever he chose. We promised you the benefit of them, but we used such language as to permit us to trick you out of them whenever a Secretary could be found to order their removal. You have, it is true, kept your contract, but that is of no importance; we shield ourselves under the words of the agreement, to avoid performing ours. Sir, it is mockery. The approval of such reasoning would exhibit a depreciated standard of public and private morality, which I hope does not yet exist.

But the Secretary does not stop here. As if to add to the insult, he claims the power to remove the deposites, whenever, in his judgment, *the convenience and interests of the people require it*, IN ANY DEGREE. He is thus constituted the judge of the interests and convenience of the people, and the slightest reason is to justify him in violating the charter, when the faith and honor of the Government may be implicated by the act. By what rule is he to judge? The convenience of the people! It is the stale apology to which tyrants and usurpers have always resorted for the violation of the requirements and sanctions of law. The Secretary says the Bank cannot complain. Now, as there are two parties to the contract, if the Bank cannot complain, let the Secretary do what he pleases, has Congress any right to complain? If one party must be silent, must not the other also? And did the Bank believe that, by its charter, such power was granted to the Secretary? Did the Senator, then a member of the other House, who drew this section, believe it? [Mr. WEBSTER. No—certainly not.] Did any of those Senators, then members of that body, who voted for the act, believe it? Not one. They all regarded it as a solemn contract, to be kept, like all other contracts, in good faith by one party as well as by the other; and never imagined that the Secretary, under the general words used, could violate it at will.

Sir, it is necessary that Congress should look to their legislative rights. A power has been claimed over the whole Treasury of the Union. The control of that Treasury is one of the highest legislative powers granted by the people to Congress. It cannot, must not, be construed away. There are, indeed,

those who believe that a surrender of this control would be utterly unconstitutional and void. The argument, it will be observed, stands thus: By the contract, the Secretary has unrestricted power to remove, or not to remove, the deposites. Congress cannot act until he has acted. The Executive has a right to control the Secretary; and thus Congress has surrendered its legislative power, and cannot exercise it, except at the will of the Secretary or Executive. Now, sir, I have by me an opinion, given in relation to a grant by a State Legislature of exclusive powers to a company, to construct railroads within defined limits, and to prevent competition: an extract from which I will read, although I do not concur in the conclusions of the writer.

"It must be acknowledged that there would appear to be high authority for "regarding this power as an incident to the power of legislation. In the act "of Congress, incorporating the Bank of the United States, there is an agree- "ment, on the part of the United States, not to authorize any other bank out "of the District of Columbia, during the existence of that charter; and similar "pledges may be found in similar cases, in the legislation of different States, "where the constitution has not expressly conferred on the Legislature the "power to make them.

"But, with every respect for the distinguished men who have sanctioned "such legislation in the General Government, or in the States, I cannot think "that a legislative body, holding a limited authority under a written constitu- "tion, can, by contract or otherwise, limit the legislative power of their suc- "cessors. The power which the constitution gives to the legislative body "must always exist in that body until it is altered by the people, and cannot "be restricted by a mere legislative act. If they can deprive their successors "of the power of chartering companies of a particular description, or in par- "ticular places, it is obvious that, upon the same principle, they might deprive "them of the power of chartering any corporations for any purpose what- "ever; and if they might, by contract or otherwise, deprive their successors "of this legislative power, they could surrender any other legislative power "whatever in the same manner, and bind the State forever to submit to it. "The existence of such a power, in a representative body, has no foundation "in reason or in public convenience, and is inconsistent with the principles "upon which all our political institutions are founded. For if a legislative "body may thus restrict the power of its successors, a single improvident act "of legislation may entail lasting and incurable evil on the people of a State. "It may compel them to forego the advantages which their local situation "affords, and prevent them from using the means necessary to promote the "prosperity and happiness of the community."

This extract was not written by R. B. Taney, Secretary of the Treasury, but by R. B. Taney, Attorney General of the United States, within twenty-one days of the date of the order for the removal of the deposites.

Mr. President, the Secretary, under the charter of the Bank, holds a mutually delegated trust, which he is to execute, according to the meaning and objects of the contract, for the benefit of both parties, and upon principles which are applicable to all officers and to all official duties, to all powers and to every trust. The original power of the legislative body still remains the same. The sole intention was to create an agent, which, in the absence of Congress, might guard against danger. But neither Congress nor the Secretary has a right to violate the conditions of the charter. Congress would not, and it is our duty to arrest the Secretary in his attempt to do it. But the Secretary endeavors to sustain his course by a resort to precedent, to usage, and practice. I have not yet had the benefit, on this point, which would arise from reading his answer to the resolution offered by the Senator from Kentucky, just printed and laid upon our tables, and may not have all the light which that answer will afford. But I present to the Senate what I believe to be the truth in relation to this subject. The Secretary offers one, and only one, authority, and that is the *postscript* of a letter from Mr. Crawford to the Mechanics' Bank of New York, of the 13*th February*, 1817, as proof of the usage and practice of the Department. I have not been able to find, in

the history of that postscript, enough to show that even one Secretary of the Treasury has entertained the opinion expressed by the present, much less to justify or apologize for him on the ground of usage.

The Bank was chartered on the 20th April, 1816. The subscriptions were made in July, 1816, and it went into operation in January, 1817. Before the subscriptions were made, and before the close of the session at which the charter was granted, and also before the charter went into operation, while Congress had full control over the subject, a joint resolution, with the force of law, was passed, requiring and directing the Secretary to adopt measures to cause, as soon as might be, all duties, taxes, debts, &c., payable to the United States, to be collected and paid, in legal currency, Treasury notes, notes of the Bank of the United States, or notes of banks payable in legal currency, and fixing the 20th of February then next (1817) as the day after which the payments ought to be so made. The object of this resolution was the restoration of specie currency; and Mr. Crawford was directed, as a means of restoring it, to require payments to be made in the mode prescribed. Under this resolution a large correspondence took place between the Secretary and the State banks. They had resolved to endeavor to restore it by the 1st of July following; it was his duty and desire to restore it by the 20th February. On the 26th December, 1816, he addressed a circular letter to them, which is a guide to all the subsequent correspondence. This letter, a copy of which is before me, states that the Bank of the United States would go into operation on the 1st of January, and be ready on that day to receive the public moneys deposited in the State banks; that, before he decides on handing over these deposites, he wishes to know if the State banks will adhere to their determination not to resume specie payments until the 1st of July. If they do, he will promptly order the deposites to be paid over; but if they resume by the 20th February, the day fixed by Congress, no part of the deposites shall be transferred, unless to sustain the Bank of the United States from any pressure attempted to be made upon it. And he closes by stating, "that there exists no reason to suspect that the resolution of the last session "of Congress, relative to the collection of the revenue, after the 20th of "February next, will be rescinded." It will be perceived, at once, that this circular relates to the restoration of specie payments on the 20th of February; that it is written under, and by virtue of, the resolution of the 30th of April, 1816, and not under the charter of the Bank, which had not then gone into operation; that the whole authority for the letter was the power granted and the duty enjoined by the resolution. It will also be perceived that it relates to the money then in deposite in the State banks, and not to money which had been deposited in the Bank of the United States, and which was to be withdrawn from it. To these deposites, the Bank, when it went into operation, made claim, and requested the Secretary to transfer them. He admitted that there was justice in the claim, but as it was not absolutely required by law that he should transfer them, and as it was important to use them in the best mode to enable the banks to resume specie payments, he declined; and it is to these deposites that I understand the postscript of Mr. Crawford to apply. The Mechanics' Bank was one of those which found difficulty in breaking the arrangement for the 1st July, and wrote to the Secretary on the 9th January, 1817, soon after the date of the circular, and in answer to that circular, stating the grounds on which they could not comply with the proposition of the Secretary to resume on the 20th February, and adding, if the resolution should not be rescinded or altered by Congress, they would reconsider their decision. It was in relation to the propositions and difficulties suggested by this letter of the Mechanics' Bank, and to the propositions which were in debate between the Bank of the United States, the State banks, and the Secretary, about the transfer of the deposites previously made in the State banks, that the letter and postscript of Mr. Crawford, of the 13th February, 1817, was written. They had no relation to deposites made in the Bank of the United States, nor do they furnish any assertion of authority by Mr. Crawford to touch deposites accruing after the charter went into operation.

The body of his letter expressly refers to the circular; and the assertion is, of a right to transfer those deposites to equalize the benefits, in the efforts making by the banks to restore specie payments. It is too explicit to have been misunderstood by the Secretary, if he had examined it with proper caution, and adequate knowledge of the operations of the Treasury at that time. The letters and documents to which I have referred may be found by Senators in document 140, being an answer of Mr. Crawford to a resolution of the House of Representatives of the 8th May, 1822; and I think I may affirm, with confidence, that the postscript relied upon does not sustain the Secretary in the course which he has adopted. Whether he has been able to find any other sayings of Mr. Crawford, or of some other Secretary, which will give plausibility to his assumption of power, we shall discover when we read his recent communication. In the mean time I refer Senators to Mr. Crawford's letters of 28th February, 1817, and 17th March, 1817, and his report of the 27th February, 1823, giving an account of all the transfers made by his directions from the date of the charter; and I think the conclusion from them will be found to be irresistible, that he did not claim even to select the banks in which deposites were made; and that his transfers were either from State banks to State banks, or of old deposites; and, above all, that he did not claim the unlimited power which has been recently exercised.

FRIDAY, JANUARY 10, 1834.

Mr. SOUTHARD continued his remarks as follows:

I am warned, Mr. President, by my personal feelings, and by regard for the time of the Senate, to contract, as far as practicable, my remaining remarks.

Mr. Crawford's opinion, as I have represented it, seems to be confirmed by his answer to the charges made against him in 1822 and '23, an occasion on which he acquired reputation by the ability with which he defended himself from a vigorous assault upon his integrity as a man and an officer. In his letter of 8th May, 1824, to the committee, he states that he has selected some of the Western banks as places of deposite, having an understanding with the Bank of the United States, and that the act was useful to it. The letter of Mr. Cheves, approving the course of the Secretary, is dated 5th September, 1819, and is full and explicit. Three of these banks, at Chilicothe, Cincinnati, and Louisville, were in places where there were branches. He omitted to report the fact to Congress through inadvertence; but he states that the Bank, "*whose interest it was the object of that provision of the charter to guard*," had full explanation, and approved it.

