

VETO MESSAGES

OF THE

PRESIDENTS OF THE UNITED STATES,

WITH

THE ACTION OF CONGRESS THEREON.

COMPILED BY ORDER OF THE SENATE,
By BEN: PERLEY POORE,
CLERK OF PRINTING RECORDS.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.

1886.

IN THE SENATE OF THE UNITED STATES,

Washington, July 24, 1886.

Resolved, That the Senate Committee on Printing be, and hereby is, directed to have prepared a collection of all Presidential vetoes from the organization of Congress to the present time, arranged in chronological order, with explanatory notes and an index ; and to report the same in print to the Senate on or before the 10th day of December next. And the expenses for copying and indexing the same, not to exceed \$300, shall be paid from the contingent fund of the Senate.

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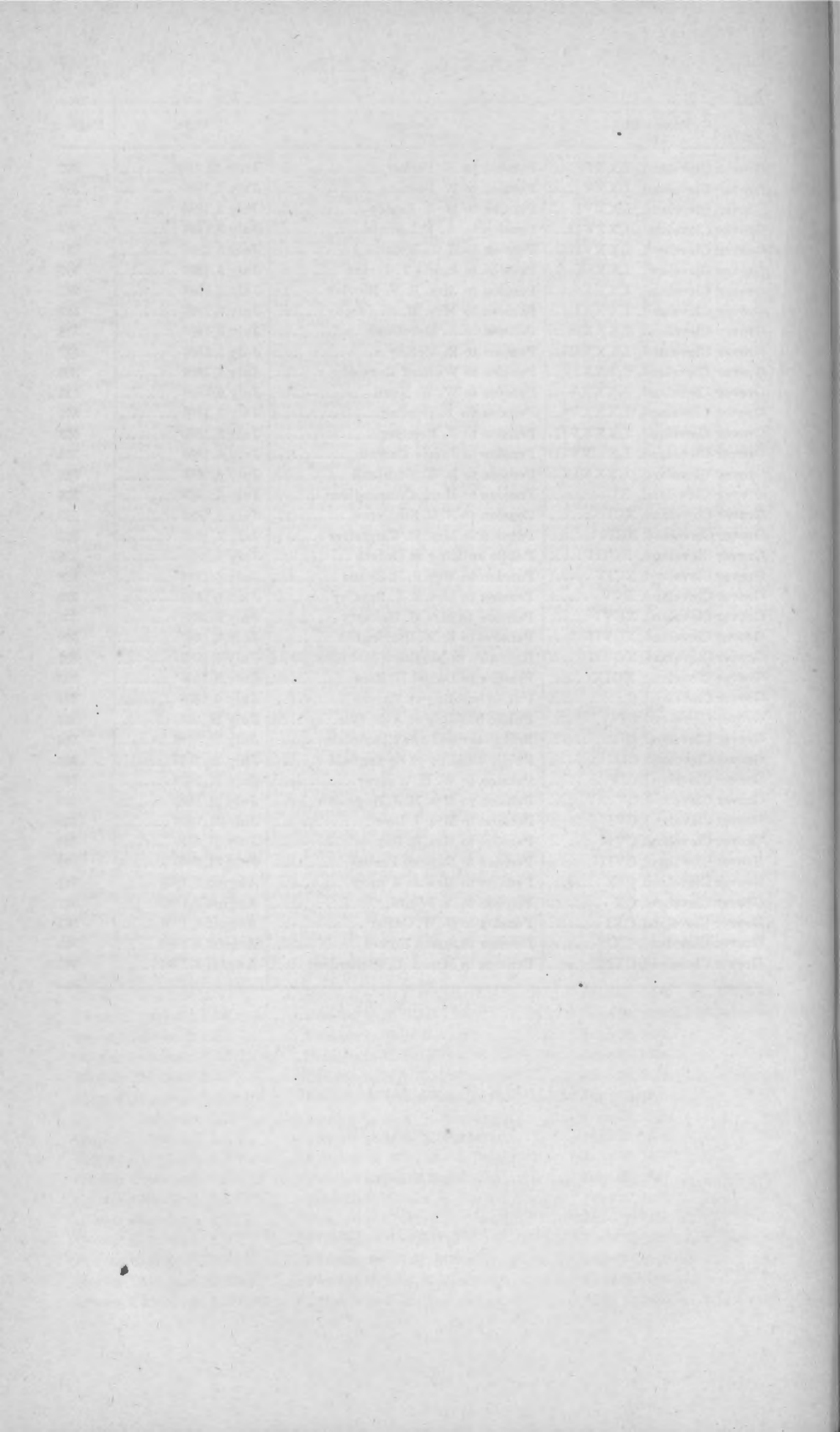
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VETO MESSAGES.

GEORGE WASHINGTON.—I.

April 5, 1792.

Gentlemen of the House of Representatives :

I have maturely considered the act passed by the two houses entitled "An act for an apportionment of Representatives among the several States, according to the first enumeration"; and I return it to your House, wherein it originated, with the following objections :

First. The Constitution has prescribed that Representatives shall be apportioned among the several States according to their respective numbers; and there is no one proportion or divisor which, applied to the respective numbers of the States, will yield the number and allotment of Representatives proposed by the bill.

Second. The Constitution has also provided that the number of Representatives shall not exceed one for every thirty thousand; which restriction is, by the context, and by fair and obvious construction, to be applied to the separate and respective numbers of the States; and the bill has allotted to eight of the States more than one for every thirty thousand.

G. WASHINGTON.

The veto message was considered by the House of Representatives soon after its reception. The bill was read, and after debate on it, the question "That the House, on reconsideration, do agree to pass the bill" was determined in the mode prescribed by the Constitution of the United States, and passed in the negative by 28 yeas against 33 nays. A new bill, in accordance with the President's suggestions, was promptly passed, and was approved on the 14th of April.

GEORGE WASHINGTON.—II.

February 28, 1797.

Gentlemen of the House of Representatives :

Having maturely considered the bill to alter and amend an act entitled "An act to ascertain and fix the military establishment of the United States," which was presented to me on the twenty-second day

of this month, I now return it to the House of Representatives, in which it originated, with my objections:

First. If the bill passes into a law, the two companies of light dragoons will be, from that moment, *legally* out of service, though they will continue afterwards *actually* in the service; and for their services during this interval, namely, from the time of *legal* to the time of *actual* discharge, it will not be lawful to pay them, unless some future provision be made by law. Though they may be discharged at the pleasure of Congress, in justice they ought to receive their pay, not only to the time of passing the law, but at least to the time of their actual discharge.

Secondly. It will be inconvenient and injurious to the public to dismiss the light dragoons as soon as notice of the law can be conveyed to them, one of the companies having been lately destined to a necessary and important service.

Thirdly. The companies of light dragoons consist of one hundred and twenty-six non-commissioned officers and privates, who are bound to serve as dismounted dragoons when ordered to do so. They have received, in bounties, about two thousand dollars; one of them is completely equipped, and above half of the non-commissioned officers and privates have yet to serve more than one-third of the time of their enlistment; and besides, there will, in the course of the year, be a considerable deficiency in the complement of infantry intended to be continued. Under these circumstances, to discharge the dragoons does not seem to comport with economy.

Fourthly. It is generally agreed that some cavalry, either militia or regular, will be necessary; and, according to the best information I have been able to obtain, it is my opinion that the latter will be less expensive and more useful than the former in preserving peace between the frontier settlers and the Indians, and, therefore, a part of the military establishment should consist of cavalry.

G. WASHINGTON.

The veto message was received by the House of Representatives on the 28th of February, and on motion the next day was "assigned for the reconsideration of the said bill, in the mode prescribed by the Constitution of the United States." On the 1st of March the House proceeded to reconsider the bill, which was first read, and then the objections of the President. After a discussion, the yeas and nays were taken—yeas 55, nays 36; so the bill was lost. A committee was at once appointed to bring in a new bill, which was promptly reported (exactly the same as the one vetoed, except that the parts objected to by the President were omitted). The new bill was passed by both Houses, and approved by the President March 3, 1797.

JAMES MADISON.—I.

*February 21, 1811.**To the House of Representatives of the United States:*

Having examined and considered the bill entitled "An act incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia," I now return the bill to the House of Representatives, in which it originated, with the following objections:

Because the bill exceeds the rightful authority to which Governments are limited by the essential distinction between civil and religious functions, and violates, in particular, the article of the Constitution of the United States, which declares that "Congress shall make no law respecting a religious establishment." The bill enacts into, and establishes by law, sundry rules and proceedings relative purely to the organization and policy of the church incorporated, and comprehending even the election and removal of the minister of the same; so that no change could be made therein by the particular society, or by the general church of which it is a member, and whose authority it recognizes. This particular church, therefore, would so far be a religious establishment by law; a legal force and sanction being given to certain articles in its constitution and administration. Nor can it be considered that the articles thus established are to be taken as the descriptive criteria only of the corporate identity of the society, inasmuch as this identity must depend on other characteristics; as the regulations established are generally unessential, and alterable according to the principles and canons, by which churches of that denomination govern themselves; and as the injunctions and prohibitions contained in the regulations would be enforced by the penal consequences applicable to a violation of them according to the local law.

Because the bill vests in the said incorporated church an authority to provide for the support of the poor, and the education of poor children of the same; an authority which being altogether superfluous, if the provision is to be the result of pious charity, would be a precedent for giving to religious societies, as such, a legal agency in carrying into effect a public and civil duty.

JAMES MADISON.

The veto message was considered by the House of Representatives on the second day after its reception. The bill, with the President's objections, was read, and after debate, the question "That the House, on reconsideration, do agree to pass the bill," was determined in the negative by 29 yeas against 74 nays; and so the bill was rejected.

JAMES MADISON.—II.

*February 28, 1811.**To the House of Representatives of the United States :*

Having examined and considered the bill entitled "An act for the relief of Richard Tervin, William Coleman, Edwin Lewis, Samuel Mims, Joseph Wilson, and the Baptist Church at Salem Meeting-house, in the Mississippi Territory," I now return the same to the House of Representatives, in which it originated, with the following objection:

Because the bill, in reserving a certain parcel of land of the United States for the use of said Baptist Church, comprises a principle and precedent, for the appropriation of funds of the United States, for the use and support of religious societies, contrary to the article of the Constitution which declares that Congress shall make no law respecting a religious establishment.

JAMES MADISON.

The veto message was considered by the House of Representatives on the 2d of March, when it was read with the President's objections. After debate, the question "That the House, on reconsideration, do agree to pass the bill," was taken, and determined in the negative by 33 yeas against 55 nays; and so the bill was rejected.

JAMES MADISON.—III.

*April 3, 1812.**To the House of Representatives of the United States :*

Having examined and considered the bill entitled "An act providing for the trial of causes pending in the respective district courts of the United States, in case of the absence or disability of the judges thereof," which bill was presented to me on the 25th of March past, I now return the same to the House of Representatives with the following objections:

Because the additional services imposed by the bill on the justices of the Supreme Court of the United States are to be performed by them rather in the quality of other judges of other courts, namely, judges of the district courts, than in the quality of justices of the Supreme Court. They are to hold the said district courts, and to do and perform all acts relating to the said courts, which are by law required of the district judges. The bill, therefore, virtually appoints, for the time, the justices of the Supreme Court to other distinct offices, to which, if compatible with their original offices, they ought to be appointed by another than a legislative authority, in pursuance of legislative provisions authorizing the appointments.

Because the appeal allowed by law from the decision of the district courts to the circuit courts, whilst it corroborates the construction which

regards a judge of the one court as clothed with a new office by being constituted a judge of the other, submits for correction erroneous judgments, not to superior or other judges, but to the erring individual himself, acting as the sole judge in the appellate court.

Because the additional services to be required may, by distances of places and the casualties contemplated by the bill, become disproportionate to the strength and health of the justices who are to perform them, the additional services being, moreover, entitled to no additional compensation, nor the additional expenses incurred to reimbursement. In this view the bill appears to be contrary to equity, as well as a precedent for modifications and extensions of judicial services encroaching on the constitutional tenure of judicial offices.

Because, by referring to the President of the United States questions of disability in the district judges and of the unreasonableness of delaying the suits or causes pending in the district courts, and leaving it with him in such cases to require the justices of the Supreme Court to perform additional services, the bill introduces an unsuitable relation of members of the judiciary department, to a discretionary authority of the executive department.

JAMES MADISON.

The veto message was ordered to be printed on its reception, and was considered by the House of Representatives on the 8th of April. After debate, the question, "Shall this bill pass, the objections of the President notwithstanding?" was put, and passed in the negative by 26 yeas against 70 nays; and so the bill was lost.

JAMES MADISON.—IV.

November 6, 1812.

To the Senate and House of Representatives of the United States :

The bill entitled "An act supplementary to the acts heretofore passed on the subject of a uniform rule of naturalization," which passed the two houses at the last session of Congress, having appeared to me liable to abuse by aliens having no real purpose of effectuating a naturalization, and therefore not been signed; and having been presented at an hour too near the close of the session to be returned with objections for reconsideration, the bill failed to become a law. I recommend that provisions be now made in favor of aliens entitled to the contemplated benefit, under such regulations as will prevent advantage being taken of it for improper purposes.

JAMES MADISON.

This message was referred to a select committee of the House of Representatives on the day of its reception. The committee reported a new bill on the 18th of November, which was passed by the House. The Senate passed the bill with amendments in the evening session of March 3, 1813, and it did not reach the House in time for action on it.

JAMES MADISON.—V.

*January 30, 1815.**To the Senate of the United States :*

Having bestowed on the bill entitled "An act to incorporate the subscribers to the Bank of the United States of America" that full consideration which is due to the great importance of the subject, and dictated by the respect which I feel for the two houses of Congress, I am constrained, by a deep and solemn conviction that the bill ought not to become a law, to return it to the Senate, in which it originated, with my objections to the same.

Waiving the question of the constitutional authority of the legislature to establish an incorporated bank, as being precluded, in my judgment, by repeated recognitions, under varied circumstances, of the validity of such an institution, in acts of the legislative, executive, and judicial branches of the Government, accompanied by indications, in different modes, of a concurrence of the general will of the nation, the proposed bank does not appear to be calculated to answer the purposes of reviving the public credit, of providing a national medium of circulation, and of aiding the Treasury by facilitating the indispensable anticipations of the revenue, and by affording to the public more durable loans.

1. The capital of the bank is to be compounded of specie, of public stock, and of Treasury notes convertible into stock, with a certain proportion of each of which every subscriber is to furnish himself.

The amount of the stock to be subscribed will not, it is believed, be sufficient to produce, in favor of the public credit, any considerable or lasting elevation of the market price, whilst this may be occasionally depressed by the bank itself, if it should carry into the market the allowed proportion of its capital consisting of public stock, in order to procure specie, which it may find its account in procuring, with some sacrifice on that part of its capital.

Nor will any adequate advantage arise to the public credit from the subscription of Treasury notes. The actual issue of these notes nearly equals at present, and will soon exceed, the amount to be subscribed to the bank. The direct effect of this operation is simply to convert fifteen millions of Treasury notes into fifteen millions of six per cent. stock, with the collateral effect of promoting an additional demand for Treasury notes beyond what might otherwise be negotiable.