The committee, consisting of Messrs. Floyd, Livingston, Webster, Randolph, Taylor, McArthur, and Owens, do not disapprove the act of the Secretary, or his reasons, but justify his conduct; and they state that a practice, which had sometimes prevailed to direct the operations of the Treasury "*to "the support of different moneyed associations, whose affairs required sup- "port, to defeat combination against them, and preserve equilibrium, was "no legal employment of the public funds. It was nothing but a gratui- "tous loan.*"

The present Secretary will derive little support from this history. But should it appear that Mr. Crawford did entertain, or that, in one or a few instances he had acted on, that opinion, in the difficult circumstances in which he was compelled to arrange the relations of the financial department with the national Bank, and aid in restoring a sound currency, under the orders of Congress, I am not willing to receive such opinion and acts as conclusive, in the construction of the charter. As the opinion and acts of Mr. Crawford I should respect them, but not admit that they were obligatory. The general practice of the Government since 1816, the obvious principles applicable to the construction of the charter, and the opinions of Congress in various forms, are much more persuasive upon my judgment. All these have been violated

and disregarded by the Secretary. He has applied accidental and temporary arrangements, and an opinion in the postscript to a letter, to a power granted, if it exist at all, *by contract*, and which *reaches the control of the whole Treasury of the Union, at all times.* The Secretary relies on slight evidence when it concurs with his own views and principles, but is not quite so prompt to regard higher evidence when it is adverse to them. It would have been well if he had manifested equal respect for the abundant proof of the constitutionality of the Bank, and the opinion of Congress as to the safety of the deposites. The Senate has not reasoned heretofore as the Secretary reasons. The Committee of Finance in the Senate, in 1829, had several resolutions referred to them, the object of one of which was, to compel the Bank to pay some compensation for the deposites; and the *means* of *compulsion* were the *withdrawal* of the *deposites* by the Secretary. They reported that it was inexpedient to act on these resolutions; and thus reason: "The 16th section "enacts, that the deposites of the money of the United States shall be made "in the Bank and its branches, unless the Secretary of the Treasury shall "at any time otherwise order or direct; in which case he shall lay before "Congress the reason of such order or direction. It is *admitted*, that the first "branch of the section is conclusive, as to the right of the Bank to the depo- "sites without charge to it; but it is argued that the second part qualifies "that right, and that the authority given to the Secretary to withdraw the de- "posites, gives him power to do so in case the Bank should refuse to give fur- "ther compensation for the use of those deposites. If that had been the object, "the words would have been, in the opinion of the committee, *explicit* as to "a point *so very material.* The committee see, in the power given to the Se- "cretary, a discreet precaution; and the words, they believe, convey only the "idea, that if, at any time, the Secretary shall be of opinion *that there will be* "*a danger of loss to the United States, by its money remaining in the vaults* "*of the Bank, he may remove it for safety, and report his reasons to Congress.* "*No other construction can, in the opinion of the committee, be given to that* "*part of the 16th section.* The power to withdraw the funds by the Secre- "tary has never been deemed necessary; and it may well be doubted whether "Congress can interfere, in any way, until he shall act under the power. *The* "*idea that Congress have given, by inference, to the Secretary of the Trea-* "*sury, a power to exact money from the Bank by a threat of withdrawing* "*the deposites, cannot be entertained by the committee.*"

Of this report one thousand copies were printed for circulation.

If Congress have not given to the Secretary the power to exact compensation for the use of the deposites, have they given the more odious power of depriving the Bank of the whole deposites, whenever a Secretary can be found ductile enough to be commanded to believe that the *interest and convenience of the People* require his high prerogative protection? The committee affirm that the power was given to secure the *safety of the money;* and that committee consisted of Mr. Smith, of Maryland, Mr. McLane, Mr. Smith, of South Carolina, Mr. Branch, Mr. Silsbee. The same committee again, upon another and distinct reference, made the *same report* on the 12th of January, 1832. It then consisted of Messrs. Smith, Tyler, Marcy, Silsbee, and Johnston. In each committee there was a majority of the friends of the present Executive. Sir, it is but a short period from January, 1832, to September, 1833. I find no evidence that any one of the Senate then questioned the soundness of the opinion of the committee, and shall be glad to learn, in the progress of this discussion, how far there has been a change of opinion here or elsewhere, and on what grounds.

But the *right to transfer* the deposites is urged as an *independent ground* on which the power of the Secretary is to be vindicated. It will be a sufficient answer to this argument to refer to the 15th and 16th sections of the charter. The 15th declares that, "whenever required by the Secretary of the "Treasury, the said corporation shall give the necessary facilities for trans- "ferring the public funds from place to place, within the United States and "the Territories thereof, and for distributing the same in payment of the pub-

" lic creditors, without charging commissions or claiming allowance on account " of difference of exchange." And the 16th requires the public money to be deposited in the Bank and its branches, where there are any. Now it is obvious that the duty of the Secretary is to require the transfers; that of the Bank to make them. He is to direct the place where the money is wanted for use; the Bank is to be at the expense of putting it there. The object of these transfers is also designated—the payment of the public creditors. The transfer and the payment are embraced in the same provision, and rest on the same condition—both to be directed by the Secretary, both to be done by the Bank; and the power of the Secretary might as fairly be inferred from one as from the other. To infer the power to deprive the Bank of the whole benefit of the deposites, at will, because there is a power to require transfers for distribution in payment of debts, is but another evidence from what slight grounds power can be inferred by those who desire to exercise it.

The power intended to be given to the Secretary was, perhaps, salutary; and there may, perhaps, have been some want of caution and precision in the wording of it; but if this be so, which I do not admit, an ample apology for Congress is found in the fact, that no one then imagined such principles of construction as have, in these reforming days, been discovered and approved. The men who had held the office before that time, Hamilton, Wolcott, Dexter, Gallatin, Campbell, Dallas, although they were versed in official concerns, and the length of their service outran that of four who have recently followed them, had not exhibited such skill in construing their powers, and those of the Executive, as to put Congress effectually upon its guard.

But, sir, if the power be conferred, and was reserved, what was it? 1. To order the *deposites* to be made. This must, from its nature, be directed, not to the Bank, but to inferior officers and debtors—where to pay or place the money; and must be prospective, and relate to moneys to be subsequently acquired. 2. The *transfer*—which relates not to change of possession in the Bank, but to a change of the place where the Bank shall hold it. Neither amounts to nor authorizes the withdrawal or taking money out of the Treasury. This is a totally different act, and governed by different laws and rules. The constitution and the law governing it have been read to the Senate. I have no anxiety about the definition of the word *Treasury*. That of the Senator from Kentucky is correct. It is that place, one or many, where the money is put, and is to remain until drawn out according to the provisions of law. In this light it is regarded in all our state papers and documents, in the messages of the President, the reports of the Secretary, the proceedings of Congress, and the laws which are enacted.

Whenever money is in the hands of the Government, has been paid to it, and not paid away, it is said to be in the Treasury. Before the Bank was formed there were more than ninety State banks in which the money was placed, and these were *all one Treasury;* and withdrawing money from any one of them was taking it out of the Treasury; and if taken out without the forms of law, if not paid on legal warrants, it was a violation of law; and so it is since the Bank was created. That is the Treasury *now*, in the same way that the State banks were before; and if the Secretary withdraws one dollar of it, with or without the Executive sanction, it is a breach of the law. The true doctrine of the Executive right to interfere with the money of the nation is this: While it is in the Treasury the Executive has no power to touch or control it. *After* it is drawn out, *according to law*, and placed in the hands of Executive officers to be expended, the right of the Executive, *such as it is, commences.* What it then is, I will not delay the Senate by examining further.

Under these views, Mr. President, of the acts and principles of the Secretary, I am compelled to dissent from him. He has, in my opinion, done acts for which he had no legal authority. His order to place the future receipts of the nation in the selected banks, his order to the disbursing agents to place their money in the same banks, and his taking the money, already in the Treasury, out of it, to *loan* to his favored banks, are all violations of the law—gross violations—for which I can see no satisfactory excuse, in any just principles under our system of Government.

I now ask attention to his *reasons* for the removal. They seem to be composed of mistaken facts and false principles.

His reasons are of two kinds. 1. Relating to the *time*. 2. To the misconduct of the Bank of the United States. Under the first, he argues that the public general interest required it, without the delay of sixty days to consult Congress. Under the second, that it was demanded as a penalty on the Bank.

In relation to the *time*, he attempts to prove four propositions. [Report, page 11.]

The first is, that it was the duty of the *Department* not to act upon the assumption that Congress would change the law, but to regulate its conduct on the principle that the charter would expire in 1836. His reasoning in its support is in pages 3 and 4. Now, sir, I admit freely that the Secretary, like all other officers, was bound to act under the law, as he found it—as it existed. He had no right to speculate one way or the other. He was to perform his duty, and not presume that Congress would not, any more than that Congress would; and this is especially true, as Congress was about to meet, to whom the legislative power on the subject belonged.

But why would he not anticipate a renewal of the charter? Because, 1. Justice did not require it. 2. Public opinion forbade it. Justice did not require it, because *it was an exclusive privilege, at the expense of the rest of the community*, enjoyed for twenty years! Is this so? Was it so in the origin of the charter? Every citizen of the Union was at liberty to become a *partner* in the concern, on the terms offered by Congress. None were prohibited; none excluded. Those who did not choose to accept them, have no right to complain that others, who did, have derived benefit from them. I admit, with the Secretary, that the present stockholders have no peculiar right to peculiar privileges, and may not claim a renewal, except so far as the interest of the Government may be promoted by having a Bank, and it may think proper to renew this, if it have faithfully performed its duty. But if the charter were not renewed, and a new one were formed, the same state of things would exist, as now does, in relation to this point, and must always exist, while there is a Bank. It is an objection, not so much to the renewal of this charter, as to the existence of any bank. The report of the committee of the House in February, 1832, places this matter in its true light. But, sir, who constituted the Secretary the judge of this question? Who gave him the right to discharge the duties of Congress, and decide this matter? What authority has he to say that it is or is not wise to create a monopoly? to grant exclusive privileges? that Congress ought or ought not to renew the charter? If such notions are to prevail, it might be well for us to take the advice which partisans have given—go home and let matters be better managed without us than with us.

But has this Bank been an oppression to the community? I repeat, sir, that it is not so. You have saved, at a low estimate, from forty to sixty millions by its operations. The transactions of your financial concerns have cost you nothing; three hundred millions have been received, transferred, paid, *without the loss of a dollar;* your currency rendered *the very best ever known in any nation in modern times;* your contracts have been facilitated; the intercourse of your citizens, in all the relations of life and business, promoted and rendered easy and profitable; the very bonds of your Union strengthened, by enabling the people in the extremes of the nation to transact their business with each other, with almost as much facility as if they were embraced within the narrowest compass. Sir, I do not allude to these things as urging the merits of the Bank, nor with any view to any question hereafter to arise, as to its recharter. It has only the merit (and it is certainly not a small one) of having, faithfully to the Government and its own stockholders, discharged its duties. The credit is due to the wise men who formed the Bank as a fit instrument of benefit, both to the Government and people. But these things show that the want of justice and the expense to the rest of the community was at least a questionable ground for the confidence of the Secretary in the exercise of his discretion.

But he could not anticipate the renewal, because he says, "I am firmly "persuaded that the law which created this corporation, in many of its pro- "visions, is not warranted by the constitution; and that the existence of such "a powerful moneyed monopoly is dangerous to the liberties of the people, "and to the purity of our political institutions." We are left to our guesses as to the grounds of his firm persuasion. I shall not stop to inquire either when this firm persuasion had its origin, whether long since, when his political and constitutional opinions were formed, or within the last two or three years, within which time many of our citizens have felt much new and overwhelming conviction about the unconstitutionality of the Bank, and found their zeal on this topic so much augmented, and have laid their original opinions as a fit offering at the footstool of power and patronage. Nor, sir, shall I now inquire into the *correctness* of the opinion expressed. The question before us is not whether Congress have constitutional power to create this or any other Bank, nor whether it is dangerous to liberty. It has been created. It is in existence. It is the law of the land. But I do inquire by what right an officer, created by law, and bound to discharge duties under any of our laws, assumes the authority to question their constitutionality, or to found *his* actions upon *his* belief that they are invalid and void. He is directed to perform a duty under a law; engages in its performance; and then finds a motive for his conduct in the assertion that it is not binding upon him. Sir, to what will not this lead? Might not the Secretary, by the same rule, have said that the charter, the contract on which he relies as allowing to him unrestricted leisure of motive and action, was void, and therefore he disregarded it altogether, and removed the deposites because they were unconstitutionally placed where they were? It would have been equally proper, and would have saved him some trouble of argument.

But he forgot, sir, that he was exercising a power under this very law. If unconstitutional, how could it confer any power on him, or justify any action which he performed, however unlimited its words?

If the Secretary may act and reason thus, every other officer, high and low, may do the same; each may deny the validity of the law which binds him to do what he is unwilling to do. Each may, like the Secretary, assume the power of Congress, and render unnecessary the existence of the judicial tribunals. The President had better look to it; he may find his subordinates somewhat troublesome to him, with such notions. Or, are only those to act on these principles who conform to his opinions and execute his purposes?