Public credit might indeed be expected to derive advantage from the establishment of a national bank, without regard to the formation of its capital, if the full aid and co-operation of the institution were secured to the Government during the war, and during the period of its fiscal embarrassments. But the bank proposed will be free from all legal obligation to co-operate with the public measures ; and whatever might be

the patriotic disposition of its directors to contribute to the removal of those embarrassments, and to invigorate the prosecution of the war, fidelity to the pecuniary and general interest of the institution, according to their estimate of it, might oblige them to decline a connection of their operations with those of the National Treasury during the continuance of the war and the difficulties incident to it. Temporary sacrifices of interest, though overbalanced by the future and permanent profits of the charter, not being requirable of right in behalf of the public, might not be gratuitously made, and the bank would reap the full benefit of the grant, whilst the public would lose the equivalent expected from it. For it must be kept in view that the sole inducement to such a grant, on the part of the public, would be the prospect of substantial aids to its pecuniary means at the present crisis, and during the sequel of the war. It is evident that the stock of the bank will, on the return of peace, if not sooner, rise in the market to a value which, if the bank were established in a period of peace, would authorize and obtain for the public a bonus to a very large amount. In lieu of such a bonus the Government is fairly entitled to, and ought not to relinquish or risk, the needful services of the the bank, under the pressing circumstances of war.

2. The bank, as proposed to be constituted, cannot be relied on during the war to provide a circulating medium, nor to furnish loans, or anticipations of the public revenue.

Without a medium, the taxes cannot be collected; and, in the absence of specie, the medium understood to be the best substitute is that of notes issued by a national bank. The proposed bank will commence and conduct its operations under an obligation to pay its notes in specie, or be subject to the loss of its charter. Without such an obligation, the notes of the bank, though not exchangeable for specie, yet resting on good pledges, and performing the uses of specie, in the payment of taxes, and in other public transactions, would, as experience has ascertained, qualify the bank to supply at once a circulating medium, and pecuniary aids to the Government. Under the fetters imposed by the bill, it is manifest that during the actual state of things, and probably during the war, the period particularly requiring such a medium and such a resource for loans and advances to the Government, notes for which the bank would be compellable to give specie in exchange could not be kept in circulation. The most the bank could effect, and the most it could be expected to aim at, would be to keep the institution alive by limited and local transactions, which, with the interest on the public stock in the bank, might yield a dividend sufficient for the purpose, until a change from war to peace should enable it, by a flow of specie into its vaults, and a removal of the external demand for it, to derive its contemplated emoluments from a safe and full extension of its operations

On the whole, when it is considered that the proposed establishment will enjoy a monopoly of the profits of a national bank for a period of twenty years; that the monopolized profits will be continually growing, with the progress of the national population and wealth; that the nation will, during the same period, be dependent on the notes of the bank for that species of circulating medium, whenever the precious metals may be wanted, and at all times for so much thereof as may be an eligible substitute for a specie medium; and that the extensive employment of the notes in the collection of the augmented taxes will, moreover, enable the bank greatly to extend its profitable issues of them, without the expense of specie capital to support their circulation, it is as reasonable as it is requisite, that the Government, in return for these extraordinary concessions to the bank, should have a greater security for attaining the public objects of the institution than is presented in the bill, and particularly for every practicable accommodation, both in the temporary advances necessary to anticipate the taxes, and in those more durable loans which are equally necessary to diminish the resort to taxes.

In discharging this painful duty of stating objections to a measure which has undergone the deliberations and received the sanction of the two houses of the national legislature, I console myself with the reflection that, if they have not the weight which I attach to them, they can be constitutionally overruled; and with a confidence that, in a contrary event, the wisdom of Congress will hasten to substitute a more commensurate and certain provision for the public exigencies.

JAMES MADISON.

The veto message and the bill were read in the Senate, and made the order of the day for the following Thursday, February 2. On that day, after an explanation of the bill by Senator King, the question was taken, "Shall this bill pass?" and was determined in the negative by 15 yeas against 19 nays.

JAMES MADISON.—VI.

March 3, 1817.

To the House of Representatives of the United States :

Having considered the bill this day presented to me, entitled "An act to set apart and pledge certain funds for internal improvements," and which sets apart and pledges certain funds "for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several States, and to render more easy and less expensive the means and provisions for the common defense," I am constrained, by the insuperable difficulty I feel in reconciling the bill with the Constitution of the United States, to return it with that objection to the House of Representatives, in which it originated.

The legislative powers vested in Congress are specified and enumerated in the eighth section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls, by any just interpretation, within the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution in the Government of the United States.

"The power to regulate commerce among the several States" cannot include a power to construct roads and canals, and to improve the navigation of water courses, in order to facilitate, promote, and secure such a commerce, without a latitude of construction departing from the ordinary import of the terms, strengthened by the known inconveniences which doubtless led to the grant of this remedial power to Congress.

To refer the power in question to the clause "to provide for the common defense and general welfare," would be contrary to the established and consistent rules of interpretation, as rendering the special and careful enumeration of powers, which follow the clause, nugatory and improper. Such a view of the Constitution would have the effect of giving to Congress a general power of legislation, instead of the defined and limited one hitherto understood to belong to them, the terms "common defense and general welfare" embracing every object and act within the purview of a legislative trust. It would have the effect of subjecting both the Constitution and laws of the several States, in all cases not specially exempted, to be superseded by laws of Congress, it being expressly declared "that the Constitution of the United States, and laws made in pursuance thereof, shall be the supreme law of the land, and the judges of every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Such a view of the Constitution, finally, would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the General and the State Governments, inasmuch as questions relating to the general welfare, being questions of policy and expediency, are unsusceptible of judicial cognizance and decision.

A restriction of the power "to provide for the common defense and general welfare" to cases which are to be provided for by the expenditure of money, would still leave within the legislative power of Congress all the great and most important measures of Government, money being the ordinary and necessary means of carrying them into execution.

If a general power to construct roads and canals, and to improve the navigation of water courses, with the train of powers incident thereto, be not possessed by Congress, the assent of the States in the mode provided in the bill cannot confer the power. The only cases in which the consent and cession of particular States can extend the power of Congress, are those specified and provided for in the Constitution.

I am not unaware of the great importance of roads and canals, and the improved navigation of water courses, and that a power in the national legislature to provide for them might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution, and believing that it cannot be deduced from any part of it without an inadmissible latitude of construction, and a reliance on insufficient precedents; believing, also, that the permanent success of the Constitution depends on the definite partition of powers between the General and the State Governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress, as proposed in this bill, I have no option but to withhold my signature from it, and cherishing the hope that its beneficial objects may be attained by a resort for the necessary powers, to the same wisdom and virtue in the nation which established the Constitution in its actual form and providently marked out in the instrument itself a safe and practicable mode of improving it, as experience might suggest.

JAMES MADISON.

The veto message was considered by the House of Representatives immediately after its reception, and the question, "That the House, on reconsideration, do agree to pass the said bill, the President's objections to the same to the contrary notwithstanding," was determined in the negative by 60 yeas against 56 nays. On this occasion, differing from every other question before the House, Henry Clay, the Speaker, claimed and exercised the right to vote. The bill did not pass.

JAMES MONROE.—I.

May 4, 1822.

To the House of Representatives of the United States :

Having duly considered the bill entitled "An act for the preservation and repair of the Cumberland road," it is with deep regret, approving as I do the policy, that I am compelled to object to its passage, and to return the bill to the House of Representatives, in which it originated, under a conviction that Congress do not possess the power, under the Constitution, to pass such a law.

A power to establish turnpikes, with gates and tolls, and to enforce the collection of tolls by penalties, implies a power to adopt and execute a complete system of internal improvement. A right to impose duties to be paid by all persons, passing a certain road, and on horses and carriages, as is done by this bill, involves the right to take the land from the proprietor, on a valuation, and to pass laws for the protection of the road from injuries; and, if it exist as to one road, it exists as to any other, and to as many roads as Congress may think proper to establish. A right to legislate for one of these purposes is a right to leg-

islate for the others. It is a complete right of jurisdiction and sovereignty, for all the purposes of internal improvement, and not merely the right of applying money, under the power vested in Congress to make appropriations, under which power, with consent of the States through which this road passes, the work was originally commenced, and has been so far executed. I am of opinion that Congress do not possess this power; that the States, individually, cannot grant it; for, although they may assent to the appropriation of money within their limits for such purposes, they can grant no power of jurisdiction or sovereignty by special compacts with the United States. This power can be granted only by an amendment to the Constitution, and in the mode prescribed by it.

If the power exist, it must be, either because it has been specifically granted to the United States, or that it is incidental to some power which has been specifically granted. If we examine the specific grants of power, we do not find it among them; nor is it incidental to any power which has been specifically granted.

It has never been contended that the power was specifically granted. It is claimed only as being incidental to some one or more of the powers which are specifically granted. The following are the powers from which it is said to be derived:

1st. From the right to establish post-offices and post-roads. 2d. From the right to declare war. 3d. To regulate commerce. 4th. To pay the debts and provide for the common defense and general welfare. 5th. From the power to make all laws necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any Department or officer thereof. 6th, and lastly. From the power to dispose of, and make all needful rules and regulations respecting, the territory and other property of the United States.

According to my judgment, it cannot be derived from either of those powers, nor from all of them united, and in consequence it does not exist.

Having stated my objections to the bill, I should now cheerfully communicate at large the reasons on which they are founded, if I had time to reduce them to such form as to include them in this paper. The advanced stage of the session renders that impossible. Having, at the commencement of my service in this high trust, considered it a duty to express the opinion that the United States do not possess the power in question, and to suggest, for the consideration of Congress, the propriety of recommending to the States an amendment to the Constitution, to vest the power in the United States, my attention has often been drawn to the subject since, in consequence whereof I have occasionally committed my sentiments to paper respecting it. The form which this exposition has assumed is not such as I should have given it, had it been intended for Congress, nor is it concluded. Neverthe-

less, as it contains my views on this subject, being one which I deem of very high importance, and which, in many of its bearings, has now become peculiarly urgent, I will communicate it to Congress, if in my power, in the course of the day, or certainly on Monday next.

JAMES MONROE.

Later in the day the following message was received from the President of the United States :

To the House of Representatives :

I transmit the paper, alluded to in the message of this day, on the subject of internal improvements.

JAMES MONROE.

WASHINGTON, May 4, 1822. .

VIEWS OF THE PRESIDENT OF THE UNITED STATES ON THE SUBJECT
OF INTERNAL IMPROVEMENTS.

It may be presumed that the proposition relating to internal improvements, by roads and canals, which has been several times before Congress, will be taken into consideration again, either for the purpose of recommending to the States the adoption of an amendment to the Constitution, to vest the necessary power in the General Government, or to carry the system into effect, on the principle that the power has already been granted. It seems to be the prevailing opinion that great advantage would be derived from the exercise of such a power by Congress. Respecting the right, there is much diversity of sentiment. It is of the highest importance that this question should be settled. If the right exist, it ought forthwith to be exercised ; if it does not exist, surely those who are friends to the power ought to unite in recommending an amendment to the Constitution to obtain it. I propose to examine this question.

The inquiry, confined to its proper objects, and within the most limited scale, is extensive. Our Government is unlike other Governments, both in its origin and form. In analyzing it, differences in certain respects between it and those of other nations, ancient and modern, necessarily come into view. I propose to notice these differences, so far as they are connected with the object of inquiry and the consequences likely to result from them, varying in equal degree from those which have attended other Governments. The digression (if it may be so called) will in every instance be short, and the transition to the main object immediate and direct.

To do justice to the subject, it will be necessary to mount to the source of power in these States, and to pursue this power in its gradations and distribution among the several departments in which it is now vested.

The great division is between the State Government and the General Government. If there was a perfect accord in every instance as to the precise extent of the powers granted to the General Government, we should then know with equal certainty what were the powers which remained to the State Governments, since it would follow that those which were not granted to the one would remain to the other. But it is on this point, and particularly respecting the construction of these powers and their incidents, that a difference of opinion exists; and hence it is necessary to trace distinctly the origin of each Government, the purposes intended by it, and the means adopted to accomplish them. By having the interior of both Governments fully before us, we shall have all the means which can be afforded to enable us to form a correct opinion of the endowments of each.

Before the revolution the present States (then colonies) were separate communities, unconnected with each other, except in their common relation to the Crown. Their Governments were instituted by grants from the Crown, which operated, according to the conditions of each grant, in the nature of a compact between the settlers in each colony and the Crown. All power not retained in the Crown was vested exclusively in the colonies, each having a government consisting of an executive, a judiciary, and a legislative assembly—one branch of which was, in every instance, elected by the people. No office was hereditary, nor did any title under the Crown give rank or office in any of the colonies. In resisting the encroachments of the parent country, and abrogating the power of the Crown, the authority which had been held by it vested exclusively in the people of the colonies. By them was a Congress appointed, composed of delegates from each colony, who managed the war, declared independence, treated with foreign powers, and acted in all things according to the sense of their constituents. The Declaration of Independence confirmed in form what had before existed in substance. It announced to the world new States, possessing and exercising complete sovereignty, which they were resolved to maintain. They were soon after recognized by France and other powers, and finally by Great Britain herself in 1783.

Soon after the power of the Crown was annulled, the people of each colony established a constitution or frame of government for themselves, in which these separate branches, legislative, executive, and judiciary, were instituted, each independent of the others. To these branches, each having its appropriate portion, the whole power of the people not delegated to Congress was communicated; to be exercised for their advantage, on the representative principle, by persons of their appointment, or otherwise deriving their authority immediately from them, and holding their offices for stated terms. All the powers necessary for useful purposes, held by any of the strongest Governments of the Old World, not vested in Congress, were imparted to these State Governments, without other checks than such as are necessary to prevent

abuse, in the form of fundamental declarations, or bills of right. The great difference between our Governments and those of the Old World consists in this: that the former, being representative, the persons who exercise their powers do it, not for themselves or in their own right, but for the people; and, therefore, while they are in the highest degree efficient, they can never become oppressive. It is this transfer of the power of the people to representative and responsible bodies in every branch which constitutes the great improvement in the science of government and forms the boast of our system. It combines all the advantages of every known Government, without any of their disadvantages. It retains the sovereignty in the people, while it avoids the tumult and disorder incident to the exercise of that power by the people themselves. It possesses all the energy and efficiency of the most despotic Governments, while it avoids all the oppressions and abuses inseparable from those Governments.

In every stage of the conflict, from its commencement until March, 1781, the powers of Congress were undefined, but of vast extent. The assemblies or conventions of the several colonies, being formed by representatives from every county in each colony, and the Congress by delegates from each colonial assembly, the powers of the latter, for general purposes, resembled those of the former for local. They rested on the same basis—the people—and were complete for all the purposes contemplated. Never was a movement so spontaneous, so patriotic, so efficient. The nation exerted its whole faculties in support of its rights and of its independence, after the contest took that direction, and it succeeded. It was, however, foreseen at a very early stage that, although the patriotism of the country might be relied on in the struggle for its independence, a well-digested compact would be necessary to preserve it after obtained. A plan of confederation was in consequence proposed and taken into consideration by Congress, even at the moment when the other great act which separated them from Great Britain, and declared their independence, was proclaimed to the world. This compact was ratified on the 21st March, 1781, by the last State, and thereupon carried into immediate effect.