Sir, it is quite instructive to hear this *firm persuasion* thus pronounced after forty years of our national existence have gone by, during three-fourths of which a national Bank has been in operation, and which have been not only the most fortunate, but the only fortunate portions of our financial history. The first Congress, enlightened by the counsels of Washington and Hamilton, and others who had profited by the light elicited when our constitution was formed, had no such firm persuasion, but created a Bank. Another Congress refused to propose amendments to the constitution, in order to obtain the power, principally because it already existed. Three others have passed bank laws, one of which contained a large majority of political friends of the Executive; committees of another Congress, similarly constituted, have affirmed the power. In favor of this very charter, we find the names of such men as Lowndes and Gaston, Ingham and Oakley, Pleasants and Pickering, Barbour and Stockton, Roberts and Daggett, and others, whom I might name, if they were beyond the sound of my voice. The Legislatures of more than one-half of all the States have *approved* the exercise of the power. Every President, except the present, has done the same; for even Mr. Jefferson put his signature to one or more laws to create branches, and facilitate the action of the first Bank. He did not, at least, while acting under the law, deny the constitutionality of the law, and assume that as a motive for his conduct. Every Secretary of the Treasury, from 1789 to 1833—Hamilton, Wolcott, Dexter, Gallatin, Campbell, Dallas, Crawford, Rush, Ingham, McLane, (one of the present cabinet)—all admitted, not merely its constitutionality, but its

necessity to the finances of the country. The judiciaries of most of the States have admitted it; and, above all, it has been sustained by that elevated tribunal which is the ultimate judge, whether legislation be constitutional or not—elevated, sir, not more by its constitutional powers and dignity, than by the learning, the purity, the firmness, the patriotic spirit, which have guided its deliberations and controlled its judgments, securing to it the profound homage of this and other nations.

Sir, after all this, is it not a process of unusual modesty, in a subordinate and temporary officer of your Government, to act, in such a case, on his *firm persuasion* that all these have been in error, and that a future Congress *could* not entertain opinions which have been thus sanctioned and illustrated.

We are assured, by the Secretary, that public opinion has settled this question, and that this settlement is now matter of *history*. This megrim of the brain has crept into the belief of more than one in high places. It is not perhaps wonderful that it should be fixed immovably in one spot; but that others should entertain it, and act upon it, as if it were law, to govern their actions when executing law, is not a little surprising. What is the proof which the Secretary refers to? That the issue respecting the recharter and future existence of the Bank was tendered voluntarily by the Bank, and accepted; that pains were taken to "frame the issue," and that it was tried by the Presidential election. Is this true? Have the people of this Union, in the performance of their highest and most sacred function, that of election, descended to the degradation of trying an issue between the Bank and a candidate for the Presidency? Have they made all the great questions, arising out of their constitution, and the policy of the Government, subservient to such an issue? forgetting them all, and deciding this alone? For myself, I admit no such degradation. When did the Bank frame the issue with so much care? I know of nothing which it has done, and nothing is alleged but the expenditures for printing, which are complained of; and its application for the renewal of its charter. The former were certainly not very effective means of either framing or trying the issue. If Senators will examine the accounts, they will find $179 91 paid for newspapers; not as much, for the time, as we pay for the papers of six members of Congress; not enough for a daily paper from the States where its branches are located. They will find, I believe, $6,453 29 for pamphlets of the highest merit, fit for the instruction of all classes, and about $9,848 21 for reviews and addresses. This, sir, is a small sum with which to bribe a whole people, newspaper editors and all, in an election. But, sir, the answer is, that these expenditures were made with the professed, and, I see no reason to doubt, the sincere object of defending the Bank from continued, vehement, persecuting, and injurious assaults upon it; by which the value of its stock was depreciated, and the owners of that stock injured. An estimate of the injury may be made by observing the loss which the public treasury and the people of the United States have suffered. When the President and his friends first made their attack upon it, your seven millions of stock was worth eight and a half millions. It stood somewhere between 125 and 130, and the first assault reduced it so much that you lost by it $750,000. Subsequent assaults have continued the process, and you have now lost a million. If they are further continued it will be reduced to par, and you will lose one and a half millions. Fortunately you cannot lose more; neither official vengeance nor private malignity can reduce it below par, and bankrupt it. It is now able to pay, and must continue able to pay, its stock, in full count. If, sir, when these assaults were made, the Bank had been perfectly silent—stood still—made no effort to protect the property which it *held as trustee for others*, it would have failed to perform its duty. In private life such an agent would have been branded as faithless and unjust. Any State bank, thus negligent, would have lost its credit and subjected itself to scorn and ruin. In what does the Bank of the United States differ from them? They are equally trustees for others. There was an equal obligation on them to protect their rights, and disprove the false assumptions on which the assaults rested.

"But they made a voluntary and premature application for a renewal of their "charter." If this be true, does it prove any thing more than that they misjudged as to time, and were in too great haste to be assured of their fate? How did they know? Who had told them that this would form an issue between them and the President? Had he? No, sir. He had not. Up to that hour his final decision in regard to the Bank was matter of speculation only; and at least one-half of his friends not merely asserted that he would approve a recharter, but they actually electioneered for him on that ground. A contrary allegation was charged as a *political finesse of the adversaries of the President.* It was so in the middle, the west, and the north of the Union—every where, except where the charter was considered unconstitutional. And, sir, they were right. In his message of December, '29, he uses this language: "the charter of the Bank of the United States expires in 1836, and *its stock-* "*holders* will, most probably, apply for a renewal of their privileges. In order "to avoid the *evils resulting from precipitancy*, in a measure involving such "important principles, and such deep pecuniary interests, I feel that I can- "not, *injustice to the parties interested*, TOO SOON *present it to the deliberate* "*consideration* of the *Legislature* and *the people.* Both the constitutionality "and the expediency of the law creating the Bank, are *well questioned* by a "large portion of our fellow-citizens, and it *must be admitted by all that it* "*has failed in the great end of establishing a uniform and sound currency.*"

He then proceeds to suggest the propriety of considering whether a bank may not be founded on the *credit* and *revenues* of the *Government.* It is unnecessary to speak of the suggestions respecting the currency and a new scheme for a bank. It so happened that the first was flatly denied, and was certainly incorrect; and the latter scouted, by even his own devoted friends, in and out of Congress. The suggestions were such, that none, or almost none, were found so brave, or so pliable, as to sustain them. There may have been many conversions since, for aught that I know. There are very operative means of producing conversions of opinions in these our days. But, sir, I put it to the candor of every man, if the President did not then say, that it was time the *question of recharter* should be *considered:*—if he did not tell the Bank so, as well as Congress and the people:—if he did not invite the Bank to have it settled, so far as its settlement depended upon *it.* It could not TOO SOON be presented to the consideration of the Legislature. Precipitancy was to be avoided. If the Bank, on reading that message, had sent a memorial to Congress, would it not have been a compliance with the expressed wishes of the President? Would any man *then* have thought it criminal?—or an intentional formation of an issue between it and the President? Subsequent events have induced its enemies to give it this aspect. The Bank did not then apply. In December, 1830, the call was renewed. In December, 1831, it was repeated, with the declaration, that as he had done his duty in urging the subject, he would "*leave it, at present, to the investi-* "*gation of an enlightened people and their Representatives.*" It was after all these calls that the Bank did *precisely what the President had recommended*, present it to the consideration of Congress, and ask the decision of the question, and a renewal of the charter, if, in their opinion, the public interest required or permitted it.

The matter was before Congress—under its consideration—at the moment when their memorial was presented. If it was brought there by a friend, was it criminal to unite with that friend in his wish to have the question decided? If by an enemy, was it wrong in resisting the intended destruction? If for good, to aid in its accomplishment? If for evil, to ward off the blow? Was it premature, when the President, on his high official sanction, had declared that the question ought to be settled? Was it premature, when, in three annual messages, he had urged its seasonable decision? Or, sir, was it *not* premature in 1829, '30, and '31, because it might then have been supposed that the Bank could be destroyed; and did it become premature afterwards, when it was discovered that this object could not be accomplished, and that time was wanted to weaken the Bank by secret investigations and public

slanders, and to move the machinery of party to subserve the purposes of private and personal hostility? On what, sir, does the Secretary build his grand argument, that he was bound to *force* the Bank to wind up? Is it not the near approach of the end of the charter? And yet it was but little more than one year before, that the Bank asked to be informed whether the charter would be renewed, and that was so *premature* as to be *criminal.* It was not premature in the Secretary, in August and September, 1833, to trample on all laws to compel the Bank to wind up; and yet it was odiously premature to have the question of winding up settled in the spring of 1832. Such is the consistency and the reasoning of a Secretary of the Treasury. This whole matter is an insult to the common understanding of the people. I have too much regard for that understanding to believe that they can be deluded by its absurdity.

Up to this period; up to the passage of the bill to recharter the Bank; up to the *veto* on that bill by the President; the question as to the ultimate action of the President was unsettled. I appeal to history and the *records of this Government* for proof of my assertion. Did that veto change it? I admit that the President, in that veto, declares the bill unconstitutional, on *account of some of its provisions,* but not for *want of power in Congress to create a bank.* For, with the most paternal kindness and benevolence towards the ignorance of Congress in the discharge of the duties which the people have confided to them, he assures them, "had the *Executive been called upon* "*to furnish the project of such an institution, the duty would have been* "*cheerfully performed.*" The President—the Executive—called upon by Congress to furnish a plan by which Congress shall manage and control and regulate the finances of the country! Admirable modesty and knowledge of the relative rights and obligations of the Executive and Legislative branches of our Government!

But, sir, in all this, due regard was observed not to close up the question. For we are assured that, after the veto, "a general discussion will take place, "eliciting new light and settling important principles; *and a new Congress,* "*elected in the midst of such discussions, and furnishing an equal repre-* "*sentation of the people, according to the last census, will bear to the Capitol* "*the verdict of public opinion, and, I doubt not, bring this question to a* "*satisfactory result.*" *What Congress* was to bear this verdict to the Capitol? The *present*—that now in actual session in that very Capitol—members *elected amidst those discussions—of which, sir, I am one! We* were to bear the verdict! Had the Secretary heard it when he acted? Did the Executive wait to hear it? How did they know what we should say? How know, that a majority would not be of opinion that the Bank ought to be rechartered? Or that even two-thirds might not be found to oppose, on this point, the Executive will, should that will resist their views in managing their constitutional guardianship over the Treasury? Could they not wait sixty days for that verdict for which they had promised to wait? Was the country on the brink of ruin, sliding down the precipice into the gulf of irretrievable bankruptcy, that its drowning honor and perishing fortunes must be thus rudely rescued? Sir, that message was a solemn promise by the Executive to let this question be settled by Congress, and to submit to it. What else can the words mean, but that the people would consider the subject and their representatives decide it? Did the President intend to trifle with the people? To profess regard for their opinions, as expressed through Congress, and yet to scorn those opinions by his actions? Was he giving out Delphic responses? Did he "palter with us in a double sense?" No, sir, he meant *then* what he said, however ill the promise has been kept, under the influence of those who have surrounded him. The people so understood—they so believed. It was to be tested, whether, *without new arguments or new facts,* legislative assemblies, chambers of commerce, and the great majority of the people of these States, had changed their opinions upon the new lights which subservience to party and devotion to men have afforded? Nay, it was even reasonable to suppose that the President himself *might* yield his official opinions to

the deliberate, well-considered opinions of a majority of the people, and to permit their judgments to govern in this land of majorities, and under institutions which have so long sanctioned the existence of such a fiscal agent. It had been so before. Mr. MADISON had yielded his doubts, upon principles and for reasons which do equal honor to his head and heart, and which are well developed in his letter of 25th June, 1831.