The following powers were vested in the United States by the Articles of Confederation. As this, the first bond of union, was in operation nearly eight years, during which time a practical construction was given to many of its powers, all of which were adopted in the Constitution, with important additions, it is thought that a correct view of those powers, and of the manner in which they are executed, may shed light on the subject under consideration. It may fairly be presumed that where certain powers were transferred from one instrument to the other, and in the same terms, or terms descriptive only of the same powers, that it was intended that they should be construed in the same sense in the latter that they were in the former.

Article 1 declares that the style of the Confederacy shall be the United States of America.

Article 2. Each State retains its sovereignty, freedom, and independence, and every power and right which is not expressly delegated to the United States.

Article 3. The States severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon, them, on account of religion, sovereignty, trade, &c.

Article 4. The free inhabitants of each State, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States, &c. Fugitives from justice into any of the States shall be delivered up on the demand of the executive of the State from which they fled. Full faith and credit shall be given in each State to the records and acts of every other State.

Article 5. Delegates shall be annually appointed by the legislature of each State, to meet in Congress on the first Monday in November, with a power to recall, &c. No State shall appoint less than two, nor more than seven, nor shall any delegate hold his office for more than three in six years. Each State shall maintain its own delegates. Each State shall have one vote. Freedom of speech shall not be impeached, and the members shall be protected from arrests, except for treason, &c.

Article 6. No State shall send or receive an embassy, or enter into a treaty with a foreign power. Nor shall any person holding any office of profit or trust under the United States, or any State, accept any present, emolument, office, or title from a foreign power. Nor shall the United States or any State grant any title of nobility. No two States shall enter into any treaty without the consent of Congress. No State shall lay any imposts or duties which may interfere with any treaties entered into by the United States. No State shall engage in war unless it be invaded or menaced with invasion by some Indian tribe; nor grant letters of marque or reprisal, unless it be against pirates; nor keep up vessels of war, nor any body of troops in time of peace without the consent of Congress; but every State shall keep up a well-regulated militia, &c.

Article 7. When land forces are raised by any State for the common defense all officers of and under the rank of colonel shall be appointed by the legislature of each State.

Article 8. All charges of war and all other expenses which shall be incurred for the common defense or general welfare, shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all the land in each State granted to individuals. The taxes for paying each proportion shall be levied by the several States.

Article 9. Congress shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article; of sending and receiving ambassadors, entering into alliances, except, &c.; of establishing rules for deciding what captures on land and water shall be legal; of granting letters of marque and reprisal in time of peace; appointing courts for the trial of piracies and felonies on the high seas; for deciding controversies between the States, and between individuals claiming lands under two or more States, whose jurisdiction has been adjusted; of regulating the alloy and value of coin struck by their authority, and of foreign coin; fixing the standard of weights and measures; regulating the trade with the Indians; establishing and regulating post-offices from one State to another, and

throughout all the States, and exacting such postage as may be requisite to defray the expenses of the office; of appointing all officers of the land forces, except the regimental; appointing all the officers of the naval forces; to ascertain the necessary sums of money to be raised for the service of the United States, and appropriate the same; to borrow money and emit bills of credit; to build and equip a navy; to agree on the number of land forces, and to make requisitions on each State for its quota; that the assent of nine States shall be requisite to these great acts.

Article 10 regulates the powers of the committee of the States to sit in the recess of Congress.

Article 11 provides for the admission of Canada into the Confederation.

Article 12 pledges the faith of the United States for the payment of all bills of credit issued and money borrowed on their account.

Article 13. Every State shall abide by the determination of the United States on all questions submitted to them by the Confederation. The Articles of the Confederation to be perpetual, and not to be altered without the consent of every State.

This bond of union was soon found to be utterly incompetent to the purposes intended by it. It was defective in its powers; it was defective, also, in the means of executing the powers actually granted by it. Being a league of sovereign and independent States, its acts, like those of all other leagues, required the interposition of the States composing it to give them effect within their respective jurisdictions. The acts of Congress, without the aid of State laws to enforce them, were altogether nugatory. The refusal or omission of one State to pass such laws was urged as a reason to justify like conduct in others, and thus the Government was soon at a stand.

The experience of a few years demonstrated that the Confederation could not be relied on for the security of the blessings which had been derived from the Revolution. The interests of the nation required a more efficient Government, which the good sense and virtue of the people provided by the adoption of the present Constitution.

The Constitution of the United States was formed by a convention of delegates from the several States, who met in Philadelphia, duly authorized for the purpose, and it was ratified by a convention in each State, which was especially called to consider and decide on the same. In this progress the State governments were never suspended in their functions; on the contrary, they took the lead in it. Conscious of their incompetency to secure to the Union the blessings of the Revolution, they promoted the diminution of their own powers and the enlargement of those of the General Government in the way in which they might be most adequate and efficient. It is believed that no other example can be found of a Government exerting its influence to lessen its own powers; of a policy so enlightened; of a patriotism so pure and disinterested. The credit, however, is more especially due to the people of each State, in obedience to whose will, and under whose control, the State governments acted.

The Constitution of the United States being ratified by the people of the several States, became, of necessity, to the extent of its powers, the paramount authority of the Union. On sound principles it can be viewed in no other light. The people, the highest authority known to our system, from whom all our institutions spring, and on whom they depend, formed it. Had the people of the several States thought proper to incorporate themselves into one community, under one Government, they might have done it. They had the power; and there was nothing then, nor is there anything now, should they be so disposed, to prevent it. They wisely stopped, however, at a certain point, extending the incorporation to that point, making the National Government, thus far, a consolidated Government, and preserving the State governments, without that limit, perfectly sovereign and independent of the National Government. Had the people of the several States incorporated themselves into one community, they must have remained such; their constitution becoming then, like the constitution of the several States, incapable of change, until altered by the will of the majority. In the institution of a State government by the citizens of a State a compact is formed, to which all and every citizen are equal parties. They are also the sole parties, and may amend it at pleasure. In the institution of the Government of the United States by the citizens of every State a compact was formed between the whole American people, which has the same force, and partakes of all the qualities, to the extent of its powers, as the compact between the citizens of a State in the formation of their own constitution. It cannot be altered, except by those who formed it, or in the mode prescribed by the parties to the compact itself.

This Constitution was adopted for the purpose of remedying all defects of the Confederation; and in this it has succeeded beyond any calculation that could have been formed of any human institution. By binding the States together the Constitution performs the great office of the Confederation; but it is in that sense only that it has any of the properties of that compact; and in that it is more effectual to the purpose, as it holds them together by a much stronger bond, and in all other respects, in which the Confederation failed, the Constitution has been blessed with complete success. The Confederation was a compact between separate and independent States, the execution of whose articles, in the powers which operated internally, depended on the State governments. But the great office of the Constitution, by incorporating the people of the several States to the extent of its powers into one community and enabling it to act directly on the people, was to annul the powers of the State governments to that extent, except in cases where they were concurrent, and to preclude their agency in giving effect to those of the General Government. The Government of the United States relies on its own means for the execution of its powers, as the State governments do for the execution of theirs; both governments having a common origin or sovereign, the people—the State gov-

ernments the people of each State, the National Government the people of every State, and being amenable to the power which created it. It is by executing its functions as a Government, thus originating and thus acting, that the Constitution of the United States holds the States together and performs the office of a league. It is owing to the nature of its powers, and the high source from whence they are derived—the people—that it performs that office better than the Confederation or any league which ever existed, being a compact which the State governments did not form, to which they are not parties, and which executes its own powers independently of them.

There were too separate and independent governments established over our Union—one for local purposes over each State, by the people of the State; the other for national purposes over all the States, by the people of the United States. The whole power of the people, on the representative principle, is divided between them. The State governments are independent of each other, and to the extent of their powers are complete sovereignties. The National Government begins where the State governments terminate, except in some instances where there is a concurrent jurisdiction between them. This Government is also, according to the extent of its powers, a complete sovereignty. I speak here, as repeatedly mentioned before, altogether of representative sovereignties; for the real sovereignty is in the people alone.

The history of the world affords no such example of two separate and independent governments established over the same people; nor can it exist, except in Governments founded on the sovereignty of the people. In monarchies, and other Governments not representative, there can be no such division of power. The Government is inherent in the possessor; it is his, and cannot be taken from him without a revolution. In such Governments, alliances and leagues alone are practicable; but with us individuals count for nothing in the offices which they hold—that is, they have no right to them. They hold them as representatives by appointment from the people, in whom the sovereignty is exclusively vested. It is impossible to speak too highly of this system, taken in its twofold character, and in all its great principles of two governments, completely distinct from and independent of each other; each constitutional, founded by, and acting directly on the people; each competent to all its purposes, administering all the blessings for which it was instituted, without even the most remote danger of exercising any of its powers in a way to oppress the people. A system capable of expansion over a vast territory, not only without weakening either government, but enjoying the peculiar advantage of adding thereby new strength and vigor to the faculties of both; possessing also this additional advantage, that, while the several States enjoy all the rights reserved to them of separate and independent governments, and each is secured by the nature of the Federal Government, which acts directly on the people against the failure of the others, to bear their equal share of the

public burdens, and thereby enjoys, in a more perfect degree, all the advantages of a league. It holds them together by a bond altogether different and much stronger than the late Confederation or any league that was ever known before; a bond beyond their control, and which cannot even be amended, except in the mode prescribed by it. So great an effort in favor of human happiness was never made before, but it became those who made it. Established in the new hemisphere; descended from the same ancestors; speaking the same language; having the same religion and universal toleration; born equal, and educated in the same principles of free government; made independent by a common struggle, and menaced by the same dangers; ties existed between them which never applied before to separate communities. They had every motive to bind them together which could operate on the interests and affections of a generous, enlightened, and virtuous people; and it affords inexpressible consolation to find that these motives had their merited influence.

In thus tracing our institutions to their origin, and pursuing them in their progress and modifications down to the adoption of this Constitution, two important facts have been disclosed, on which it may not be improper, in this stage, to make a few observations. The first is, that in wresting the power, or what is called the sovereignty, from the Crown, it passed directly to the people. The second, that it passed directly to the people of each colony, and not to the people of all the colonies, in the aggregate; to thirteen distinct communities, and not to one. To these two facts, each contributing its equal proportion, I am inclined to think that we are, in an eminent degree, indebted for the success of our Revolution. By passing to the people it vested in a community, every individual of which had equal rights and a common interest. There was no family dethroned among us; no banished pretender in a foreign country looking back to his connections and adherents here in the hope of a recall; no order of nobility whose hereditary rights in the Government had been violated; no hierarchy which had been degraded and oppressed. There was but one order, that of the people, by whom everything was gained by the change. I mention it also as a circumstance of peculiar felicity, that the great body of the people had been born and educated under these equal and original institutions. Their habits, their principles, and their prejudices were, therefore, all on the side of Revolution and of free republican government.

Had distinct orders existed, our fortune might, and probably would, have been different. It would scarcely have been possible to have united so completely the whole force of the country against a common enemy. A contest would probably have arisen in the outset between the orders for the control. Had the aristocracy prevailed, the people would have been heartless. Had the people prevailed, the nobility would probably have left the country, or, remaining behind, internal divisions would have taken place in every State, and a civil war broken

out more destructive even than the foreign, which might have defeated the whole movement. Ancient and modern history is replete with examples proceeding from conflicts between distinct orders; of revolutions attempted which proved abortive; of republics which have terminated in despotism. It is owing to the simplicity of the elements of which our system is composed that the attraction of all the parts has been to a common center; that every change has tended to cement the Union; and, in short, that we have been blessed with such glorious and happy success.

And that the power wrested from the British Crown passed to the people of each colony, the whole history of our political movement, from the emigration of our ancestors to the present day, clearly demonstrates. What produced the Revolution? The violation of our rights. What rights? Our chartered rights. To whom were the charters granted? To the people of each colony, or to the people of all the colonies as a single community. We know that no such community as the aggregate existed; and, of course, that no such rights could be violated. It may be added that the nature of the powers which were given to the delegates by each colony, and the manner in which they were executed, show that the sovereignty was in the people of each, and not in the aggregate. They respectfully presented credentials, such as are usual between ministers of separate powers, which were examined and approved, before they entered on the discharge of the important duties committed to them. They voted, also, by colonies, and not individually; all the members from one colony being entitled to one vote only. This fact, alone, the first of our political association, and at the period of our greatest peril, fixes, beyond all controversy, the source from whence the power which has directed and secured success to all our measures, has proceeded.

Had the sovereignty passed to the aggregate, consequences might have ensued, admitting the success of our Revolution, which might, even yet, seriously affect our system. By passing to the people of each colony, the opposition to Great Britain, the prosecution of the war, the Declaration of Independence, the adoption of the Confederation, and of this Constitution, are all imputable to them. Had it passed to the aggregate, every measure would be traced to that source; even the State governments might be said to have emanated from it, and amendments of their constitutions, on that principle, be proposed by the same authority. In short, it is not easy to perceive all the consequences into which such a doctrine might lead. It is obvious, that the people, in mass, would have had much less agency in all the great measures of the Revolution, and in those which followed, than they actually had, and proportionably less credit for their patriotism and services, than they are now entitled to and enjoy. By passing to the people of each colony, the whole body in each were kept in constant and active deliberation on subjects of the highest national importance, and in the

supervision of the conduct of all the public servants, in the discharge of all their respective duties. Thus the most effectual guards were provided against abuses and dangers of every kind which human ingenuity could devise, and the whole people rendered more competent to the self-government which, by an heroic exertion, they had acquired.

I will now proceed to examine the powers of the General Government, which, like the governments of the several States, is divided into three branches, a legislative, executive, and judicial, each having its appropriate share. Of these, the legislative, from the nature of its powers, all laws proceeding from it, and the manner of its appointment, its members being elected immediately by the people, is by far the most important. The whole system of the National Government may be said to rest, essentially, on the powers granted to this branch. They mark the limit within which, with few exceptions, all the branches must move in the discharge of their respective functions. It will be proper, therefore, to take a full and correct view of the powers granted to it.

By the eighth section of the first article of the Constitution, it is declared that Congress shall have power—

1st. "To lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defense and general welfare of the United States.

2d. "To borrow money.

3d. "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

4th. "To establish an uniform rule of naturalization, and uniform laws respecting bankruptcies.

5th. "To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

6th. "To provide for the punishment of counterfeiting the securities and current coin of the United States.

7th. "To establish post-offices and post-roads.

8th. "To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

9th. "To constitute tribunals inferior to the Supreme Court, to define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations.

10th. "To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

11th. "To raise and support armies.

12th. "To provide and maintain a navy.

13th. "To make rules for the government of the land and naval forces.

14th. "To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

15th. "To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be in the service of the

United States, reserving to the States the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

16th. To exercise exclusive legislation, in all cases whatever, over such district (not exceeding ten miles square), as may, by the cession of particular States, and the acceptance of, by Congress, become the seat of Government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same may be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

17th. And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof.

To the other branches of the Government, the powers properly belonging to each, are granted. The President, in whom the executive power is vested, is made Commander-in-Chief of the Army and Navy, and Militia, when called into the service of the United States. He is authorized, with the advice and consent of the Senate, two-thirds of the members present concurring, to form treaties; to nominate, and, with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers whose appointments are not otherwise provided for by law. He has power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. It is made his duty to give to Congress, from time to time, information of the state of the Union; to recommend to their consideration such measures as he may judge necessary and expedient; to convene both houses on extraordinary occasions; to receive ambassadors; and to take care that the laws be faithfully executed.

The judicial power is vested in one Supreme Court, and in such inferior courts as Congress may establish; and it is made to extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made under their authority. Cases affecting ambassadors and other public characters; cases of admiralty and maritime jurisdiction causes in which the United States are a party; between two or more States; between citizens of different States; between citizens of the same State, claiming grants of land under different States; between a State or the citizens thereof, and foreign States, are specially assigned to these tribunals.

Other powers have been granted in other parts of the Constitution, which, although they relate to specific objects, unconnected with the ordinary administration, yet as they form important features in the Government, and may shed useful light on the construction which ought to be given to the powers above enumerated, it is proper to bring into view.

By article one, section nine, clause first, it is provided that the migration or importation of such persons, as any of the States, now existing, shall think proper to admit, shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed on such importation not exceeding ten dollars for each person.

By article three, section three, clause first, new States may be admitted into the Union, but that no new State shall be formed within the jurisdiction of another State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislature of the States concerned, as well as of the United States. And, by the next clause of the same article and section, power is vested in Congress to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States, with a proviso that nothing in the Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

By article four, section four, the United States guaranty to every State a republican form of government, and engage to protect each of them against invasion: and, on application of the legislature, or of the executive, when the legislature cannot be convened, against domestic violence.

Of the other parts of the Constitution relating to power, some form restraints on the exercise of the powers granted to Congress, and others, on the exercise of the powers remaining to the States. The object, in both instances, is, to draw, more completely, the line between the two governments, and also to prevent abuses by either. Other parts operate like conventional stipulations between the States, abolishing between them all distinctions, applicable to foreign powers, and securing to the inhabitants of each State all the rights and immunities of citizens in the several States.

By the fifth article it is provided that Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments, or, on the application of the legislatures of two-thirds of the several States, shall call a convention, for proposing amendments, which, in either case, shall be valid, as a part of the Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode may be proposed by Congress; provided that no State, without its consent, shall be deprived of its equal vote in the Senate, and that no amendment which may be made prior to the year 1808 shall affect the first and fourth clauses in the ninth section of the first article.

By the second section of the sixth article it is declared that the Constitution and laws of the United States shall be made in pursuance thereof, and all treaties made under the authority of the United States shall be the supreme law of the land; and, that the judges of every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. This right in the National

Governments to execute its powers was indispensable to its existence. If the States government had not been restrained from encroaching on the powers vested in the National Government, the Constitution, like the Confederation, would soon have been set at naught; and it was not within the limit of the human mind to devise any plan for the accomplishment of the object, other than by making a National Constitution which should be, to the extent of its powers, the supreme law of the land. This right in the National Government would have existed, under the Constitution, to the full extent provided for by this declaration, had it not been made. To prevent the possibility of a doubt, however, on so important a subject, it was proper to make the declaration.

Having presented above a full view of all the powers granted to the United States, it will be proper to look to those remaining to the States. It is by fixing the great powers, which are admitted to belong to each government, that we may hope to come to a right conclusion, respecting those in controversy between them. In regard to the National Government, this task was easy, because its powers were to be found in specific grants in the Constitution; but it is more difficult to give a detail of the powers of the State governments, as their constitutions, containing all powers granted by the people, not specifically taken from them by grants to the United States, cannot well be enumerated. Fortunately, a precise detail of all the powers remaining to the State governments, is not necessary in the present instance. A knowledge of their great powers, only, will answer every purpose contemplated, and respecting these there can be no diversity in opinion. They are sufficiently recognized and established by the Constitution of the United States itself. In designating the important powers of the State governments, it is proper to observe, first, that the territory contemplated by the Constitution belongs to each State, in its separate character, and not to the United States in their aggregate character. Each State holds territory according to its original charter, except in cases where cessions have been made to the United States by individual States. The United States had none when the Constitution was adopted, which had not been thus ceded to them, and which they held on the conditions on which such cession had been made. Within the individual States, it is believed, that they held not a single acre, but, if they did, it was as citizens held it, merely as private property. The territory acquired by cession, lying without the individual States, rests on a different principle, and is provided for by a separate and distinct part of the Constitution. It is the territory within the individual States, to which the Constitution, in its great principles, applies, and, it applies to such territory as the territory of a State, and not as that of the United States. The next circumstance to be attended to, is, that the people composing this Union are the people of the several States, and not of the United States, in the full sense of a consolidated Government. The militia are the militia of the several States; lands are held under the laws of the States; descents, contracts,

and all the concerns of private property, the administration of justice, and the whole criminal code, except in the case of breaches of the laws of the United States, made under, and in conformity with, the powers vested in Congress, and of the laws of nations, are regulated by State laws. This enumeration shows the great extent of the powers of the State governments. The territory and the people form the basis on which all Governments are founded. The militia constitutes their effective force. The regulation and protection of property, and of personal liberty, are also among the highest attributes of sovereignty. This, without other evidence, is sufficient to show that the great office of the Constitution of the United States is, to unite the States together, under a Government endowed with powers adequate to the purposes of its institution, relating, directly or indirectly, to foreign concerns, to the discharge of which, a National Government, thus formed, alone could be competent.

This view of the exclusive jurisdiction of the several States over the territory within their respective limits, except in cases otherwise specially provided for, is supported by the obvious intent of the several powers granted to Congress, to which a more particular attention is now due. Of these, the right to declare war is perhaps the most important as well by the consequences attending war, as by the other powers granted in aid of it. The right to lay taxes, duties, imposts, and excises, though necessary for the support of the civil government, is equally necessary to sustain the charges of war; the right to raise and support armies, and a navy, and to call forth and govern the militia when in the service of the United States, are altogether of the latter kind. They are granted in aid of the power to make war, and intended to give effect to it. These several powers are of great force and extent, and operate more directly within the limits, and upon the resources of the States, than any of the other powers. But still they are means only for given ends. War is declared, and must be maintained. An army and a navy must be raised; fortifications must be erected for the common defense; debts must be paid. For these purposes duties, imposts, and excises, are levied; taxes are laid; the lands, merchandise, and other property, of the citizens are liable for them; if the money is not paid, seizures are made, and the lands are sold. The transaction is terminated; the lands pass into other hands, who hold them as the former proprietors did, under the laws of the individual States. They were means only to certain ends; the United States have nothing further to do with them. The same view is applicable to the power of the General Government over persons. The militia is called into the service of the United States; the service is performed; the corps returns to the State to which it belongs; it is the militia of such State, and not of the United States. Soldiers are required for the army, who may be obtained by voluntary enlistment, or by some other process, founded in the principles of equality. In either case, the citizen, after the tour of

of duty is performed, is restored to his former station in society, with his equal share in the common sovereignty of the nation. In all these cases, which are the strongest which can be given, we see that the right of the General Government is nothing more than what it is called in the Constitution, a power to perform certain acts; and that the subject on which it operates is a mean only to that end; that it was, both before and after that act, under the protection, and subject to the laws, of the individual State within which it was.

To the other powers of the General Government the same remarks are applicable, and with greater force. The right to regulate commerce with foreign powers was necessary, as well as to enable Congress to lay and collect duties and imposts, as to support the rights of the nation in the intercourse with foreign powers. It is executed at the ports of the several States, and operates almost altogether externally. The right to borrow and coin money, and to fix its value, and that of foreign coin, are important to the establishment of a National Government, and particularly necessary in support of the right to declare war; as, indeed, may be considered the right to punish piracy and felonies on the high seas, and offenses against the laws of nations. The right to establish an uniform rule of naturalization, and uniform laws respecting bankruptcies, seems to be essentially connected with the right to regulate commerce. The first branch of it relates to foreigners entering the country; the second to merchants who have failed. The right to promote the progress of useful arts and sciences may be executed without touching any of the individual States. It is accomplished by granting patents to inventors, and preserving models, which may be done exclusively within the Federal district. The right to constitute courts inferior to the Supreme Court, was a necessary consequence of the judiciary existing as a separate branch of the General Government. Without such inferior court in every State, it would be difficult, and might even be impossible, to carry into effect the laws of the General Government. The right to establish post-offices and post-roads is essentially of the same character. For political, commercial and social purposes, it was important that it should be vested in the General Government. As a mere matter of regulation, and nothing more, I presume, was intended by it, it is a power easily executed; and involving little authority within the State individually. The right to exercise exclusive legislation, in all cases whatsoever, over the Federal district, and over forts, magazines, arsenals, dock-yards, and other needful buildings, with the consent of the State within which the same may be, is a power of a peculiar character, and is sufficient in itself to confirm what has been said of all the other powers of the General Government. Of this particular grant, further notice will hereafter be taken.

I shall conclude my remarks on this part of the subject by observing that the view which has been presented of the powers and character of the two Governments is supported by the marked difference which is

observable in the manner of their endowment. The State governments are divided into three branches, a legislative, executive, and judiciary; and the appropriate duties of each assigned to it, without any limitation of power, except such as is necessary to guard against abuse, in the form of bills of right. But, in instituting the National Government, an entire different principle was adopted and pursued. The Government itself is organized, like the State governments, into three branches, but its powers are enumerated and defined in the most precise form. The subject has already been too fully explained to require illustration by a general view of the whole Constitution, every part of which affords proof of what is here advanced. It will be sufficient to advert to the eighth section of the first article, being that more particularly which defines the powers, and fixes the character, of the Government of the United States. By this section, it is declared that Congress shall have power—

1st. To lay and collect taxes, duties, imposts, and excises, &c.

Having shown the origin of the State governments, and their endowments, when first formed; having also shown the origin of the National Government, and the powers vested in it; and having shown, lastly, the powers which are admitted to have remained to the State governments, after those which were taken from them by the National Government, I will now proceed to examine whether the power to adopt and execute a system of internal improvement, by roads and canals, has been vested in the United States.

Before we can determine whether this power has been granted to the General Government, it will be necessary to ascertain, distinctly, the nature and extent of the power requisite to make such improvements. When that is done, we shall be able to decide whether such power is vested in the National Government.

If the power existed, it would, it is presumed, be executed by a board of skillful engineers, on a view of the whole Union, on a plan which would secure complete effect to all the great purposes of our Constitution. It is not my intention, however, to take up the subject here, on this scale. I shall state a case for the purpose of illustration only. Let it be supposed that Congress intended to run a road from the City of Washington to Baltimore, and to connect the Chesapeake Bay with the Delaware and the Delaware with the Raritan, by a canal—what must be done to carry the project into effect? I make here no question of the existing power. I speak only of the power necessary for the purpose. Commissioners would be appointed to trace a route, in the most direct line, paying due regard to heights, water courses, and other obstacles, and to acquire the right to the ground over which the road and canal would pass, with sufficient breadth for each. This must be done by voluntary grants, or by purchases from individuals, or, in case they would not sell, or should ask an exorbitant price, by condemning the property and fixing its value by a jury of the vi-

cinage. The next object to be attended to, after the road and canal are laid out and made, is to keep them in repair. We know that there are people in every community capable of committing voluntary injuries; of pulling down walls that are made to sustain the road; of breaking the bridges over water-courses, and breaking the road itself. Some living near it might be disappointed that it did not pass through their lands, and commit these acts of violence and waste, from revenge, or in the hope of giving it that direction, though for a short time. Injuries of this kind have been committed, and are still complained of, on the road from Cumberland to the Ohio. To accomplish this object Congress should have a right to pass laws to punish offenders wherever they may be found. Jurisdiction over the road would not be sufficient, though it were exclusive. It would seldom happen that the parties would be detected in the act. They would generally commit it in the night, and fly far off before the sun appeared. The power to punish these culprits must, therefore, reach them wherever they go. They must, also, be amenable to competent tribunals, Federal or State. The power must likewise extend to another object, not less essential or important than those already mentioned. Experience has shown that the establishment of turnpikes, with gates and tolls, and persons to collect the tolls, is the best expedient that can be adopted to defray the expense of these improvements, and the repairs which they necessarily require. Congress must, therefore, have power to make such an establishment, and to support it, by such regulations, with fines and penalties, in the case of injuries, as may be competent to the purpose. The right must extend to all those objects, or it will be utterly incompetent. It is possessed and exercised by the States individually, and it must be possessed by the United States, or the pretension must be abandoned.

Let it be further supposed that Congress, believing that they do possess the power, have passed an act for those purposes, under which commissioners have been appointed, who have begun the work. They are met at the first farm on which they enter by the owner, who forbids them to trespass on his land. They offer to buy it at a fair price, or at twice or thrice its value. He persists in his refusal. Can they, on the principle recognized and acted on by all the State governments, that, in cases of this kind, the obstinacy and perverseness of an individual must yield to the public welfare, summon a jury of upright and discreet men to condemn the land, value it, and compel the owner to receive the amount, and deliver it up to them? I believe that very few would concur in the opinion that such a power exists.

The next object is, to preserve these improvements from injury. The locks of the canal are broken; the walls which sustained the road are pulled down; the bridges are broken; the road itself is plowed up; toll is refused to be paid; the gates of the canal or turnpike are forced. The offenders are pursued, caught, and brought to trial. Can they be

punished? The question of right must be decided on principle. The culprits will avail themselves of every barrier that may serve to screen them from punishment. They will plead that the law, under which they stand arraigned, is unconstitutional, and that question must be decided by the court, whether Federal or State, on a fair investigation of the powers vested in the General Government by the Constitution. If the judges find that these powers have not been granted to Congress, the prisoners must be acquitted; and, by their acquittal, all claim to the right to establish such a system is at an end.

I have supposed an opposition to be made to the right in Congress, by the owner of the land, and other individuals charged with breaches of laws, made to protect the works from injury, because it is the mildest form in which it can present itself. It is not, however, the only one. A State, also, may contest the right, and then the controversy assumes another character. Government might contend against government; for, to a certain extent, both the governments are sovereign and independent of each other, and in that form it is possible, though not probable, that opposition might be made. To each limitations are prescribed, and should a contest rise between them, respecting their rights, and the people sustain it with anything like an equal division of numbers, the worst consequences might ensue.