He thought it was wise to regard the question as settled, after all that had occurred. He knew and felt that, under all Governments, *misera est servitus ubi lex est, aut vaga, aut incognita.* The lesson he teaches is worthy of imitation, not only from its intrinsic merits, but from the character of him who teaches it. He is worthy, sir, of the deepest homage and the closest imitation. He has devoted a long, a pure, and a useful life to his country. He has left the impress of his virtues and his talents on your constitution and your laws, in all their history; and he now exhibits one of the most dignified and lovely and venerable specimens of a philosophic and patriotic old age that the world has ever been permitted to witness.

Mr. President, the assertion of the Secretary, that this question was finally and irreversibly settled, is not only opposed to fact and to the respect due to Congress, but it is not respectful even to the character of the President himself. It turns upon the allegation, that the President was elected *because he was opposed to the Bank.* It supposes *disingenuousness* in *him*, in his messages to Congress; and that *this single merit*, this hostility to the Bank, was the *cause* of the preference of him by the people. Had he, then, no other merits? Was there no other cause why he should be preferred, without even remembering his opposition to the Bank? Had he rendered no services to his country; fought no battles; gained no glory; suffered no privations; made no sacrifices? Had he no constitutional principles to secure regard? No acts of reform to win favor? *Must* the people have voted for him for *this merit* alone? Does any man believe that he received a single vote on this ground, which he would not have received had there been no quarrel with the Bank? No, sir, I do not thus estimate the intelligence of the people nor the motives of their approbation and support. The President was chosen for other and stronger reasons, however unfounded and misguided I may regard them. His election was no *reason* on which the Secretary can be justified in making the great movement which affected, not our finances alone, but all the business and prosperity of the country. And he can find no apology in it, unless he assumes the odious position that the President's will is law, and his opinions the unerring guide of legislative action.

The two next positions of the Secretary are, (Rep. p. 11,) that the deposites ought not to remain in the Bank until the charter expired in 1836; and, as the *Secretary only* could remove them, it was his duty *then* to act. In relation to his exclusive power, I have said all that I intend. The reasoning of the Secretary, to be found in pages 4 and 5, as I understand it, is this: that the deposites always amount to several millions; their sudden withdrawal, at the expiration of the charter, would create inconvenience, and make the deposites unsafe, so that it could not return them to the Government; that its outstanding notes would lose their value when not received for Government dues, and holders at a distance suffer by their depreciation; that a sound currency must in the mean time be created; that this can, under his direction, be accomplished by the State banks, but could not be hastily substituted at the expiration of the charter.

Now, sir, I profess to have very little financial skill or knowledge. I have not made it the study of my life; but few and passing moments, amidst other employments, have been devoted to acquiring it. But, as I am compelled to form and express, *by my vote*, an opinion on the financial reasons of the Secretary, such views as I have must be my guide in that vote.

In the first place, it occurs to me that the Secretary has mistaken the *time* when the affairs of the Bank are to be wound up. Its charter, for certain purposes, expires in '36; but for paying its debts and calling in its claims—in other words, settling up its concerns—it has *two* years beyond that period.

The 21st section of the charter so expressly provides: "Notwithstanding the "*expiration of the term* for which the corporation is created, it shall be law- "ful to use the corporate *name*, *style*, and *capacity*, for the purpose of suits "for the final settlement of the affairs and accounts of the corporation, and "for the *sale and disposition of their estate, real, personal, and mixed*, but "not for any other purpose or in any other manner whatsoever, nor for a pe- "riod exceeding two years *after the expiration of the said term of incorpora- "tion*." It has, therefore, *four* instead of *two* years to accomplish the work of which the Secretary speaks, and we must apply his reasoning to the four and not to the two years. This provision, to my mind, indisputably proves the intention of Congress that the Bank should discount, should do every thing, make profit, and possess all its privileges, *until* '36; that the deposites should be enjoyed *up to that time*, and it should not be compelled to close its business transactions *before the full end of twenty years*, the time mentioned in its charter. It is a charter for twenty, not eighteen years. The time subsequently given for winding up was designed to enable it to act to the last moment, and to relieve it from the difficulties under which the old Bank labored for want of such a provision. I find in this fact, in this provision, a full answer to the whole argument of the Secretary *as to time*—a conclusive reason to believe that he has violated the intention of Congress and the chartered rights of the Bank. Congress gave the Bank twenty years, and did not authorize the Secretary, by his volition, to deprive it of two years of that time.

In the next place we must apply the reasoning to a *solvent, rich bank;* able to pay all its debts, and count down its silver and gold, on every demand. This solvency, though not long since questioned by its adversaries, is *now admitted by the President*—by the *Secretary*—by *all*. And what its difficulties in 1819 or 1820 have to do with its present condition, I am unable to discover. We are speaking of it *in* 1833—*now*—and what it must be *in* 1836 under proper management. If it were even compelled to wind up at this moment, the official reports of the Secretary prove that it is entirely able to pay *deposites—debts—every thing*, and have a *large surplus*. I need not repeat the figures in the statement of its situation on the 1st of this month. It had in bills, and notes, stocks, specie, and debts from State banks, about seventy-two millions, besides its large surplus contingent fund, and about three millions in real estate; and all the claims which could be made against it for stock, notes in circulation, and debts, did not amount, I think, to more than sixty-seven millions. It had more than ten millioms of specie in its vaults in December, and that specie constantly accumulating. It has no cause to fear any attack. It can pay its debts, and restore to its stockholders their money, and much more. In winding up its concerns, and calling in its dues, its specie must, by necessity, constantly augment. It will require its payments from debtors, and State banks, to be in specie, that it may answer the claims upon it at home and abroad, from creditors and stockholders.

Apply, then, the positions of the Secretary to *such* a bank, having *four* years to close its concerns; or, if you please, having only *two*.

The sudden withdrawal, at the expiration of the charter, of the deposites. How could those deposites be unsafe? More unsafe *then* than *now?* Why withdraw them *suddenly?* Why with more haste than the claims against the Government would require? But, with whatever haste, why should not the Bank be able to pay them? They must be paid before the stockholders, and the whole means of the Bank, stock and all, to four times their amount, would be answerable for them. They had in December about forty millions, subject to the payment of their eleven millions of public and private deposites. The same amount of deposites which alarmed the Secretary have been paid, and suddenly, too, by the Bank, more than once, and no bankruptcy or pressure has ensued. They never have been, and never can be more safe *than at the precise moment that the Bank closes its active business*, and no longer puts any of its concerns at hazard. It is so with all solvent trustees and agents, and must be so with the Bank. But, sir, the Secretary need not be disturbed

by the anticipated loss of the deposites. If we may trust his own reports, and if matters proceed as they have done for the last two or three years, there will be little or no money to deposite. The augmented expenses of administration, and the insolvency of departments, will relieve us from any cause for apprehension on this subject.

Again: Should the notes of the Bank, not being received for Government dues, depreciate, and holders at a distance lose by them? The receipt of these notes by the Government is doubtless useful to their circulation, but it is not their only, nor chief value. This is already proved by the depreciated condition of the notes of some of the selected banks, at a distance from the the places where they are issued. They are below par. The chief value consists in their being payable in specie whenever demanded—their circulation throughout the Union, wherever business or pleasure requires them; and because, from the nature of the commerce and trade of the country, their tendency is to the commercial cities—to the sea-board, where they will be cash, or its equivalent, to all who hold them. After new issues shall have ceased, they will and must be sought by all in the interior who have transactions upon the sea-coast. The amount of them now in circulation is stated at eighteen or nineteen millions, at this moment probably twenty millions. They form about one-fourth of the circulating medium of the country, and are never greater in amount than appears in the reports of the Bank to the Department. They will be *lessened* of *course* by the prudence and caution of the Bank as it approaches its dissolution, but even if they were augmented, the causes before stated would ensure their continued credit. I wish the Secretary had instructed us *how* notes thus situated can depreciate below their nominal value; or how a Bank, thus strong, would be unable to pay its deposites, public or private. Nothing but the utter and entire ruin of its debtors, and of the State banks, which owed it five millions of dollars on the 1st of January, could produce the predicted evil. It is *perchance possible* that the Prophet, and those who sustain him, may be powerful enough to occasion the fulfilment of his prophecy, but they must reach it through the destruction of the credit and confidence of the country, and the prostration of commerce, and dealing, and prosperity, in the community.

The amount in circulation is large, in itself, but small when compared with the capital of the Bank. In the reports of Mr. Crawford, several years after it was created, this point is developed and discussed. It has been greater before and since the present Secretary reasoned about it. Its withdrawal, and closing up the concerns of the Bank, will, of course be felt, whenever it may be performed, though with the utmost caution and moderation. It must be so in closing any large banking institution, or any large mercantile establishment; but, left to itself, unforced by the mandate of power, it would be less felt than the pressure which now afflicts the community. The Bank would not be obliged to withdraw from the active employments of the country, means greater than it has now been compelled to do. Its debts and credits, to the amount of the former, would but change hands, in the shape of some new circulation; and the balances due to it be paid in specie, or what would be received as equivalent by its stockholders. The amount to which it has *curtailed its business* within the last five months has been stated at twelve millions—I know not on what evidence. The statements and the reports from the Secretary show no such fact. It has been reduced, in about that period, somewhere about nine millions—but its own circulation has not been diminished. The sum mentioned has been withdrawn from active use; for there was no substitute supplied by our financial Secretary: there can be no substitute in the present state of things. The State banks are incompetent to supply it. But, in winding up, it would not be compelled to withdraw from active use, one-half, nor one-fourth of that amount, in the same time—and these would be replaced by other circulation. What would be the value of that circulation, and how far it would subserve the convenience of the people of the country, is quite a different matter. There would be enough—its quality no man can tell. We had an example once on this point. When

the old Bank of the United States was closed, other banks grew up like mushrooms in a night, and perished almost as soon. They threw out abundance of paper—but it was not money, nor the equal representative of money. Your currency increased, in four or five years, from about forty-five to much more than one hundred millions; and the consequences on the prosperity of the people and the Government need not be described to him who has not memory enough to recollect them, or virtue enough to desire to guard against them. Absolute, unavoidable, uncontrollable, grinding necesssity compelled us to seek a remedy. It was found, by the wisdom of Congress, in the charter of this Bank, and in the restoration of specie payments—the restoration of money to the country. In less than five years, the circulation was reduced from nearly one hundred and ten to about fifty-five millions; and the effect has been told in years of public and private prosperity, until ignorance or folly blasted it. I am also unable to perceive why evils produced by the winding up of the Bank, in *two years*, in 1836 and '37, should be *greater* than in 1834 and '35? Why should they be greater, when the Bank and the country, by the regular process under the law, are prepared for the operation, than when the Secretary, suddenly and unexpectedly, forces it upon them? We ought to have been instructed upon this point.

But, sir, although I cannot perceive why these notes should be depreciated, and these evils result which the Secretary so clearly foresaw, I think I can perceive why the stock itself may not bear in market the same price as when the charter had longer to run, and why it will not do to judge it *now*, by "*the infallible Price Current.*" As its charter approaches a close, it is not a place for permanent investments, whence fair profits and interest may be expected for years to come. It will then be an article to be purchased only at its actual transfer value. It will bring just so much, and no more, as the buyer believes will be paid to him when the stock is taken up and cancelled, and this will be the nominal value of the stock, and the proper proportion of surplus profits. But, sir, it would be quite as fair to apply the price current to the stock of a bank just about to expire, and compare it with those which have longer time to run, as it is now to make the same comparison between the Bank of the United States and others; after all the weight of official and personal hostility has been made to bear upon the former, and the Treasury of the Union has been poured into the lap of the latter. It is not strange that those who reason by such lights should reach false conclusions.