It may be urged that the opposition suggested by the owner of the land, or by the States individually, may be avoided by a satisfactory arrangement with the parties. But a suppression of opposition in that way is no proof of a right in Congress; nor could it, if confined to that limit, remove all the impediments to the exercise of the power. It is not sufficient that Congress may, by the command and application of the public revenue, purchase the soil, and thus silence that class of individuals; or, by the accommodation afforded to individual States, put down opposition on their part. Congress must be able rightfully to control all opposition, or they cannot carry the system into effect. Cases would inevitably occur to put the right to the test. The work must be preserved from injury; tolls must be collected; offenders must be punished. With those culprits no bargain can be made. When brought to trial they must deny the validity of the law, and that plea being sustained, all claim to the right ceases.

If the United States possess this power, it must be either because it has been specifically granted, or that it is incidental and necessary to carry into effect some specific grant. The advocates for the power derive it from the following sources: 1st. The right to establish post-offices and post-roads; 2d. To declare war; 3d. To regulate commerce among the several States; 4th. From the power to pay the debts and provide for the common defense and general welfare of the United States; 5th. From the power necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any Department or officer thereof; 6th, and

lastly. From the power to dispose of, and make all needful rules and regulations respecting the territory and other property of the United States. It is to be observed that there is but little accord among the advocates for this power as to the particular source from whence it is derived. They all agree, however, in ascribing it to some one or more of those above mentioned. I will examine the ground of the claim in each instance.

The first of these grants is in the following words: "Congress shall have power to establish post-offices and post-roads." What is the just import of these words and the extent of the grant? The word "establish" is the ruling term; "post-offices and post-roads" are the subjects on which it acts. The question, therefore, is, what power is granted by that word? The sense in which words are commonly used is that in which they are to be understood in all transactions between public bodies and individuals. The intention of the parties is to prevail, and there is no better way of ascertaining it than by giving to the terms used their ordinary import. If we were to ask any number of our most enlightened citizens, who had no connection with public affairs, and whose minds were unprejudiced, what was the import of the word "establish," and the extent of the grant which it controls, we do not think there would be any difference of opinion among them. We are satisfied that all of them would answer that a power was thereby given to Congress to fix on the towns, court-houses, and other places throughout our Union at which there should be post-offices; the routes by which the mails should be carried from one post-office to another, so as to diffuse intelligence as extensively and to make the institution as useful as possible; to fix the postage to be paid on every letter and packet thus carried to support the establishment; and to protect the post-office and mails from robbery by punishing those who should commit the offense. The idea of a right to lay off the roads of the United States on a general scale of improvement; to take the soil from the proprietor by force; to establish turnpikes and tolls, and to punish offenders in the manner stated above, would never occur to any such person. The use of the existing road by the stage, mail-carrier, or post-boy, in passing over it, as others do, is all that would be thought of; the jurisdiction and soil remaining to the State, with a right in the State, or those authorized by its legislature, to change the road at pleasure.

The intention of the parties is supported by other proof, which ought to place it beyond all doubt. In the former act of Government—the Confederation—we find a grant for the same purpose expressed in the following words: "The United States in Congress assembled, shall have the sole and exclusive right and power of establishing and regulating post-offices from one State to another throughout the United States, and of exacting such postage on the papers passing through the same as may be requisite to defray the expenses of said post-office." The term "establish" was likewise the ruling one in that instrument,

and was evidently intended and understood to give a power simply and solely to fix where there should be post-offices. By transferring this term from the Confederation into the Constitution it was doubtless intended that it should be understood in the same sense in the latter that it was in the former instrument, and to be applied alike to post-offices and post-roads. In whatever sense it is applied to post-offices it must be applied in the same sense to post-roads. But it may be asked, if such was the intention, why were not all the other terms of the grant transferred with it? The reason is obvious. The Confederation being a bond of union between independent States it was necessary, in granting the powers which were to be exercised over them, to be very explicit and minute in defining the powers granted. But the Constitution, to the extent of its powers, having incorporated the States into one government, like the government of the States, individually, fewer words in defining the powers granted by it were not only adequate but perhaps better adapted to the purpose. We find that brevity is a characteristic of the instrument. Had it been intended to convey a more enlarged power in the Constitution than had been granted in the Confederation, surely the same controlling term would not have been used; or in other words would have been added to show such intention, and to mark the extent to which the power should be carried. It is a liberal construction of the powers granted in the Constitution, by this term, to include in it all the powers that were granted in the Confederation by terms which specifically defined and (as was supposed) extended their limits. It would be absurd to say that, by omitting from the Constitution any portion of the phraseology which was deemed important in the Confederation, the import of that term was enlarged, and with it the powers of the Constitution, in a proportional degree, beyond what they were in the Confederation. The right to exact postage and to protect the post-offices and mails from robbery, by punishing the offenders, may fairly be considered as incidents to the grant, since, without it, the object of the grant might be defeated. Whatever is absolutely necessary to the accomplishment of the object of the grant, though not specified, may fairly be considered as included in it. Beyond this the doctrine of incidental power cannot be carried.

If we go back to the origin of our settlements and institutions, and trace their progress down to the Revolution, we shall see that it was in this sense, and in none other, that the power was exercised by all our colonial governments. Post-offices were made for the country, and not the country for them. They are the offspring of improvement. They never go before it. Settlements are first made; after which the progress is uniform and simple, extending to objects in regular order most necessary to the comfort of man; schools, places of public worship, court-houses and markets; post-offices follow. Roads may, indeed, be said to be coeval with settlements. They lead to all the places mentioned, and to every other which the various and complicated interests of society require.

It is believed that not one example can be given, from the first settlement of our country to the adoption of this Constitution, of a post-office being established without a view to existing roads, or of a single road having been made by pavement, turnpike, &c., for the sole purpose of accommodating a post-office. Such, too, is the uniform progress of all societies. In granting, then, this power to the United States, it was, undoubtedly, intended by the framers and ratifiers of the Constitution to convey it in the sense and extent only in which it had been understood and exercised by the previous authorities of the country.

This conclusion is confirmed by the object of the grant, and the manner of its execution. The object is the transportation of the mail throughout the United States, which may be done on horseback, and was so done until lately, since the establishment of stages. Between the great towns, and in other places where the population is dense, stages are preferred, because they afford an additional opportunity to make a profit from passengers. But where the population is sparse, and on cross-roads, it is generally carried on horseback. Unconnected with passengers and other objects, it cannot be doubted that the mail itself may be carried in every part of our Union with nearly as much economy and greater dispatch on horseback than in a stage, and in many parts with much greater. In every part of the Union in which stages can be preferred, the roads are sufficiently good, provided those which serve for every other purpose will accommodate them. In every other part, where horses alone are used, if other people pass them on horseback surely the mail-carrier can. For an object so simple, and so easy in its execution, it would, doubtless, excite surprise if it should be thought proper to appoint commissioners to lay off the country on a great scheme of improvement, with the power to shorten distances, reduce heights, level mountains, and pave surfaces.

If the United States possessed the power contended for under this grant, might they not, in adopting the roads of the individual States for the carriage of the mail, as has been done, assume jurisdiction over them, and preclude a right to interfere with or alter them? Might they not establish turnpikes and exercise all the other acts of sovereignty above stated over such roads necessary to protect them from injury and defray the expense of repairing them? Surely, if the right exists, these consequences necessarily followed as soon as the road was established. The absurdity of such a pretension must be apparent to all who examine it. In this way a large portion of the territory of every State might be taken from it, for there is scarcely a road in any State which will not be used for the transportation of the mail. A new field for legislation and internal government would thus be opened.

From this view of the subject, I think we may fairly conclude that the right to adopt and execute a system of internal improvement, or any part of it, has not been granted to Congress under the power to establish post-office and post-roads; that the common roads of the country

only were contemplated by that grant, and are fully competent to all its purposes.

The next object of inquiry is, whether the right to declare war includes the right to adopt and execute this system of improvement. The objections to it are, I presume, not less conclusive than those which are applicable to the grant which we have just examined.

Under the last-mentioned grant a claim has been set up to as much of that system as relates to roads. Under this it extends alike to roads and canals.

We must examine this grant by the same rules of construction that were applied to the preceding one. The object was to take this power from the individual States, and to vest it in the General Government. This has been done in clear and explicit terms—first, by granting the power to Congress, and, secondly, by prohibiting the exercise of it by the States. Congress shall have a right to declare war. This is the language of the grant. If the right to adopt and execute this system of improvement is included in it, it must be by way of incident only, since there is nothing in the grant itself which bears any relation to roads and canals.

The following considerations, it is presumed, prove, incontestably, that this power has not been granted in that or any other manner:

The United States are exposed to invasion through the whole extent of their Atlantic coast by any European power with whom we might be engaged in war; on the northern and northwestern frontier, on the side of Canada by Great Britain, and on the southern by Spain, or any power in alliance with her. If internal improvements are to be carried to the full extent to which they may be useful for military purposes, the power as it exists must apply to all the roads of the Union, there being no limitation to it. Wherever such improvements may facilitate the march of troops, the transportation of cannon, or otherwise aid the operations or mitigate the calamities of war, along the coast or in any part of the interior, they would be useful for military purposes, and might, therefore, be made. The power following as an incident to another power can be measured, as to its extent, by reference only to the obvious extent of the power to which it is incidental. So great a scope was, it is believed, never given to incidental power.

If it had been intended that the right to declare war should include all the powers necessary to maintain war, it would follow that nothing would have been done to impair the right, or to restrain Congress from the exercise of any power which the exigencies of war might require. The nature and extent of this exigency would mark the extent of the power granted, which should always be construed liberally, so as to be adequate to the end. A right to raise money by taxes, duties, excises, and by loan; to raise and support armies and a navy; to provide for calling forth, arming, disciplining, and governing the militia when in the service of the United States; establishing fortifications, and gov-

erning the troops stationed in them, independently of the State authorities, and to perform many other acts, is indispensable to the maintenance of war. No war with any great power can be prosecuted with success without the command of the resources of the Union in all these respects. These powers, then, would of necessity, and by common consent, have fallen within the right to declare war, had it been intended to convey, by way of incident to that right, the necessary powers to maintain war. But these powers have all been granted specifically, with many others, in great detail, which experience had shown were necessary for the purposes of war. By specifically granting, then, these powers, it is manifest that every power was thus granted which it was intended to grant for military purposes; and that it was also intended that no important power should be included in this grant by way of incident, however useful it might be for some of the purposes of the grant.

By the sixteenth of the enumerated powers, article 1, section 8, Congress are authorized to exercise exclusive legislation in all cases whatever over such district as may by cession of particular States and the acceptance of Congress, not exceeding ten miles square, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other useful buildings. If any doubt existed on a view of other parts of the Constitution respecting the decision which ought to be formed on the question under consideration, I should suppose that this clause would completely remove it. It has been shown, after the most liberal construction of all the enumerated powers of the General Government, that the territory within the limits of the respective States belonged to them; that the United States had no right, under the powers granted to them, with the exception specified in this grant, to any the smallest portion of territory within a State, all those powers operating on a different principle, and having their full effect without impairing, in the slightest degree, this right in the States; that those powers were in every instance means to ends, which, being accomplished, left the subject, that is, the property, in which light only, land could be regarded, where it was before—under the jurisdiction and subject to the laws of the State governments.

The second number of the clause, which is applicable to military and naval purposes alone, claims particular attention here. It fully confirms the view taken of the other enumerated powers; for, had it been intended to include in the right to declare war, by way of incident, any right of jurisdiction or legislation over territory within a State, it would have been done as to fortifications, magazines, arsenals, dock-yards, and other needful buildings. By specifically granting the right, as to such small portions of territory as might be necessary for these purposes, and on certain conditions, minutely and well defined, it is

manifest that it was not intended to grant it, as to any other portion, on any condition, for any purpose, or in any manner whatsoever.

It may be said that, although the authority to exercise exclusive legislation in certain cases, within the States, with their consent, may be considered as a prohibition to Congress to exercise like exclusive legislation in any other case, although their consent should be granted, it does not prohibit the exercise of such jurisdiction or power, within a State, as would be competent to all the purposes of internal improvement. I can conceive no ground on which the idea of such a power over any part of the territory of a State can be inferred from the power to declare war. There never can be an occasion for jurisdiction for military purposes, except in fortifications; dock-yards, and the like places. If the soldiers are in the field, or are quartered in garrisons without the fortifications, the civil authority must prevail where they are. The government of the troops by martial law is not affected by it. In war, when the forces are increased, and the movement is on a greater scale, consequences follow which are inseparable from the exigencies of the State. More freedom of action, and a wider range of power, in the military commanders, to be exercised on their own responsibility, may be necessary to the public safety; but, even here, the civil authority of the State never ceases to operate. It is also exclusive for all civil purposes.

Whether any power short of that stated would be adequate to the purposes of internal improvement is denied. In the case of territory, one government must prevail for all the purposes intended by the grant. The jurisdiction of the United States might be modified in such manner as to admit that of the State in all cases and for all purposes not necessary to the execution of the proposed power. But the right of the General Government must be complete for all the purposes above stated. It must extend to the seizure and condemnation of the property, if necessary; to the punishment of offenders for injuries to the roads and canals; to the establishment and enforcement of tolls, &c. It must be a complete right to the extent above stated, or it will be of no avail. That right does not exist.

The reasons which operate in favor of the right of exclusive legislation in forts, dock-yards, &c., do not apply to any other places. The safety of such works, and of the cities which they are intended to defend, and even of whole communities, may sometimes depend on it. If spies are admitted within them in time of war, they might communicate intelligence to the enemy, which might be fatal. All nations surround such works with high walls, and keep their gates shut. Even here, however, three important conditions are indispensable to such exclusive legislation: First, the ground must be requisite for, and be applied to, those purposes; second, it must be purchased; third, it must be purchased by the consent of the State in which it may be. When we find that so much care has been taken to protect the sovereignty of

the States over the territory within their respective limits, admitting that of the United States over such small portions, and for such special and important purposes only, the conclusion is irresistible, not only that the power necessary for internal improvements has not been granted, but that it has been clearly prohibited.

I come next to the right to regulate commerce, the third source from whence the right to make internal improvements is claimed. It is expressed in the following words: "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." The reasoning applicable to the preceding claims is equally so to this. The mischief complained of was that this power could not be exercised with advantage by the individual States, and the object was to transfer it to the United States. The sense in which the power was understood and exercised by the States was doubtless that in which it was transferred to the United States. The policy was the same as to three branches of this grant, and it is scarcely possible to separate the two first from each other in any view which may be taken of the subject. The last, relating to the Indian tribes, is of a nature distinct from the others, for reasons too well known to require explanation. Commerce between independent powers or communities is universally regulated by duties and imposts. It was so regulated by the States before the adoption of this Constitution, equally in respect to each other and to foreign powers. The goods and vessels employed in the trade are the only subjects of regulation. It can act on none other. A power, then, to impose such duties and imposts, in regard to foreign nations, and to prevent any on the trade between the States, was the only power granted.

If we recur to the causes which produced the adoption of this Constitution, we shall find that injuries resulting from the regulation of trade, by the States, respectively, and the advantages anticipated from the transfer of the power to Congress, were among those which had the most weight. Instead of acting as a nation in regard to foreign powers, the States, individually, had commenced a system of restraint on each other, whereby the interests of foreign powers were promoted at their expense. If one State imposed high duties on the goods or vessels of a foreign power, to countervail the regulations of such power, the next adjoining States imposed lighter duties, to invite those articles into their ports, that they might be transferred thence into the other States, securing the duties to themselves. This contracted policy in some of the States was soon counteracted by others. Restraints were immediately laid on such commerce by the suffering States, and thus had grown up a state of affairs, disorderly and unnatural, the tendency of which was to destroy the Union itself, and with it all hope of realizing those blessings which we had anticipated from the glorious revolution which had been so recently achieved. From this deplorable

dilemma, or rather certain ruin, we were happily rescued by the adoption of the Constitution.

Among the first and most important effects of this great revolution was the complete abolition of this pernicious policy. The States were brought together by the Constitution, as to commerce, into one community, equally in regard to foreign nations and each other. The regulations that were adopted regarded us, in both respects, as one people. The duties and imposts that were laid on the vessels and merchandise of foreign nations were all uniform throughout the United States, and, in the intercourse between the States themselves, no duties of any kind were imposed other than between different ports and counties within the same State.

This view is supported by a series of measures, all of a marked character, preceding the adoption of the Constitution. As early as the year 1781 Congress recommended it to the States to vest in the United States a power to levy a duty of 5 per cent. on all goods imported from foreign countries into the United States for the term of fifteen years. In 1783 this recommendation, with alterations as to the kind of duties and an extension of this term to twenty-five years, was repeated, and more earnestly urged. In 1784 it was recommended to the States to authorize Congress to prohibit, under certain modifications, the importation of goods from foreign powers into the United States for fifteen years. In 1785 the consideration of the subject was resumed, and a proposition presented in a new form, with an address to the States, explaining fully the principles on which a grant of the power to regulate trade was deemed indispensable. In 1786 a meeting took place at Annapolis, of delegates from several of the States, on this subject, and, on their report, a convention was formed at Philadelphia the ensuing year from all the States, to whose deliberations we are indebted for the present Constitution.

In none of these measures was the subject of internal improvement mentioned or even glanced at. Those of 1784, '85, '86, and '87, leading, step by step, to the adoption of the Constitution, had in view only the obtaining of a power to enable Congress to regulate trade with foreign powers. It is manifest that the regulation of trade with the several States was altogether a secondary object, suggested by and adopted in connection with the other. If the power necessary to this system of improvement is included under either branch of this grant, I should suppose that it was the first rather than the second. The pretension to it, however, under that branch has never been set up. In support of the claim under the second no reason has been assigned which appears to have the least weight.

The fourth claim is founded on the right of Congress to "pay the debts and provide for the common defense and general welfare" of the United States. This claim has less reason on its side than either of

those which we have already examined. The power of which this forms a part is expressed in the following words:

"Congress shall have power to lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

That the second part of this grant gives a right to appropriate the public money, and nothing more, is evident from the following considerations:

1. If the right of appropriation is not given by this clause it is not given at all, there being no other grant in the Constitution which gives it directly, or which has any bearing on the subject, even by implication, except the two following: First, the prohibition which is contained in the eleventh of the enumerated powers not to appropriate money for the support of armies for a longer term than two years; and, second, the declaration of the sixth member or clause of the ninth section of the first article, that no money shall be drawn from the Treasury but in consequence of appropriations made by law.

2. This part of the grant has none of the characteristics of a distinct and original power. It is manifestly incidental to the great objects of the first part of the grant, which authorizes Congress to lay and collect taxes, duties, imposts, and excises—a power of vast extent, not granted by the Confederation—the grant of which formed one of the principal inducements to the adoption of this Constitution. If both parts of the grant are taken together (as they must be, for the one follows immediately after the other in the same sentence), it seems to be impossible to give to the latter any other construction than that contended for. Congress shall have power to lay and collect taxes, duties, imposts, and excises. For what purpose? To pay the debts and provide for the common defense and general welfare of the United States—an arrangement and phraseology which clearly show that the latter part of the clause was intended to enumerate the purposes to which the money thus raised might be appropriated.

3. If this is not the real object and fair construction of the second part of this grant, it follows either that it has no import or operation whatever on one of much greater extent than the first part. This presumption is evidently groundless in both instances—in the first, because no part of the Constitution can be considered useless—no sentence or clause in it without a meaning. In the second, because such a construction as made the second part of the clause an original grant, embracing the same object with the first, but with much greater power than it, would be in the highest degree absurd. The order generally observed in grants—an order founded in common sense, since it promotes a clear understanding of their import—is to grant the power intended to be conveyed in the most full and explicit manner, and then to explain or qualify it, if explanation or qualification should be necessary. This order has, it is believed, been invariably observed in all the grants con-

tained in the Constitution. In the second, because, if the clause in question is not construed merely as an authority to appropriate the public money, it must be obvious that it conveys a power of indefinite and unlimited extent—that there would have been no use for the special powers to raise and support armies and a navy, to regulate commerce, to call forth the militia, or even to lay and collect taxes, duties, imposts, and excises. An unqualified power to pay the debts and provide for the common defense and general welfare, as the second part of this clause would be, if considered as a distinct and separate grant, would extend to every object in which the public could be interested. A power to provide for the common defense would give to Congress the command of the whole force and of all the resources of the Union. But a right to provide for the general welfare would go much further. It would, in effect, break down all the barriers between the States and the General Government, and consolidate the whole under the latter.

The powers specifically granted to Congress are what are called the enumerated powers, and are numbered in the order in which they stand, among which that contained in the first clause holds the first place in point of importance. If the power created by the latter part of the clause is considered an original grant, unconnected with and independent of the first, as in that case it must be, then the first part is entirely done away, as are all the other grants in the Constitution, being completely absorbed in the transcendent power granted in the latter part. But if the clause be construed in the sense contended for, then every part has an important meaning and effect; not a line, a word, in it is superfluous. A power to lay and collect taxes, duties, imposts, and excises subjects to the call of Congress every branch of the public revenue, internal and external; and the addition to pay the debts and provide for the common defense and general welfare gives the right of applying the money raised—that is, of appropriating it to the purposes specified—according to a proper construction of the terms. Hence, it follows that it is the first part of the clause only which gives a power which affects in any manner the power remaining to the States; as the power to raise money from the people, whether it be by taxes, duties, imposts, or excises, though concurrent in the States as to taxes and excises, must necessarily do. But the use or application of the money, after it is raised, is a power altogether of a different character. It imposes no burden on the people, nor can it act on them in a sense to take power from the States, or in any sense in which power can be controverted or become a question between the two governments. The application of money raised under a lawful power is a right or grant which may be abused. It may be applied partially among the States, or to improper purposes in our foreign and domestic concerns; but still it is a power not felt in the sense of other power, since the only complaint which any State can make of such partiality and abuse is that some other State or States have obtained greater benefit from the application than by a just rule of ap-

portionment they were entitled to. The right of appropriation is, therefore, from its nature, secondary and incidental to the right of raising money, and it was proper to place it in the same grant and same clause with that right. By finding them, then, in that order, we see a new proof of the sense in which the grant was made, corresponding with the view herein taken of it.

The last part of this grant, which provides that all duties, imposts, and excises shall be uniform throughout the United States, furnishes another strong proof that it was not intended that the second part should constitute a distinct grant, in the sense above stated, or convey any other right than that of appropriation. This provision operates exclusively on the power granted in the first part of the clause. It recites three branches of that power—duties, imposts, and excises—those only on which it could operate; the rule by which the fourth, that is, taxes, should be laid, being already provided for in another part of the Constitution. The object of this provision is to secure a just equality among the States in the exercise of that power by Congress. By placing it after both the grants, that is, after that to raise and that to appropriate the public money, and making it apply to the first only, it shows that it was not intended that the power granted in the second should be paramount to, and destroy, that granted in the first. It shows also that no such formidable power as that suggested had been granted in the second, or any power, against the abuse of which it was thought necessary specially to provide. Surely, if it was deemed proper to guard a specific power of limited extent and well known import against injustice and abuse, it would have been much more so to have guarded against the abuse of a power of such vast extent and so indefinite as would have been granted by the second part of the clause, if considered as a distinct and original grant.

With this construction all the other enumerated grants, and indeed all the grants of power contained in the Constitution, have their full operation and effect. They all stand well together, fulfilling the great purposes intended by them. Under it we behold a great scheme, consistent in all its parts, a Government instituted for national purposes, vested with adequate powers for those purposes, commencing with the most important of all, that of the revenue, and proceeding in regular order to the others with which it was deemed proper to endow it, all, too, drawn with the utmost circumspection and care. How much more consistent is this construction with the great objects of the institution and with the high character of the enlightened and patriotic citizens who framed it, as well as of those who ratified it, than one which subverts every sound principle and rule of construction and throws every thing into confusion.

I have dwelt thus long on this part of the subject from an earnest desire to fix in a clear and satisfactory manner the import of the second part of this grant, well knowing, from the generality of the terms

used, their tendency to lead into error. I indulge a strong hope that the view herein presented will not be without effect, but will tend to satisfy the unprejudiced and impartial that nothing more was granted by that part than a power to *appropriate* the public money raised under the other part. To what extent that power may be carried will be the next object of inquiry.

It is contended, on the one side, that, as the National Government is a Government of limited powers, it has no right to expend money, except in the performance of acts authorized by the other specific grants, according to a strict construction of their powers; that this grant in neither of its branches gives to Congress discretionary power of any kind, but is a mere instrument in its hands to carry into effect the powers contained in the other grants. To this construction I was inclined in the more early stage of our Government; but on further reflection and observation my mind has undergone a change, for reasons which I will frankly unfold.

The grant consists, as heretofore observed, of a twofold power; the first to raise, the second to appropriate the public money, and the terms used in both instances are general and unqualified. Each branch was obviously drawn with a view to the other, and the import of each tends to illustrate that of the other. The grant to raise money gives a power over every subject from which revenue may be drawn, and is made in the same manner with the grants to declare war, to raise and support armies and a navy, to regulate commerce, to establish post-offices and post-roads, and with all the other specific grants to the General Government. In the discharge of the powers contained in any of these grants there is no other check than that which is to be found in the great principles of our system, the responsibility of the Representative to his constituents. If the war, for example, is necessary and Congress declare it for good cause, their constituents will support them in it. A like support will be given them for the faithful discharge of their duties under any and every other power vested in the United States. It affords to the friends of our free governments the most heartfelt consolation to know, and from the best evidence, our own experience, that in great emergencies the boldest measures, such as form the strongest appeals to the virtue and patriotism of the people, are sure to obtain the most decided approbation. But should the Representative act corruptly and betray his trust, or otherwise prove that he was unworthy of the confidence of his constituents, he would be equally sure to lose it and to be removed and otherwise censured, according to his deserts. The power to raise money by taxes, duties, imposts, and excises is alike unqualified, nor do I see any check on the exercise of it other than that which applies to the other powers above recited, the responsibility of the Representative to his constituents. Congress know the extent of the public engagements and the sums necessary to meet them; they know how much may be derived from each branch of revenue without pressing it

too far ; and paying due regard to the interests of the people, they likewise know which branch ought to be resorted to in the first instance. From the commencement of the Government two branches of this power, duties and imposts, have been in constant operation, the revenue from which has supported the Government in its various branches and met its other ordinary engagements. In great emergencies the other two, taxes and excises, have likewise been resorted to, and neither was the right or the policy ever called in question.

If we look to the second branch of this power, that which authorizes the appropriation of the money thus raised, we find that it is not less general and unqualified than the power to raise it. More comprehensive terms than to "pay the debts and provide for the common defense and general welfare" could not have been used. So intimately connected with and dependent on each other are these two branches of power that, had either been limited, the limitation would have had the like effect on the other. Had the power to raise money been conditional or restricted to special purposes, the appropriation must have corresponded with it, for none but the money raised could be appropriated; nor could it be appropriated to other purposes than those which were permitted. On the other hand, if the right of appropriation had been restricted to certain purposes it would be useless and improper to raise more than would be adequate to those purposes. It may fairly be inferred these restraints or checks have been carefully and intentionally avoided. The power in each branch is alike broad and unqualified, and each is drawn with peculiar fitness to the other, the latter requiring terms of great extent and force to accommodate the former, which have been adopted, and both placed in the same clause and sentence. Can it be presumed that all these circumstances were so nicely adjusted by mere accident? Is it not more just to conclude that they were the result of due deliberation and design? Had it been intended that Congress should be restricted in the appropriation of the public money to such expenditures as were authorized by a rigid construction of the other specific grants, how easy would it have been to have provided for it by a declaration to that effect. The omission of such declaration is, therefore, an additional proof that it was not intended that the grant should be so construed.

It was evidently impossible to have subjected this grant in either branch to such restriction without exposing the Government to very serious embarrassment. How carry it into effect? If the grant had been made in any degree dependent upon the States, the Government would have experienced the fate of the Confederation. Like it, it would have withered and soon perished. Had the Supreme Court been authorized, or should any other tribunal distinct from the Government be authorized to impose its veto, and to say that more money had been raised under either branch of this power, that is, by taxes, duties, imposts, or excises, than was necessary; that such a tax or duty was use-

less; that the appropriation to this or that purpose was unconstitutional, the movement might have been suspended and the whole system disorganized. It was impossible to have created a power within the Government, or any other power distinct from Congress and the Executive, which should control the movement of the Government in this respect and not destroy it. Had it been declared by a clause in the Constitution that the expenditures under this grant should be restricted to the construction which might be given of the other grants, such restraint, though the most innocent, could not have failed to have had an injurious effect on the vital principles of the Government and often on its most important measures. Those who might wish to defeat a measure proposed might construe the power relied on in support of it in a narrow and contracted manner, and in that way fix a precedent inconsistent with the true import of the grant. At other times those who favored a measure might give to the power relied on a forced or strained construction and, succeeding in the object, fix a precedent in the opposite extreme. Thus it is manifest that if the right of appropriation be confined to that limit measures may oftentimes be carried or defeated by considerations and motives altogether independent of and unconnected with their merits, and the several powers of Congress receive constructions equally inconsistent with their true import. No such declaration, however, has been made, and from the fair import of the grant, and, indeed, its positive terms, the inference that such was intended seems to be precluded.