But, sir, the Secretary is to make a substitute for our legislative *fiscal agent*, and for our present *indifferent currency*. *He* is to perform the high duty of Congress, and prescribe a much better and sounder, circulation—a much better, more economical, and efficient agent. And how? By substituting State banks, and notes of State banks, and making them receivable as the notes of the United States Bank now are. By law, the notes of the mother Bank and the branches are received every where from those who have payments to make to the Government. An inhabitant of Maine can pay the Government, in Maine, with a note issued in New Orleans. He cannot, indeed, go to the Branch in Maine and demand specie for it, (for the note he holds does not promise to pay specie *there*, but where it was issued,) but he can pay Government dues with it. The complaint that these notes are not payable every where in specie, on demand, I should designate as absurd, if courtesy would permit. The law makes no such requirement; and no Bank, with branches so scattered, and with the commercial relations existing between the different portions of our wide-spread country, with any amount of capital, could long accomplish it. All that it can do is to provide specie for the issues at each place. This it has done. If notes of the New Orleans, Lexington, Savannah, and other branches, were all payable in specie every where, it would put the safety and honor of the whole institution in the power of any enemy who might collect notes enough to exceed its specie at any one place. The enmity of the Treasury, or of a few individuals, would have found a ready prey under such circumstances. The run upon the Branch at Savannah would not have cost so much trouble and money. This mode of payment was

once attempted by the Bank, and a committee of Congress, of able and intelligent men, who examined its concerns in 1819, looked to this as one of the causes which embarrassed the Bank in 1819, and as injurious to the institution and the interests of the country: and committees of the House, in 1830 and 1832, sustained by the House, affirmed the same view of this matter. But charges against the Bank do not become stale. They are repeated again and again, with all the complacency of new discovery and invention.

To create an equal substitute, the State bank notes must be received every where for Government dues; those of Maine in Kentucky, those of Buffalo in Charleston. To accomplish this, either the Government itself must become responsible for these banks, or the banks themselves must become responsible for each other; otherwise the notes will be as they now are, and as they were from 1813 to 1817, at discount. The Government must receive them for its dues at par, and pay them out at the discount of from three to fifteen and twenty per cent. Individuals will only receive and pay them at their commercial value. Are we prepared to pass a law, taking upon ourselves the solvency of these banks, and agreeing to receive them, at par, from our debtors? Will the banks become responsible for each other? The misconduct of a single one might prostrate the whole. Will their charters permit it? Will their stockholders consent? Sir, neither by contract, nor by law, can the Secretary render these notes receivable every where, much less can he make them payable in specie every where. They will and must depreciate, and as the Government lost between forty and fifty millions by their depreciation in the war, and the people were annually taxed by this cause more than six millions of dollars, so will it be again in time of peace as well as war.

In saying these things, sir, I am not to be understood as intending to depreciate the State banks. I admit their general solvency so long as the business and currency of the country is in a natural and sound state. I admit also their entire competency to accomplish the objects of their creation within the limits of action and agency which were contemplated by those who formed them. But they were intended to be local: their nature and capital does not fit them for the purposes of the Secretary; and whenever they shall be substituted, you will find them as you have once before found them. You have had annually repeated for years, in the treasury reports, an item of between one and two millions of unavailable funds. These were State bank notes, and not worth a farthing. The Secretary would soon find a repetition of this item, swelled enormously, upon his scheme going into operation.

Is it not graceless to complain against the Bank that it does not pay specie where it has not promised to pay it, and when its charter does not require it, and yet propose to substitute for it that which can neither pay specie every where, nor be receivable where it is wanted?

Is it not inexcusable that the Secretary should, *of his own authority*, attempt to substitute for the fiscal agent of the Government, *created by law*, agents heretofore found incompetent, and whose employment has created such distress in the country?

But this is not the worst of the scheme. The Government deposites its money in these banks to much more than their whole capital, and the *security is left at the option of the Secretary!* Now, what security is proposed? In the last report from the Department we have a document which explains it; it is the *report* from the *agent* who was also the *principal;* for he was invested with full powers to make *any proposition* he pleased; and whatever he approved was adopted by the Executive.

Will the Senate hear the plan of security for the public money of the Union? Report of *Amos Kendall* to the *Secretary of the Treasury*, dated *4th September*, 1833, page 11. "When asked what kind of security would be most "satisfactory, I did not hesitate to say, that, in my opinion, the *personal re-* "*sponsibility* of the *directors* would *be the very best.* It would show their "own *perfect confidence in the safety and success* of the undertaking, and it "would not only afford the Government an *ample guarantee for the safety* of "its *funds*, in addition to the capital and character of the Banks, but would

" satisfy the public mind. When it is seen that the managers of the State " banks are willing to pledge not only the capital of those institutions, but " their own property and character, it will be impossible to doubt that the " deposite is as safe in their keeping as human precaution can make it. It is " understood that the security *intended to be offered* by the banks east of Bal- " timore is of this description; and in case any of their *directors* shall decline " giving it, they will be substituted by some of the *richest stockholders*. In " *case I had failed to procure the assent of any of the banks in all of the prin-* " *cipal cities, to the giving of security, it was my purpose to propose the pay-* " *ment of an interest of one or two per cent. on the average deposite, to consti-* " *tute a fund to meet any possible losses. If this plan should be thought* " *advisable, I have no doubt of its entire practicability!!*"

Let the Senate, let Congress, let the people, hear and approve this plan for the safety and management of their money, illegally and unconstitutionally plundered from the Treasury—this substitution of the Executive will for legislative action. Is it wonderful that Congress was not to be consulted before this scheme of consummate folly was adopted? Is it strange that Mr. Duane should regard it as "a breach of public faith," " vindictive and arbitrary"— " not conservative or just;" as disrespectful to Congress, who were about to assemble; and who have pronounced the deposites safe; as calculated " to shake public confidence and promote doubt and mischief in the operations of society;" as " crude and unsafe;" as dangerous in the hands of a Secretary dependent for office on Executive will, by making the banks "*political machinery;*" as destructive of national credit and reputation; as designed " to promote selfish and factious purposes?"

Personal security of some of the directors and stockholders of these Banks, for our public money, to the amount of millions! " The payment of one or " two per cent. upon the average deposite, to constitute a fund to meet any " possible losses!" Am I to reason on such a scheme before an American Senate? Sir, human ingenuity could not offer a grosser insult to the human understanding. Your money is safe, perfectly safe, and admitted to be so, and you are to take it away, and venture it on *personal security* of individuals, and on a *safety fund*, to meet *losses* which you *are to create by the change*. The folly and madness of the act is only equalled by the confidence with which it is urged upon us. But, sir, you, the Congress of the Union, were not even to be permitted to judge of the scheme before it was executed. Your Secretary has already executed it, in part. Your money has been ventured, and without consulting you, and without taking the security; for he yet has none, and, of that description, he never will have. Directors and individual stockholders are not idiots; they will refuse the security when it shall be demanded. The Executive power has plundered your Treasury, and presents you such personal security *as he can get* and a *safety fund in its stead*. And we, sir, we, on our solemn oaths, are to answer that we approve his course. For myself, never. Let Congress approve, and not only will your money be squandered, but your constitution violated, your laws contemned; and, in the room of law, you will have the Executive will, acting upon and controlling an army of moneyed mercenaries, and regulating a money power, which, united with the sword, can jeopard your liberties whenever he pleases. The vindication of the law, at the hands of Congress, can alone arrest this result.

We have had experience upon all the points connected with this part of the Secretary's reasons. But, sir, I begin to doubt the truth of the old maxim— that experience is an efficient teacher to public men and Governments. The history of the old Bank ought to have been full of instruction to the Secretary. It had a capital of six millions; it had a circulation in proportion to its capital, nearly three times greater than the present: a large proportion of its stock was held abroad, and the holders were to be paid in specie. It had not an hour given to it, to wind up its concerns. It continued its active operations to the last hour of its existence, and was compelled to appoint trustees for that purpose. Yet, sir, not one of all the views of the present Secretary were realized, so far as we are informed by its history. Its notes did not depreciate—

specie became hourly more plenty in its vaults—there was abundance of circulation, *such as it was*. The immediate distress was small, the evil was consequential. When Congress was deliberating on the propriety of its renewal, one of the principal difficulties arose from the fact, that it had been allowed no time to settle its concerns, and it was feared that this circumstance would create distress to the stockholders and to the community. This difficulty was, with assumed carelessness, alluded to by the astute Secretary of the Treasury in a conversation with an agent of the Bank. The agent incautiously remarked that the Bank could appoint trustees, and would thus be enabled to avoid these evils. "Thank you, sir," said the Secretary, "you have relieved "us from our only difficulty." The charter was permitted to expire; trustees were appointed; the settlement was made; and not one of the anticipations of our present Secretary was then realized. Not one of these irresistible causes of hasty action, in him, was then found to exist.

Under this head, the Secretary gives us another view, to prove it a question of time, and that there could be no delay, [p. 7.] The argument is this: The election of President and non-renewal of the charter was known in December, 1832; and the Bank ought then to have curtailed. It had discounts in December, 1832, of sixty-one and a half millions; and in nine months afterwards, in August, 1833, of sixty-four millions; being an increase of two and a half millions. An agent was then appointed to inquire, in the four principal commercial cities, whether the State banks would receive the deposites, and perform the duties of the Bank of the United States. This ought not to have changed the action of the Bank, as, by inquiry of the Secretary, it might have learned that all the deposites would not be withdrawn, but that the process would be gradual; that the amount of revenue bonds falling due, and the cash duties, enabled it to be liberal; but yet, in three months, before 1st of October, it had curtailed its accommodations four millions. That it received two millions additional deposites, which, added to the four millions, made its curtailment, in fact, six millions; that a part of this was specie, for it was increased $639,000; that the balance due from State banks increased two millions, rendering them unable to protect the community, as they were compelled to look to their own safety; and that thus a pressure was produced by the Bank, which it was necessary to arrest before the meeting of Congress.

I have seldom, if ever, seen a larger share of misapprehended facts and misapplied reasoning within the same compass. It commences with a false assumption, that the Bank knew that it would not be rechartered in December, 1832. I trust I have shown that this could be known only on one principle, which is, that, as the President was opposed to it, and his will was law, therefore there could be no renewal. Is the Bank to be condemned for not crediting this conclusion? Yet, *it is upon this fact* that the *whole reasoning* of the Secretary rests. If, in December, 1832, the Bank was not bound to act on the belief that a decision had already been made against it, then his reasoning altogether fails.

But further. He complains of the increase, from January to August, of two and a half millions. The periods are unfairly selected. To learn correctly the extension or contraction of the business of a Bank, in different years, it is necessary to compare the same periods of the year. In the business of all banks this is the case, and between January and August no fair comparison can be made. It is peculiarly so with the United States' Bank. The great mass of its issues, discounts, and purchases of bills, depend on the course of trade and business between the north and the south, and this country and Europe. Every man, whose thoughts have extended as far north as Maine—as far south as New Orleans, and as far east as Europe, is perfectly apprized of this, and cannot be ignorant that, between times of purchases in the South and remittances from the North, there never is, there never can be, a fair comparison. Why, then, did the Secretary select these periods? Was it to do justice to the Bank, or to frame an apology for an illegal act? But the increase was not greater than it had frequently before been between the same periods in other years; and if the Secretary had taken the trouble to look into

the returns of the Bank, and the reports of his predecessors, he would have found such facts as these. In 1831, between the same months, there was an extension from about 46 millions to more than 57 millions—nearly 12 millions. In 1832, from January to April, only three months, an increase from 68 to 70½ millions, nearly 2½ millions, as great as is complained of in nine months, in 1833. And there are various other instances of a similar character, through all the history of the Bank. The same results, also, are manifest, by comparing its *circulation* at different periods.

So, also, the Secretary complains of the contraction of accommodations between August and October last. Yet, if he had made the same comparison, he would have found equal and more extensive diminutions at other times, which were unfelt by the community, and which were never thought to be evidence of misconduct, nor attributed to improper motives. One instance is to be found in the preceding year, 1832. From August to October, of four and a half millions, that is, from 68 to 63,693,000; almost double the amount complained of in 1833.