Many considerations of great weight operate in favor of this construction, while I do not perceive any serious objections to it. If it be established it follows that the words "to provide for the common defense and general welfare" have a definite, safe, and useful meaning. The idea of their forming an original grant with unlimited power superseding every other grant is abandoned. They will be considered simply as conveying a right of appropriation, a right indispensable to that of raising a revenue, and necessary to expenditures under every grant. By it, as already observed, no new power will be taken from the States, the money to be appropriated being raised under a power already granted to Congress. By it, too, the motive for giving a forced or strained construction to any of the other specific grants will in most instances be diminished, and in many utterly destroyed. The importance of this consideration cannot be too highly estimated, since, in addition to the examples already given, it ought particularly to be recollected that, to whatever extent any specified power may be carried, the right of jurisdiction goes with it, pursuing it through all its incidents. The very important agency which this grant has in carrying into effect every other grant is a wrong argument in favor of the construction contended for. All the other grants are limited by the nature of the offices which they have severally to perform, each conveying a power to do a certain thing and that only, whereas this is co-extensive with the great scheme of the Government itself. It is the lever which raises and puts

the whole machinery in motion and continues the movement. Should either of the other grants fail in consequence of any condition or limitation attached to it or misconstruction of its powers, much injury might follow, but still it would be the failure of one branch of power, of one item in the system only. All the others might move on. But should the right to raise and appropriate the public money be improperly restricted the whole system might be sensibly affected, if not disorganized. Each of the other grants is limited by the nature of the grant itself. This by the nature of the Government only. Hence it became necessary that, like the power to declare war, this power should be commensurate with the great scheme of the Government and with all its purposes.

If then the right to raise and appropriate the public money is not restricted to the expenditures under the other specific grants, according to a strict construction of their powers, respectively, is there no limitation to it? Have Congress a right to raise and appropriate the money to any and to every purpose, according to their will and pleasure? They certainly have not. The Government of the United States is a limited Government, instituted for great national purposes, and for those only. Other interests are committed to the States, whose duty it is to provide for them. Each Government should look to the great and essential purposes for which it was instituted, and confine itself to those purposes. A State government will rarely, if ever, apply money to national purposes, without making it a charge to the nation. The people of the State would not permit it. Nor will Congress be apt to apply money in aid of the State administrations, for purposes strictly local, in which the nation at large has no interest, although the State should desire it. The people of the other States would condemn it. They would declare that Congress had no right to tax them for such a purpose, and dismiss, at the next election, such of their representatives as had voted for the measure, especially if it should be severely felt. I do not think that in offices of this kind there is much danger of the two governments mistaking their interests or their duties. I rather expect that they would soon have a clear and distinct understanding of them, and move on in great harmony.

Good roads and canals will promote many very important national purposes. They will facilitate the operations of war, the movements of troops, the transportation of cannon, of provisions, and every warlike store, much to our advantage, and to the disadvantage of the enemy in time of war. Good roads will facilitate the transportation of the mail, and thereby promote the purposes of commerce and political intelligence among the people. They will, by being properly directed to these objects, enhance the value of our vacant lands, a treasure of vast resource to the nation. To the appropriation of the public money to improvements, having these objects in view, and carried to a certain extent, I do not see any well-founded constitutional objection.

In regard to our foreign concerns, provided they are managed with integrity and ability, great liberality is allowable in the application of the public money. In the management of these concerns no State interests can be affected, no State rights violated. The complete and exclusive control over them is vested in Congress. The power to form treaties of alliance and commerce with foreign powers; to regulate by law our commerce with them; to determine on peace or war; to raise armies and a navy; to call forth the militia, and direct their operations, belongs to the General Government. These great powers, embracing the whole scope of our foreign relations, being granted, on what principle can it be said that the minor are withheld? Are not the latter clearly and evidently comprised in the former? Nations are sometimes called upon to perform to each other acts of humanity and kindness, of which we see so many illustrious examples between individuals in private life. Great calamities make appeals to the benevolence of mankind, which ought not to be resisted. Good offices in such emergencies exalt the character of the party rendering them. By exciting grateful feelings they soften the intercourse between nations, and tend to prevent war. Surely, if the United States have a right to make war, they have a right to prevent it. How was it possible to grant to Congress a power for such minor purposes, other than in general terms, comprising it within the scope and policy of that which conveyed it for the greater?

The right of appropriation is nothing more than a right to apply the public money to this or that purpose. It has no incidental power, nor does it draw after it any consequences of that kind. All that Congress could do under it, in the case of internal improvements, would be to appropriate the money necessary to make them. For every act requiring legislative sanction or support, the State authority must be relied on. The condemnation of the land, if the proprietors should refuse to sell it, the establishment of turnpikes and tolls, and the protection of the work, when finished, must be done by the State. To these purposes the powers of the General Government are believed to be utterly incompetent.

To the objection that the United States have no power, in any instance, which is not complete, to all the purposes to which it may be made instrumental, and, in consequence, that they have no right to appropriate any portion of the public money to internal improvements, because they have not the right of sovereignty and jurisdiction over them, when made, a full answer has, it is presumed, been already given. It may, however, be proper to add, that, if this objection was well-founded, it would not be confined to the simple case of internal improvements, but would apply to others of high importance. Congress have a right to regulate commerce. To give effect to this power, it becomes necessary to establish custom-houses in every State along the coast, and in many parts of the interior. The vast amount of goods imported, and the duties to be performed to accommodate the merchants and secure the

revenue, make it necessary that spacious buildings should be erected, especially in the great towns, for their reception. This, it is manifest, could best be performed under the direction of the General Government. Have Congress the right to seize the property of individuals if they should refuse to sell it, in quarters best adapted to the purpose, to have it valued, and to take it at the valuation? Have they a right to exercise jurisdiction within those buildings? Neither of these claims has ever been set up, nor could it, as is presumed, be sustained. They have invariably either rented houses, where such as were suitable could be obtained, or where they could not purchase the ground of individuals, erected the buildings, and held them under the laws of the State. Under the power to establish post offices and post-roads, houses are also requisite for the reception of the mails and the transaction of the business of the several offices. These have always been rented or purchased, and held under the laws of the State, in the same manner as if they had been taken by a citizen. The United States have a right to establish tribunals inferior to the Supreme Court, and such have been established in every State of the Union. It is believed that the houses for these inferior courts have invariably been rented. No right of jurisdiction in them has ever been claimed, nor other right than that of privilege, and that only while the court is in session. A still stronger case may be urged. Should Congress be compelled, by invasion or other cause, to remove the Government to some town within one of the States, would they have a right of jurisdiction over such town, or hold even the house in which they held their sessions, under other authority than the laws of such State? It is believed that they would not. If they have a right to appropriate money for any of these purposes, to be laid out under the protection of the laws of the State, surely they have an equal right to do it for the purposes of internal improvements.

It is believed that there is not a corporation in the Union which does not exercise great discretion in the application of the money raised by it, to the purposes of its institution. It would be strange if the Government of the United States, which was instituted for such important purposes, and endowed with such extensive powers, should not be allowed, at least, equal discretion and authority. The evil to be particularly avoided is the violation of State rights; shunning that, it seems to be reasonable and proper that the powers of Congress should be so construed as that the General Government, in its intercourse with other nations, and in our internal concerns, should be able to adopt all such measures lying within the fair scope and intended to facilitate the direct objects of its powers as the public welfare may require, and a sound and provident policy dictate.

The measures of Congress have been in strict accord with the view taken of the right of appropriation, both as to its extent and limitation, as will be shown by a reference to the laws, commencing at a very early period. Many roads have been opened, of which the following are the

principal: The first, from Cumberland, at the headwaters of the Potomac, in the State of Maryland, through Pennsylvania and Virginia, to the State of Ohio, March 29, 1806. (See vol. 4, page 13, of the late edition of the laws.) The second, from the frontiers of Georgia, on the route from Athens to New Orleans, to its intersection with the 31st degree of north latitude (April 31, 1806, page 58). The third, from the Mississippi, at a point and by a route described, to the Ohio (same act). The fourth, from Nashville, in Tennessee, to Natchez (same act). The fifth, from the 31st degree of north latitude, on the route from Athens to New Orleans, under such regulations as might be agreed on between the Executive and the Spanish Government (March 3, 1807, page 117). The sixth, from the foot of the rapids of the river Miami, of Lake Erie, to the western line of the Connecticut Reserve (December 12, 1811, page 364). The seventh, from the Lower Sandusky to the boundary line established by the treaty of Greenville (same act). The eighth, from a point where the United States road, leading from Vincennes to the Indian boundary line, established by the treaty of Greenville, strikes the said line, to the North Bend, in the State of Ohio (January 8, 1812, page 367). The ninth, for repairing and keeping in repair the road between Columbia, on Duck River, in Tennessee, and Madisonville, in Louisiana; and also the road between Fort Hawkins, in Georgia, and Fort Stoddard (April 27, 1816, page 104, of the acts of that year). The tenth, from the Shawneetown, on the Ohio River, to the Sabine, and to Kaskaskias, in Illinois (April 27, 1816, page 112). The eleventh, from Reynoldsburg, on Tennessee River, in the State of Tennessee, through the Chickasaw Nation, to interect the Natchez road near the Chickasaw old town (March 3, 1817, page 252). The 12th: By this act authority was given to the President to appoint three commissioners for the purpose of examining the country and laying out a road from the termination of the Cumberland road, at Wheeling, on the Ohio, through the States of Ohio, Indiana, and Illinois, to a point to be chosen by them, on the left bank of the Mississippi between St. Louis and the mouth of the Illinois River, and to report an accurate plan of the said road, with an estimate of the expense of making it. It is, however, declared by the act that nothing was thereby intened to imply an obligation, on the part of the United States, to make or defray the expense of making the said road or any part thereof.

In the late war two other roads were made by the troops for military purposes, one from the Upper Sandusky, in the State of Ohio, through the Black Swamp, towards Detroit, and another from Plattsburg, on Lake Champlain, through the Chatauga woods, towards Sackett's Harbor, which have since been repaired and improved by the troops. Of these latter there is no notice in the laws. The extra pay to the soldiers for repairing and improving those roads was advanced, in the first instance, from the appropriation to the Quartermaster's Department, and afterwards provided for by a specific appropriation by Con-

gress. The necessity of keeping those roads open and in good repair, being on the frontier, to facilitate a communication between our posts, is apparent.

All of these roads, except the first, were formed merely by cutting down the trees, and throwing logs across, so as to make causeways over such parts as were otherwise impassable. The execution was of the coarsest kind. The Cumberland road is the only regular work which has been undertaken by the General Government, or which could give rise to any question between the two governments respecting its powers. It is a great work, over the highest mountains in our Union, connecting, from the seat of the General Government, the eastern with the western waters, and more intimately the Atlantic with the Western States, in the formation of which \$1,800,000 have been expended. The measures pursued in this case require to be particularly noticed, as fixing the opinion of the parties, and particularly of Congress, on the important question of the right. Passing through Maryland, Pennsylvania, and Virginia, it was thought necessary and proper to bring the subject before their respective legislatures, to obtain their sanction, which was granted by each State by a legislative act, approving the route and providing for the purchase and condemnation of the land. This road was founded on an article of compact between the United States and the State of Ohio, under which that State came into the Union, and by which the expense attending it was to be defrayed by the application of a certain portion of the money arising from the sale of the public lands within that State. In this instance, which is by far the strongest, in respect to the expense, extent, and nature of the work done, the United States have exercised no act of jurisdiction or sovereignty within either of the States, by taking the land from the proprietors by force; by passing acts for the protection of the road; or to raise a revenue from it by the establishment of turnpikes and tolls, or any other act founded on the principle of jurisdiction or right. Whatever they have done has, on the contrary, been founded on the opposite principle; on the voluntary and unqualified admission that the sovereignty belonged to the State, and not to the United States; and that they could perform no act which should tend to weaken the power of the State, or to assume any to themselves. All that they have done has been to appropriate the public money to the construction of this road, and to cause it to be constructed; for I presume that no distinction can be taken between the appropriation of money raised by the sale of the public lands, and of that which arises from taxes, duties, imposts, and excises; nor can I believe that the power to appropriate derives any sanction from a provision to that effect having been made by an article of compact between the United States and the people of the then Territory of Ohio. This point may, however, be placed in a clearer light by a more particular notice of the article itself.

By an act of April 30, 1802, entitled "An act to enable the people of the eastern division of the Territory northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," after describing the limits of the proposed new State, and authorizing the people thereof to elect a convention to form a constitution, the three following propositions were made to the convention, to be obligatory on the United States, if accepted by it: First, that section number sixteen of every township, or, where such section had been sold, other lands equivalent thereto, should be granted to the inhabitants of such township, for the use of free schools. Second, that the six miles' reservation, including the salt springs commonly called the Sciota salt springs; the salt springs near the Muskingum River, and in the military tract, with the sections which include the same, should be granted to the said State, for the use of the people thereof, under such regulations as the legislature of the State should prescribe; provided, that it should never sell or lease the same for more than ten years. Third, that one-twentieth part of the proceeds of the public lands lying within the said State, which might be sold by Congress, from and after the 30th June ensuing, should be applied to the laying out and making public roads, from the navigable waters emptying into the Atlantic, to the Ohio, and through the State of Ohio; such roads to be laid out under the authority of Congress, with the consent of the several States through which they should pass.

These three propositions were made on the condition that the convention of the State should provide, by an ordinance, irrevocable without the consent of the United States, that every tract of land sold by Congress, after the 30th of June ensuing, should remain, for the term of five years, after sale, exempt from every species of tax whatsoever.

It is impossible to read the ordinance of the 23d of April, 1784, or the provisions of the act of April 30, 1802, which are founded on it, without being profoundly impressed with the enlightened and magnanimous policy which dictated them. Anticipating that the new States would be settled by the inhabitants of the original States and their offspring, no narrow or contracted jealousy was entertained of their admission into the Union, in equal participation in the national sovereignty with the original States. It was foreseen, at the early period at which that ordinance passed, that the expansion of our Union to the Lakes and to the Mississippi and all its waters, would not only make us a greater power, but cement the Union itself. These three propositions were well calculated to promote these great results. A grant of land to each township, for free schools, and of the salt springs to the State, which were within its limits, for the use of its citizens, with 5 per cent. of the money to be raised from the sale of lands within the State, for the construction of roads between the original States and the new State, and of other roads within the State, indicated a spirit not to be mis-

taken, nor could it fail to produce a corresponding effect in the bosoms of those to whom it was addressed. For these considerations the sole return required of the convention was, that the new State should not tax the public lands which might be sold by the United States within it, for the term of five years after they should be sold. As the value of these lands would be enhanced by this exemption from taxes for that term, and from which the new State would derive its proportionable benefit, and as it would also promote the rapid sale of those lands, and with it the augmentation of its own population, it cannot be doubted, had this exemption been suggested, unaccompanied by any propositions of particular advantage, that the convention would, in consideration of the relation which had before existed between the parties, and was about to be so much improved, most willingly have acceded to it, and without regarding it as an onerous condition.

Since, then, it appears that the whole of the money to be employed in making this road was to be raised from the sale of public lands, and which would still belong to the United States, although no mention had been made of them in the compact, it follows that the application of the money to that purpose stands upon the same ground as if such compact had not been made, and, in consequence, that the example in favor of the right of appropriation is in no manner affected by it.

The same rule of construction of the right of appropriation has been observed, and the same liberal policy pursued, towards the other new States, with certain modifications adapted to the situation of each, which were adopted with the State of Ohio. As, however, the reasoning which is applicable to the compact with Ohio, in relation to the right of appropriation, in which light only I have adverted to it, is equally applicable to the several compacts with the other new States, I deem it unnecessary to take a particular notice of them.