Now, sir, I complain of this concealment. Did not the Secretary see and know these things? Then, why did he attempt to impose on Congress the simple fact of the extension and diminution, in this year, as evidence of improper purposes and objects in the Bank, at the times they were made? The whole history of the Bank is filled with similar facts, not in relation to the notes and bills only, but of every species of property and interest which the Bank holds. And it is so with every other bank. Besides, who ever before heard that we were to estimate either the wisdom or virtue, or the folly and vice of a bank, by simply taking the amount of its discounts, at different times, without inquiring into the causes which produced them; the state of its active means; the funds under its control; the wants of the community in its commercial and other transactions? Does the Secretary state? Did he know how all these circumstances operated upon the Bank? Whether they justified its conduct, without regard to the motives which he attributes. Not at all. It was sufficient for *him* that the Bank had 61½ millions out in January, and 64 in August; and he infers that it must, of necessity, have been regardless of the solemn decision against its charter. It had curtailed four millions by October, and therefore it intended to oppress the community. If our Louis is satisfied with such reasoning, he will find that he has discharged a Necker and substituted a Calonne.

But, while we are comparing these expansions and contractions, which are so offensive to the Secretary, I desire attention to a fact which is worthy of note. The expansions in 1831 and 1832 are attributed, in *both* the remarkable papers which have issued from the Executive, to a design in the Bank *to acquire political power*, and affect the Presidential election. I wish self-love could permit certain individuals to believe that there could be any motives to action, but such as relate to friendship or hatred of themselves. Sir, when did the Presidential election take place? In the fall of 1832. When was the largest extension? Through 1831, and up to April, 1832. During that time, certainly, the most vehement and active part of the electioneering campaign did not take place. It was after April, 1832. Now, in April, 1832, the amount of these discounts and accommodations was greater than at any moment during the existence of the Bank. They reached to nearly seventy and a half millions; and from that moment, while the contest was hottest, as the election was approaching, while the canvass was going on, there was a steady and rapid diminution; so that when the election actually occurred, they were only $63,693,000—a decrease of more than *six and a half millions* in about *six months*. The Bank is accused of attempting to influence the election by extending its discounts; yet, when the election might be affected by it, if it could indeed be affected by this means at all, it reduces six and a half millions. Why, sir, do these officers suppose us ready to receive any absurdity which they may choose to assert?

Is it not unpardonable that such impositions should be practised by grave official documents, and the people be misled thereby, because they have not

the means of correcting them? If the increase from January to August was criminal, was the diminution afterwards also criminal? Shall the Secretary complain in August that the Bank would not wind up its concerns, and then, when it did immediately afterwards diminish its business, charge that very act as a crime? Shall he avow his intention to force the Bank to close, do an act which compels it to look to that object, and then charge it as unprincipled for doing the very thing which he required it to do? Is such conduct to be tolerated and approved?

But, sir, what right has the Secretary to complain that the Bank extended its business? Did it injure us or our interests? were the profits upon our stock less? were our deposites rendered unsafe by it? These things are not pretended. Our profits are increased; and, if possible, so is our security, provided the business of the Bank be not extended beyond its means; and of this the Bank was the proper judge. An examination of the transactions of the Bank will show that there has always been remarkable caution and skill in the extension and curtailment of its business: both being adapted to the active means in its possession at the time, and to the wants of the community. A comparison of its conduct, in this respect, with the known history of the country, would justify high commendation. But this is not my purpose. It is sufficient that it has been a faithful agent and trustee, and that the reasons of the Secretary, as applied to it, are unfounded.

The Secretary tells us that the Bank reduced its accommodations in August and September last, about four millions of dollars. There were then in the Bank nine millions eight hundred and sixty-three thousand dollars of deposites. Now, sir, what was the situation of the Bank at that time, in relation to these deposites? It had previously discounted upon them, and, to the proper extent, furnished thereby accommodation to the public. But the moment had come when it was necessary to withdraw all the accommodation which rested upon them. If they were to be taken from the Bank, it could not; it had neither the right nor the power to discount upon them. It would have hazarded its own safety, if it had. It had been warned that they would be withdrawn; nay, at the time of its curtailing the four millions, they had been in part withdrawn, and the process was going forward. How, then, could the Bank, without total disregard to its own interests, continue accommodations founded upon funds which it had not, or, if it had, was immediately to lose, before the discounts could be returned? It was impossible.

The Secretary says that it might have been liberal to the wants of the commercial community, because, in addition to the ordinary receipts from bonds on previous importations, the season for cash duties was at hand, and the receipts from both sources would be large. But, sir, would they not be deposites still, and subject to the same removal as the other deposites? Besides, the Secretary takes the months of August and September, and speaks of diminution *then*, and of receipts from bonds and cash duties *then*. Yet, among the papers which he sent to us, is the copy of his order to the Bank, to deliver up to the collector "all the bonds to the United States, payable at or after the 1st of October," dated 26th September, 1833; and the order to the collector to take the bonds and deliver them to the Girard Bank, and to make no deposites in the United States' Bank after the 30th September. And this order is dated on the 26th September also. The Bank was to be liberal on the bonds and the cash duties; and these are both taken from it, and the decision to take them away was made on the 18th September, and executed on the 26th, although the purpose to remove them was avowed long before. I leave these facts to the reflection of every ingenuous mind.

The Secretary complains that there was a severe pressure on the community. Why, then, did he do an act which he must have known would increase that pressure? His assertion is now *gravely denied*, and we are assured that it is mere *imagination*. The Secretary is right, and his advocates wrong, in this difference between them. Sir, no pressure? Are the murmurs which reach us on every breeze, and burden every mail, mere fancy? Your stocks of all kinds are depreciated—even the price current tells us that. Your works of

internal improvement are arrested. Your agricultural products, in the south and in the north, have fallen in price. Your merchants have countermanded their orders. Your manufacturers have diminished their work, and are in danger of insolvency. The interest upon money has risen from six to twenty-four per cent. in some instances. There is a paralysis of enterprise. Nor let it be imagined that it reaches only your commercial cities and large manufacturing establishments. The merchant cannot purchase, nor the farmer or mechanic sell, and laborers are thrown out of employ by thousands; and, unless arrested, and speedily, it will, and must, reach through all interests and all classes of society. It will, in its progress, fall most heavily on the humble, and the laborious, and the poor—on men of small capital, your farmers, your mechanics—your working men. Their daily bread will be affected by it, for their occupations and their wages will be diminished or taken away, and their feelings will, ere long, be heard in tones not pleasant to the ears of power. "Their griefs, and not their manners, will reason" *then*. Already have anxiety—apprehension—gloom—dismay—pervaded the community, and the dread of the future is more appalling than the suffering of the present. Shall we shut our eyes to these facts, or deny them at the bidding of power, and justify them by the machinery of party? No, sir, there is guilt—deep guilt—resting upon the authors of this distress; and the indignant frowns of an injured people ought to rest upon them. Who are they? and where are they? Let us not mistake them, and cast our denunciations upon the innocent.

Did the Bank do this mischief? Then let punishment fall heavily upon it. But, in my deep and solemn conviction, the guilt does not rest there. No act of the Bank, previous to August last, had injuriously affected the public. It had not curtailed. Its course was liberal and just, and met the applause of all. The community was in a state of quiet prosperity. At that moment, an agent was appointed to accomplish the ruin of the Bank. The determination to remove from it its chartered right, and privileges, and benefits, was originally suggested in the neighborhood of Wall street, and had, for months, been announced, but was, for a time, disbelieved by the whole community.

Ninety-nine out of every hundred of the friends of the Executive declared it impossible, and that the imputed intention was a false accusation. But it was pursued steadily, until it was understood to be the wish of the President, and then it was justified by partisans, and declared probable. Still it was disbelieved. But at length semi-official authority declared that the purpose was fixed. The Cabinet was consulted, the counsel of a majority was disregarded, and the decree was passed. The sure destruction of the Bank—its inevitable overthrow—was then proclaimed; and, with malignant triumph, it was represented as a crouching suppliant at the feet of the Treasury. But, sir, the edict was powerless. Then, and not till then, did the Bank make one movement which could, by possibility, lead to any pressure upon the community. And then only did it do what was indispensable to its safety. Let any man read the dates of the papers which have been communicated, and tell me if this statement be not true. As early as the 3d of June, the President communicated to Mr. Duane his consultation of the Cabinet; and soon afterwards the determination of the President was publicly known. And it was a determination, not for a *partial removal*, as the Secretary affirms; no such partial removal was mentioned; it was *entire;* the reasons for it demanded that it should be entire; the object could not be accomplished unless it was of the whole deposites. What could the Bank do, but refuse to extend its issues, and prepare for the blow? Was it to rely on a partial removal? to discount on money which might be taken from it at any moment? to leave its numerous branches, without preparation, exposed to the vengeance of exulting enemies? Will any man seriously assert that it should have relied on the fairness of its foes? Look to Savannah. That branch was considered weak in specie. Its notes were collected, purchased at a premium, and three hundred thousand dollars were presented in a single day. Just in time, sir, for the news of its insolvency and dishonor to reach Washington at the opening of the session. The vile purpose was not accomplished; but it is evidence of the consequences to

the Bank, had it failed to prepare for the emergency. And shall we be told that the Bank, and not the Department, produced the pressure? It is perfectly apparent, from the documents before us, that the first movement was by the Executive; that the necessity was thrown upon the Bank; and that it curtailed only so far as the withdrawal of the deposites, and the security of itself and its branches, imperiously required. In deciding who produced the present public calamity, I ask, and desire an answer: was there not a state of great prosperity in business, until THE AGENT was appointed, and the determination to remove the deposites was made? If this determination had not been made, was there a necessity, a possible motive, for the Bank to do one act which could injure the existing prosperity? any motive to curtail, and thus harm itself? When that determination was made, when the deposites were to be withdrawn, could the Bank continue to discount on those deposites? Must it not, of necessity, curtail to the extent which it had discounted on those deposites? When its destruction was avowed, was it not absolutely necessary, at least, to stand still, or to prepare for the attack, and put itself and its branches in a situation, not only to deliver up the deposites, but to meet every demand upon it and them? Sir, let public resentment fall where public resentment is merited.

But I deny that the mere act of curtailing by the Bank of four, or even ten millions, did or could produce the pressure under which we suffer. The same amount, and in the same time, has been curtailed without any such effect—nay, even without the country being aware of it. I refer for proof to the reports of the Secretary of the Treasury, and the statements of the Bank, and to the history of the times. You have a circulation of about seventy-five millions, and an annual circulation of between three and four hundred millions; and can the withdrawal of four millions in the time mentioned, and in the ordinary operations of business and commerce, reach and agonize every interest of the country? No, sir, the cause is different; it lies deeper, in the very nature of credit and currency, where the Secretary has made no search; it is not produced by the want of money in the country; it is here, all here, as much as in August last; it has not been consumed. But, sir, you cannot get it. And why not? The reason is obvious. Credit and confidence constitute the essence and vitality of all circulating mediums, and of all moneyed transactions; and credit and confidence have been destroyed by violations of your constitution, and by the trespasses of your Executive upon the legal rights of those who deal in your circulation, by breach of faith, and by the interference of reckless malice and ignorance in the management of your financial concerns. The Bank had not the power to produce it. It was the alarm given to moneyed men, and to banking institutions, when they saw the determination to destroy the United States' Bank by illegal means, and to restore the state of currency which existed from 1811 to 1816. They would not hazard their money; they kept it closely, either to preserve it against danger of loss, or to speculate upon the miseries of others, when sacrifices should be required. Each prepared to guard himself from those around him. Distrust produced curtailments and refusals to lend. The panic and the pressure spread instantly, rapidly, widely; and will continue to spread wherever the circulation of your currency reaches —from the proudest mansion to the humblest cottage—from your cities to the outskirts of your population—unless justice be done, and confidence in the faith and honor of your Government, and the administration of your finances, be restored. No attempt to cast the blame on others will answer, no edicts of authority are equal to its restoration; no caucus management, no voting to sustain a party, or to manifest devotion to a man will relieve the country, and save your merchants and manufacturers from insolvency, and your farmers, and mechanics, and laborers from distress. You might as well attempt to arrest or guide the electric fluid in its course, without the aid of the philosopher of nature upon the principles of nature, as to control the credit and confidence which are essential to your circulating medium by the mandate of power, or the discipline of party.

Sir, the Secretary, and those who ruled him, ought to have foreseen the results of his movements, or they are unfit to touch the currency and finances of the country. The President ought to have employed no such agents to deal

with the most delicate and difficult of all the concerns and interests of human society. He who undertakes to manage the currency ought to understand its nature, and the instruments he uses. Would you repair or tune a piano with a blacksmith's hammer, or bleed a sensitive female with a butcher's cleaver? The treasury of the nation and the finances of the country should not have been made the weapons and instruments of political warfare—the thongs with which to chastise political adversaries, and the cords by which to bind partisans to the support of party, or premiums to reward their fidelity. But the evil has been done, and it must be repaired by calling back credit and confidence; by vindicating the authority of the laws in the restoration of the depositesy by wiping out the stain from the national faith; and by the *legislative power* providing such fiscal agents as its wisdom shall dictate, and making such enactments as shall give security to the future. What these are, it is not *now* necessary for me to discuss.

The Secretary proceeds to assign his other reasons, growing out of the manner in which the affairs of the Bank have been managed, [Rep. page 11.] I intended to examine them fully, but causes obvious to the Senate restrain me. I shall notice them rather to draw general conclusions from them, than to expose them in detail. The Secretary founds his argument upon the fact that the Bank is a fiscal agent of the Government, and was not created for private benefit, but has violated its duty by concealing its proceedings, and by doing acts criminal to the Government—that it has also sought political power.

It is a fiscal agent, but it is at the same time a corporation for the private benefit of the owners. As agent, its duties are prescribed by the charter. While it performs these, the Government has no right to complain. It is on no principle bound to do for the Government more than the law requires. That is the contract by which the agent was appointed, and his letter of instructions. All these it has done; the Secretary does not deny it. And the records of your Government, since 1817, are full of reports and proceedings of Congress—of reports of Secretaries of the Treasury—of messages of the Presidents—*even of the present President*—declaring, in unequivocal terms, its entire faithfulness and skill in performing all that the law prescribed, and all that the Government had a right to demand. Such ample testimonials in favor of any institution are nowhere to be found. Senators may readily refer to them; and I therefore confidently affirm that it has, in no respect, failed to do its duty to the Government, *under the law*. But it is also a corporation for private benefit, made so for the express purpose of being a fiscal agent. After it has rendered its dues to the Government, it has a legal and unquestionable right to seek its own interest; and if it performs any service for an individual, or for the Government, it may claim, and is bound to claim, proper compensation for it. In this respect it is like other individuals and corporations. An illustration may be found in the charge of the Secretary respecting the French draft, the circumstances of which are known to those who take the trouble to read. The Government drew a bill on France, and desired the bank to buy it; it declined, because it was not necessary for its interest, but offered to collect it, as it did bills for others. Was the Bank bound to buy? It is not pretended. It was not one of its duties as fiscal agent. But the Government urged, and it did buy, and paid the money; it bought it as an individual, and from the Government as an individual; it had, therefore, all the legal rights of the purchaser and holder of a bill of exchange: one of these is, damages if it be not paid. The bill was sent to England, thence to France; was not paid, but dishonored, and was paid for the Bank in France: so that, for a considerable period of time it had paid for it twice—once here, and once in France. Upon what honest or legal principle could an individual have denied payment of the damages? None. In what do the rights of the Government differ? Is it absolved from the rules of common honesty and common justice? May it do properly what would dishonor a man in such a transaction? Such are not my opinions of its duties, nor of the regard which it owes to law and justice. Nor is the denial conformable to its practice. It has again and again paid damages on protested bills. If I am not misinformed, there are, at this moment, bills upon one of your Departments, which is waiting for funds to discharge them,

and on which the Department has promised to pay interest and damages. Then why not in this case? But it has not only paid damages, but where it has been the holder, has uniformly, and with unbending firmness, always demanded them. The records of your Treasury show a multitude of cases of this description, and, among others, the familiar one of Stephen Girard.* And, sir, there is no apology in the fact that the Government had deposites in the Bank at the time. The statements of the Bank disprove it, and, if they did not, the case would not be altered. Those deposites were the right of the Bank, by law, for which it had paid, and on which it had a right to discount, until they were drawn out for the payment of the debts of the Government.

With regard to the action of the Bank, in what is said to be postponing the payment of the public stock in April and December, 1832, the Secretary refers to the knowledge of Congress and its acts. And there I am willing to let it rest, without comment on the facts. But did it not occur to the Secretary, while he was assuming his high authority, that he was, in this very complaint, casting additional insult upon Congress? Did it not occur to him that this subject had been investigated by Congress with care, and its judgment pronounced, that the Bank neither sought nor requested a postponement; and was, in effect, acquitted of blame? How dare he, by repeating the accusation, thus insult a Congress in which the friends of the Executive had control? How long will Congress bear to be thus bearded under the sanction of the Executive, by men who live upon the Executive breath, and whose lives are fleeting as the changes of the Executive passions?

So, also, sir, the complaints about the Exchange Committee. This subject of exchanges, and the action of the Bank in regard to them, was commenced in July, 1817; and a correspondence, at great length, held by Mr. Crawford with the Bank on the subject, and, after some opposition from him which was subsequently waived, *a plan* of exchanges, foreign and domestic, was adopted, which has, with few and unimportant variations, been pursued, in form and substance, to the present time. The active operations under the plan, however, did not, I believe, commence, in consequence of the situation of the Bank, until 1820. But every Secretary of the Treasury has been acquainted with it, and approved it. The Committee of Investigation of 1819, on which were Spencer, Lowndes, McLane, Bryan, and Tyler, had this, with all other matters, before them, and found no cause for condemnation. It is not even mentioned, in the long list of grievances, which Mr. Spencer thought demanded that a *scire facias* should issue; nor to be found in amendments proposed, at that time, to restrain the Bank. In every investigation and discussion since that time, it has been the subject of comment, and yet Congress has not thought it proper to interfere; and now the Executive and a Secretary of the Treasury found, on their omission, a reason for violating the rights of the Bank, and assuming to do what Congress declined to do.

But the Secretary complains that, on this point and some others, there was concealment from the Government directors, and thus from the Government—meaning *always* by that word, the Executive. Sir, if the directors did their

* The case of John M. Ebirck, in 1819–'20, also illustrates your practice and principle. He endorsed, gratuitously and without consideration, a bill on the house of Willinks, of Liverpool, for two thousand pounds sterling. The house failed; he wrote to his friends to protect the bill; but, uncertain whether his orders would be in time, he applied to the Department, and OFFERED TO DEPOSITE THE AMOUNT IN THE TREASURY, WITH INTEREST FROM THE TIME OF THE PURCHASE, to be returned to him if the bill was paid in England—or to give security, at once, for the whole amount, as soon as advices should be received, with interest and charges of protest and postage. Yet both offers were refused, and he was required to pay, and did pay, damages. He met the same fate on a second bill on Groning. When an innocent endorser is thus treated by the Government, how can it—how dare it—complain that a purchaser from it also asks damages? Is it not gross injustice? unworthy disregard of its own honor and reputation for fair dealing? Yet such is the complaint made by the Secretary and President against the Bank, and for which its chartered rights are to be disregarded. It is sufficient to create disgust in honest and fair men.

duty, there was no concealment. The rules adopted in 1817 prescribe the number of directors in addition to the president and cashier who shall act on this subject: they are to meet daily; to purchase at rates fixed by the committee. The security on the bills is prescribed to them. Even if one member objects, there is to be no purchase; and once a week a statement of the Exchange Department is laid before the Board of Directors, and is admitted to be so done by the four directors, in their letter of the 22d April, 1832, to the President. How unfounded, then, the accusation that the board violated the charter, by permitting less than seven to transact the business of the Bank, and concealed, improperly, its exchange transactions.

But the Secretary complains of another case of concealment. I give credit for the shame which prevented him from mentioning the case, by name. He refers us to the letter of the four directors, in which it is found, and in which, alone, it ought to be found. Any official Executive document would be disgraced by it. With regard to that case, I only state, that the *inquisition*, by which it is developed, was secret; founded on a missive from the President, which he had no authority to write; not avowed; traitorous to their fellow members; a violation, direct and positive, of the words of the charter; a base inquiry, manifestly governed by party resentments, to be used for party and vindictive purposes, meriting the scorn of honorable minds. A true estimate of the objects of that investigation, and of the *new lights* afforded to the Executive, to justify his action against the Bank, after the refusal of Congress, may be formed, when it is recollected that the four directors communicate, in answer to the injunction of the President, information only *on two subjects*—the action of the exchange committee, and the accounts of *Gales & Seaton*. *These* were the subjects of import, which called upon the President to descend from his high station, to turn inquisitor, *to find motives and reasons for this discharge of official duty;* and these, sir, the *financial reasons* of a *financial officer*, which compelled him to trespass on the rights of the Bank, and insult the legislative power.

But, sir, the Bank used its money for political purposes. And here again the Secretary selects the arbitrary periods of January, 1830, and May, 1831; and makes a moderate mistake of nine or ten millions. He alleges that, in January, 1830, the Bank had only about $42,400,000 of debts due to the Bank; but in May, 1831, $70,400,000; *an extension of twenty-eight millions*. Now, if any Senator will take the trouble to cast up the items of discounts and bills, the public debt, and the balances from State banks and foreign houses, he will find an amount of about 52, instead of $42,000,000, of the means of the Bank, in active use in January, 1830. And if the same process be applied to May, 1831, there will be found less than $62,000,000, leaving, as the difference between them, in accommodation to the public, less than 10, instead of $28,000,000. And to justify this increase, he will find in May, 1831, $1,400,000 of specie in its vaults more than in January, 1830; $2,828,000 more of deposites; $1,762,000 more of State bank debts; $211,000 less in real property; a difference, in all, of more than $6,000,000, to justify this extension. And if the simple rule of three had been applied by the Secretary to the different items, he would have found that the extension, in proportion to its means, was very little, if any, greater in May, 1831, than in January, 1830; and that, for any difference which did exist, the commercial wants of the community at those periods would form an ample reason to any well-informed financier, without attributing the fact to the desire of acquiring political power, or preventing an individual from being elected President—a motive of action in the Bank which seems to be the sleeping and waking dream of certain minds. The Senate know, if the Bank had refused the extension of its accommodations at that time, the merchants, the public, the Government, must all have suffered inconvenience and injury.

The only remaining evidence, which I now recollect, of the misconduct of the Bank, which was detected by the inquisition, and which proves an effort to gain political power, and forms a *reason* with the Secretary, relates to the expense account; and the only questioned matter in that is, its publication of certain papers; prepared by others, and circulated by it, in its own defence.

Now, this subject was investigated by Congress, under the auspices of the friends of the Executive, and their powers under the charter were ample for this purpose, although the same powers are not given to the Executive. Congress did not think fit to act upon their investigation of the facts; yet they had scarcely left Washington, before this inquisition was established, under Executive patronage. And what was discovered? Nothing but what was upon the books, and must have been known to the investigating committee. The first cause of complaint is, that the President of the Bank was authorized, by resolution, to expend as much money as he pleased, *even the whole capital of the Bank*, to buy presses, bribe editors, publish pamphlets, &c. Sir, is this true? Or is it false? The resolution of the 30th November, 1830, was founded on a suggestion that an article in the Quarterly Review, on banks and currency, written by Mr. Gallatin, might be beneficially circulated. That of the 11th March, 1831, that benefits would result from a similar circulation of other articles which had issued from the press; and it authorizes the President of the Bank "to cause to be prepared and circulated such documents and papers as may communicate to the people information in regard to the nature and operations of the Bank."

Nothing is said of buying or bribing presses—nothing of all the terrific purposes which haunt the Secretary. The President's duty was to have prepared and circulated documents and papers; and their character is defined; they must relate *to the nature and operations of the Bank*. Such a trust would have been bestowed, by any board, of any bank, on the President, or a committee of directors, in whom they had any tolerable share of confidence; and here especially so, as the expenditures must appear in the expense account, which is regularly submitted to the dividend committee, on which it so happened, I believe, that one of these malcontent directors was. By this process, the control of the board was complete. How, by any fair construction, can this resolution be extended beyond the defined object? How can it be regarded as placing the whole capital in the hands of the President? Honest men, in executing it, would never construe it thus. They would be confined to *reasonable* expenditures for the *specific* purpose. And until I saw the unlimited power drawn by the Secretary from the general words of the charter as to the removal of the deposites, I never imagined that any sensible and correct agent, invested with power on a given subject, would infer a right to so general a license of motive and action. The construction of the Secretary of this resolution of the board is a fit companion of his construction of the terms of the charter.

This form of resolution is common in all cases where discretion is confided; and there are other examples in this Bank. I will not refer to that respecting counterfeiters, because it seems to be misconstrued as offensive, and as creating comparisons which I have no disposition to make or sanction. But another instance of the same kind is found in the resolution authorizing the President to take steps necessary to protect the Western branches from a run made upon them. The authority, in such cases, cannot be restricted by the words of the resolution; it is restricted by its nature and objects, and by the fidelity of the agent acting under it. What was done under this resolution? Have Senators looked into the list of publications?—Gallatin's Essay; Tucker's Review; Clarke & Hall's book; reports of committees of Congress; speeches of three members of the Senate—Clay, Webster, and Ewing; bank documents; review of the veto message, and of a Senator's speech; some addresses to Legislatures, and copies of three newspapers, containing a part of these, and perhaps of some other articles?

These are all that I find in the precious developments of these Executive, but not Governmental agents. The expense, we are told, indeed, on Executive authority, amounted to some 80,000 dollars; but there was a slight mistake of some 30,000 in the items, and the addition. The average expenditure for three and a half years was a little more than 14,000. And, of the whole, about one-half was for printing and distributing Congressional reports and speeches, and but about 2,000 for papers containing these essays, &c. And was it criminal to do this? Is there harm in circulating the Essay of Gallatin,

and that of the accomplished scholar and political economist, Tucker? I wish the Bank had sent copies to the Secretary, and that he would have condescended to read them, before he acted. Is there crime in distributing reports which Congress had thought it proper to print, *by thousands, at the expense of the public Treasury, for the same object—the information of the people?* Is there guilt in publishing any or all these papers; and those speeches, with the rest, which shed lustre upon the Senate itself, and will elevate the respect for American intellect, wherever they shall be read, throughout the civilized world? They must have strangely constituted minds who can complain of this; and must hold no enviable position, when such documents are considered by them as offensive to their party and party purposes. But, sir, I recollect that John Sergeant, as a member of the Board of Directors, happened to be the person to whom a proposition was made for printing the Congressional Reports, and that his name is dragged in by these directors, in their honorable and manly estimate of what is right in communicating facts for Executive information and action. Sir, why was this? Was it out of love for fair dealing, and for the sake of justice and truth? Or was it to play upon party and political passions and prejudices? Why does his name appear upon the *Records of the Inquisition?* He had, sir, been a prominent politician, a candidate for a high station under your Government, associated with another, of whom I may not utter a word, although, here and elsewhere, I shall feel all that is justly demanded from patriotic and virtuous feeling, for services to my country of the best and noblest kind. It may be, sir, that these facts influenced these directors, when they placed his name, as an agent, in these publications, and without inquiring what was the nature and extent of that agency. But, sir, the movement will produce no effect favorable to their wishes with the people, whatever it may do with those in power. They know well that the name of *John Sergeant* cannot be associated with illegal, dishonorable, or dishonest purposes. For myself, I rejoice that I was permitted to give him my suffrage. He is a man, mild, amiable, unassuming, unostentatious, yet firm, decided, and energetic: "not early won, to fawn on any man." Always candid and frank, with no concealment of views, no management and finesse to bind partisans to his control; profound in legal and constitutional knowledge; pure in private life, as in public morality; a republican by birth, feeling, education, principle; a patriot, ardent and devoted to the best and highest interests of his country; with a character *totus teres atque rotundus*. And should the time ever come when he shall wear the honors of his country, even the highest, he will wear them without a stain. I beg pardon of the Senate for my deviation from the strict topics of debate; but I could not restrain this slight expression of respect and friendship for a man, who is eminently worthy of both, as he is of the regard and confidence of his fellow-citizens.

Sir, have matters arrived at such a crisis, in this free land, that the publication of such documents as those which I have mentioned is to be criminally punished, without law, by the Executive? That an individual may not circulate papers relating to his character and proceedings with impunity? If so, *let it be so recorded by our vote*, and let the *people know it*. Let them be told that official documents and able discussions may not be sent to them, *unless they advocate the Executive*. And let them be told further, that, if a corporation presumes to defend itself from any imputation which *one man* and *his partisans* choose to throw upon it, its legal privileges, its chartered rights, may be taken away, *without trial*, and at the nod of power.

Mr. President, the Bank had not only the legal right, but the moral obligation rested on it to defend itself. It has, at least, the privilege which we allow to the lowest wretch in the community, to whom neither our laws nor our feelings deny the privilege of self-defence, or the permission to publish a denial of the guilt charged upon him. But, sir, *if* the Bank has acted incorrectly, *if* it has violated its duty and its charter, there is a full and ample remedy, provided by the charter itself. But how? By the power of the Executive? No, it is not intrusted to him; but by the tribunals of the country, upon the motion of Congress or of the Executive. The 23d section, drawn by

Mr. Daggett, provides, that, when there is reason to believe that the charter has been violated, a *scire facias* may be sued out of the Circuit Court of the United States for Pennsylvania; that, after it has been fifteen days served, before the commencement of the term, the case may be examined by the court, and a forfeiture declared: PROVIDED THAT EVERY ISSUE OF FACT JOINED BETWEEN THE UNITED STATES AND THE CORPORATION SHALL BE TRIED BY A JURY; and there may be a review by the Supreme Court. Is this law a dead letter? Was this provision inserted for no object, but that the Executive might trample it under foot? When Congress have provided a mode of punishment *by court and jury*, may the Executive disregard it, and inflict punishment of *another kind, without trial?* The President, in his annual message, alleges that there was not time for this proceeding before the expiration of the charter. Is this so? He knew the facts in April, 1833, at least in August, 1833, and the charter does not expire until March, 1836. The court sat in October last, and, in one year, the final decision might have been had. The late Attorney General ought to have informed the President better. But if the allegation was true, is that a justification? The subscribers to the Bank ventured into the contract, on the faith of *this* provision, by which they supposed their rights were protected; and if it be not sufficient for its object, if it fails, can the Executive, *of his own mere motion*, supply the defect? This assumption to punish the Bank, in violation of this law, is one of the most gross and contemptuous acts of disregard of legal restraint, to be found in our or any other history. It is an act of undisguised despotism. It spurns the high constitutional right of trial by jury and the laws of the land, and places on the judgment-seat the vengeance of irritated feelings, of selfish prejudice, of party passion. I entreat, I implore Senators that they will not, for any present purpose, for any passing object, give countenance, in this home of constitutional liberty, to this dangerous usurpation.

Mr. President, I have discharged my duty, with no common pain, by presenting my opinion of the reasons which the Secretary has assigned for ordering the public money to be removed from the Bank, which had, by law and solemn contract, been made the place for its deposite—the temporary Treasury of the Union—for its safe keeping. I do believe that those reasons are insufficient, and the principles which he avows dangerous to liberty. It is a solemn duty in Congress to express its strong condemnation of the act—to restore the money—and, as far as practicable, to maintain the faith of the Government. It is not the less necessary that we should act promptly and efficiently, because it has been done under the pretended sanction of the law. There are no more dangerous encroachments against free institutions than those which are made under misconstructions of law, and appealing to its authority. Nor, sir, is there any tyranny more odious and terrific than that which preserves the forms of free Government, while all its powers are centred in the will of one man.

But we are told, though all that I have said may be true, that we—the Senate—may not express our judgments upon these resolutions—we, to whom the law requires the reasons of the Secretary to be submitted for our decision, may not pass on those reasons, if we think the act a violation of law and duty. Why, then, sir, submit them to us? Why this mockery of legislation? And why may we not denounce and condemn such conduct? We are told, because the President or Secretary *may, by possibility*, be *impeached*, and we must be their judges. Andrew Jackson impeached! and R. B. Taney, a favorite agent and officer of his, who acted under his orders, brought to our bar! Sir, are these suggestions made in a spirit of irony and sarcasm at our supposed impotence? Who are to move an impeachment? *Will* it come? *Can* it come? When, in our history, was a triumphant President, at the head of a triumphant majority, impeached? When was an instrument of his a partisan of that majority? No, sir, this terror is reserved for minorities. Look back to the annals of impeachments, and let them answer on this point. But suppose an impeachment were to be moved, does that destroy our legislative power of action? I do not so read the constitution of our country. The people have ordained that this body should possess and exercise some of the highest func-

tions of all the co-ordinate Departments of the Government, and they have not provided that the necessity of exercising one should take away the others. The constitution of this body, in that respect, demands the highest attributes of intelligence and integrity in its members. May it ever sustain its powers, unsurrendered, uncontrolled, uncontaminated.

We are compelled, hard as is the task for the human mind and heart, to pass daily and hourly from legislative to executive duties; and the latter often arise from our own legislative action. And so it may be with regard to our judicial powers; for so the people willed it, and, I believe, most wisely. The representatives of equal States, we must worthily, as such representatives, discharge *all* our duties; and, above all, we must not permit a remote contingency, that we may sit as judges, to deprive us of our largest and most important power under the constitution—that of legislation. The time may come, sir, when a combination of both these powers may be indispensable to the safety of our liberties, our laws, and our constitution. Though we may not choose to assert that it has already come, yet it may not be distant, when some spoiled child of fortune, with no merit but that of seizing boldly on popular prejudices, may reach your highest executive station; may draw around him, with some wise and good, many of the profligate, the corrupt, and the desperate; may seize your Treasury, and usurp the powers and duties of the Legislature; and, under perverted construction of the laws, and expressions of profound respect for the public good, and love for the convenience of the people, may disregard the whole spirit of your institutions; and yet may gain proselytes by the favors and rewards of offices and contracts, and hold in dread his opponents by the fear of punishment; when his word may be truth—his opinions law—and adulation to him the highest merit; and when the miasmatic minions which are generated and nourished in the corrupted atmosphere of corrupt power shall float on every breeze, carrying moral and political pestilence through the whole circumference of the land; and when pressed by the friends of freedom, in the confidence of the strength which he has secured, he may exclaim, "Is not the King's name forty thousand names?" And he shall be answered—

> "Fear not, my lord; the power that made you King
> "Has power to keep you King, in spite of all."

Then, sir, then, shall such a President and his subordinates be permitted, by the mere act of violating law, to deprive the Senate of its powers, and thus paralyze the whole legislative action of your Government; for, without the Senate, the House of Representatives has no legislative capacity? Shall they, the more guilty they are, be the more powerful in arresting you in the discharge of your high and almost sacred functions? No, sir, no. The Senate will not—cannot—sanction the suicidal doctrine.