It is proper to observe that the money which was employed in the construction of all the other roads was taken directly from the Treasury. This fact affords an additional proof that, in the contemplation of Congress, no difference existed in the application of money to those roads, between that which was raised by the sale of lands, and that which was derived from taxes, duties, imposts, and excises.

So far, I have confined my remarks to the acts of Congress respecting the right of appropriation to such measures only as operate internally and affect the territory of the individual States. In adverting to those which operate externally and relate to foreign powers, I find only two which appear to merit particular attention. These were gratuitous grants of money for the relief of foreigners in distress; the first, in 1794, to the inhabitants of Saint Domingo, who sought an asylum on our coast from the convulsions and calamities of the island; the second in 1812, to the people of Caracas, reduced to misery by an earthquake. The

considerations which were applicable to these grants have already been noticed and need not be repeated.

In this examination of the right of appropriation, I thought it proper to present to view also the practice of the Government under it, and to explore the ground on which each example rested, that the precise nature and extent of the construction thereby given of the right might be clearly understood. The right to raise money would have given, as is presumed, the right to use it, although nothing had been said to that effect in the Constitution. And where the right to raise it is granted, without special limitation, we must look for such limitation to other causes. Our attention is first drawn to the right to appropriate, and not finding it there, we must then look to the general powers of the Government, as designated by the specific grants, and to the purposes contemplated by them, allowing to this, the right to raise money, the first and most important of the enumerated powers, a scope which will be competent to those purposes. The practice of the Government, as illustrated by numerous and strong examples directly applicable, ought surely to have great weight in fixing the construction of each grant. It ought, I presume, to settle it, especially where it is acquiesced in by the nation, and produces a manifest and positive good. A practical construction, thus supported, shows that it has reason on its side, and is called for by the interests of the Union. Hence, too, the presumption that it will be persevered in. It will surely be better to admit that the construction given by these examples has been just and proper, than to deny that construction and still to practice on it—to say one thing and to do another.

Wherein consists the danger of giving a liberal construction to the right of Congress to raise and appropriate the public money? It has been shown that its obvious effect is to secure the rights of the States from encroachment and greater harmony in the political movement between the two governments, while it enlarges to a certain extent, in the most harmless way, the useful agency of the General Government for all the purposes of its institution. Is not the responsibility of the representative to his constituent, in every branch of the General Government, equally strong, and as sensibly felt, as in the State governments, and is not the security against abuse as effectual in the one as in the other government? The history of the General Government, in all its measures, fully demonstrates that Congress will never venture to impose unnecessary burdens on the people, or any that can be avoided. Duties and imposts have always been light, not greater perhaps than would have been imposed for the encouragement of our manufactures, had there been no occasion for the revenue arising from them; and taxes and excises have never been laid, except in cases of necessity, and repealed as soon as the necessity ceased. Under this mild process, and the sale of some hundreds of millions of acres of good land, the Government will be possessed of money, which may be applied with

great advantage to national purposes. Within the States only will it be applied, and, of course, for their benefit, it not being presumable that such appeals as were made to the benevolence of the country, in the instances of the inhabitants of Saint Domingo and Caracas, will often occur. How, then, shall this revenue be applied? Should it be idle in the Treasury? That our resources will be equal to such useful purposes I have no doubt, especially if by completing our fortifications, and raising and maintaining our Navy at the point provided for, immediately after the war, we sustain our present altitude, and preserve, by means thereof, for any length of time, the peace of the Union.

When we hear charges raised against other Governments of breaches of their constitutions, or rather of their charters, we always anticipate the most serious consequences; communities deprived of privileges which they have long enjoyed, or individuals oppressed and punished, in violation of the ordinary forms and guards of trial to which they were accustomed and entitled. How different is the situation of the United States! Nor can anything mark more strongly the great characteristics of that difference than the grounds on which like charges are raised against this Government. It is not alleged that any portion of the community, or any individual, has been oppressed, or that money has been raised under a doubtful title. The principal charges are, that a work of great utility to the Union, and affecting, immediately, and with like advantage, many of the States has been constructed; that pensions to the surviving patriots of our Revolution, to patriots who fought the battles and promoted the independence of their country, have been granted, by money, too, raised not only without oppression, but almost without being felt, and under an acknowledged constitutional power.

From this view of the right to appropriate, and of the practice under it, I think that I am authorized to conclude that the right to make internal improvements has not been granted by the power "to pay the debts, and provide for the common defense and general welfare," included in the first of the enumerated powers; that that grant conveys nothing more than a right to appropriate the public money, and stands on the same ground with the right to lay and collect taxes, duties, imposts, and excises, conveyed by the first branch of that power; that the Government itself being limited, both branches of the power to raise and appropriate the public money are also limited; the extent of the Government, as designated by the specific grants, marking the extent of the power in both branches, extending, however, to every object embraced by the fair scope of those grants, and not confined to a strict construction of their respective powers, it being safer to aid the purposes of these grants by the appropriation of money than to extend, by a forced construction, the grant itself. That, although the right to appropriate the public money to such improvements affords a resource indispensably necessary to such a scheme, it is, nevertheless, deficient as a power in the great characteristics on which its execution depends.

The substance of what has been urged on this subject may be expressed in a few words. My idea is, that Congress have an unlimited power to raise money, and that, in its appropriation, they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense, and of general, not local, national, not State, benefit.

I will now proceed to the fifth source from which the power is said to be derived, viz, the power to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any Department or officer thereof. This is the seventeenth and last of the enumerated powers granted to Congress.

I have always considered this power as having been granted on a principle of greater caution to secure the complete execution of all the powers which had been vested in the General Government. It contains no distinct and specific power, as every other grant does, such as to lay and collect taxes, to declare war, to regulate commerce, and the like. Looking to the whole scheme of the General Government, it gives to Congress authority to make all laws which should be deemed necessary and proper for carrying all its powers into effect. My impression has been, invariably, that this power would have existed, substantially, if this grant had not been made; for why is any power granted, unless it be to be executed when required, and how can it be executed under our Government, unless it be by laws necessary and proper for the purpose, that is, well adapted to the end? It is a principle universally admitted that a grant of a power conveys, as a necessary consequence or incident to it, the means of carrying it into effect, by a fair construction of its import. In the formation, however, of the Constitution which was to act directly upon the people, and be paramount, to the extent of its powers, to the constitutions of the States, it was wise in its framers to leave nothing to implication which might be reduced to certainty. It is known that all power which rests solely on that ground has been systematically and zealously opposed under all Governments with which we have any acquaintance; and it was reasonable to presume, that, under our system, where there was a division of the sovereignty between the two independent Governments; the measures of the General Government would excite equal jealousy, and produce an opposition not less systematic, though, perhaps, less violent. Hence the policy, by the framers of our Government, of securing, by a fundamental declaration in the Constitution, a principle which, in all other Governments, had been left to implication only. The terms, necessary and proper, secure to the powers of all the grants to which the authority given in this is applicable a fair and sound construction, which is equally binding, as a rule, on both Governments, and on all their departments.

In examining the right of the General Government, to adopt and execute, under this grant, a system of internal improvement, the sole ques-

tion to be decided is, whether the power has been granted under any of the other grants. If it has, this power is applicable to it, to the extent sated. If it has not, it does not exist at all, for it has not been hereby granted. I have already examined all the other grants (one only excepted, which will next claim attention), and shown, as I presume, on the most liberal construction of their powers, that the right has not been granted by any of them. Hence it follows, that, in regard to them, it has not been granted by this.

I come now to the last source from which this power is said to be derived, viz, the power to dispose of, and make all needful rules and regulations respecting the territory or other property of the United States, which is contained in the second clause of the third section of the fourth article of the Constitution.

To form a just opinion of the nature and extent of this power, it will be necessary to bring into view the provisions contained the first clause of the section of the article referred to, which makes an essential part of the policy in question. By this it is declared, that new States shall be admitted into the Union, but that no new States shall be formed or erected within the jurisdiction of any other State; nor any States, be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the United States.

If we recur to the condition of our country at the commencement of the Revolution, we shall see the origin and cause of these provisions. By the charters of the several colonies, limits by latitude and other descriptions, were assigned to each. In commencing the Revolution, the colonies, as has already been observed, claimed by those limits, although their population extended, in many instances, to a small portion of the territory lying within them. It was contended, by some of the States, after the declaration of independence, that the vacant lands, lying within any of the States, should become the property of the Union, as by a common exertion they would be acquired. This claim was resisted by the others, on the principle that all the States entered into the contest in the full extent of their chartered rights, and that they ought to have the full benefit of those rights in the event of success. Happily, this controversy was settled, as all interfering claims and pretensions, between the members of our Union, and between the General Government and any of these members, have been, in the most amicable manner, and to the satisfaction of all parties. On the recommendation of Congress, the individual States, having such territory within their chartered limits, ceded large portions thereof to the United States, on condition that it should be laid off into districts of proper dimensions, the lands to be sold for the benefit of the United States; and that the districts be admitted into the Union, when they should obtain such a population as it might be thought proper and reasonable to prescribe. This

is the territory, and this the property, referred to in the second clause of the fourth article of the Constitution.

All the States which had made cessions of vacant territory, except Georgia, had made them before the adoption of the Constitution, and that State had made a proposition to Congress to that effect, which was under consideration at the time the Constitution was adopted. The cession was completed after the adoption of the Constitution. It was made on the same principle, and on similar conditions with those which had been already made by the other States. As differences might arise respecting the right or the policy in Congress to admit new States into the Union, under the new government, or to make regulations for the government of the territory ceded in the intermediate state, or for the improvement and sale of the public lands, or to accept other cessions, it was thought proper to make special provisions for these objects, which was accordingly done by the above-recited clause in the Constitution.

Thus the power of Congress over the ceded territory was not only limited to these special objects, but was also temporary. As soon as the Territory became a State, the jurisdiction over it, as it had before existed, ceased. It extended afterwards only to the unsold lands, and as soon as the whole were sold, it ceased in that sense, also, altogether. From that moment, the United States have no jurisdiction or power in the new States, other than in the old, nor can it be obtained except by an amendment of the Constitution.

Since, then, it is manifest that the power granted to Congress to dispose of, and make all needful regulations respecting the territory and other property of the United States, relates solely to the territory and property which had been ceded by individual States, and which, after such cession, lay without their respective limits, and for which special provision was deemed necessary, the main power of the Constitution operating internally, not being applicable or adequate thereto, it follows that this power gives no authority, and has even no bearing on the question of internal improvement. The authority to admit new States and to dispose of the property and regulate the territory, is not among the enumerated powers granted to Congress, because the duties to be performed under it are not among the ordinary duties of that body, like the imposition of taxes, the regulation of commerce, and the like. They are objects in their nature special, and for which special provision was more suitable and proper. Having now examined all the powers of Congress, under which the right to adopt and execute a system of internal improvement is claimed, and the reasons in support of it, in each instance, I think that it may fairly be concluded that such a right has not been granted. It appears, and is admitted, that much may be done in aid of such a system, by the right which is derived from several of the existing grants, and more especially from that to appropriate the public money. But still it is manifest, that, as a system for the United States, it can never be carried into effect, under that grant, nor under all of

them united, the great and essential power being deficient ; consisting of a right to take up the subject on principle ; to cause our Union to be examined by men of science, with a view to such improvements ; to authorize commissioners to lay off the roads and canals in all proper directions ; to take the land at a valuation if necessary, and to construct the works ; to pass laws, with suitable penalties for their protection ; and to raise a revenue from them ; to keep them in repair, and make further improvement, by the establishment of turnpikes, and tolls, with gates to be placed at the proper distances.

It need scarcely be remarked that this power will operate, like many others now existing, without affecting the sovereignty of the States, except in the particular offices to be performed. The jurisdiction of the several States may still exist over the roads and canals within their respective limits, extending alike to persons and property, as if the right to make and protect such improvements had not been vested in Congress. The right being made commensurate simply with the purposes indispensable to the system, may be strictly confined to them. The right of Congress to protect the works, by-laws, imposing penalties, would operate on the same principles as the right to protect the mail. The act being punishable only, a jurisdiction over the place would be altogether unnecessary and even absurd.

In the preceding inquiry, little has been said of the disadvantages which would attend the exercise of such a power by the General Government. I have made the inquiry under a deep conviction that they are almost incalculable, and that there was a general concurrence of opinion among our fellow-citizens to that effect. Still it may not be improper for me to state the grounds upon which my own impression is founded. If it sheds no additional light on this interesting part of the subject, it will, at least, show that I have had more than one powerful motive for making the inquiry. A general idea is all that I shall attempt.

The advantages of such a system must depend upon the interests to be affected by it, and the extent to which they may be affected, and those must depend on the capacity of our country for improvement, and the means at its command applicable to that object.

I think that I may venture to affirm that there is no part of our globe comprehending so many degrees of latitude on the main ocean, and so many degrees of longitude into the interior, that admits of such great improvement, and at so little expense. The Atlantic, on the one side, and the lakes, forming almost inland seas, on the other, separated by high mountains which rise in the valley of the Saint Lawrence, and determine in that of the Mississippi, traversing from north to south, almost the whole interior ; with innumerable rivers on every side of those mountains, some of vast extent, many of which take their sources near to each other, give the great outline ; the details are to be seen on the valuable maps of our country.

It appears, by the light already before the public, that it is practicable and easy to connect, by canals, the whole coast, from its southern to its northern extremity, in one continued inland navigation; and to connect, in like manner, in many parts, the Western lakes and rivers with each other. It is equally practicable and easy to facilitate the intercourse between the Atlantic and the Western country, by improving the navigation of many of the rivers, which have their sources near to each other in the mountains, on each side, and by good roads across the mountains, between the highest navigable points of those rivers. In addition to the example of the Cumberland road, already noticed, another of this kind is now in train, from the headwaters of the river James to those of the Kanawha; and in like manner may the Savannah be connected with the Tennessee. In some instances it is understood that the Eastern and Western waters may be connected together directly by canals. One great work of this kind is now in its progress and far advanced in the State of New York, and there is good reason to believe that two others may be formed, one at each extremity of the high mountains above mentioned, connecting in the one instance the waters of the Saint Lawrence with Lake Champlain, and in the other, some of the most important of the Western rivers with those emptying into the Gulf of Mexico; the advantage of which will be seen at the first glance by an enlightened observer.

Great improvements may also be made by good roads, in proper directions, through the interior of the country. As these roads would be laid out on principle, on a full view of the country, its mountains, rivers, &c., it would be useless, if I had the knowledge, to go into detail respecting them. Much has been done by some of the States, but yet much remains to be done with a view to the Union.

Under the colonial governments, improvements of this kind were not thought of. There was, it is believed, not one canal, and little communication from colony to colony. It was their policy to encourage the intercourse between each colony and the parent country only. The roads which were attended to were those which led from the interior of each colony to its principal towns on the navigable waters. By those routes the produce of the country was carried to the coast and shipped thence to the mercantile house in London, Liverpool, Glasgow, or other towns to which the trade was carried on. It is believed that there was but one connected route from North to South at the commencement of the Revolution, and that a very imperfect one. The existence and principle of our Union point out the necessity of a very different policy.

The advantages which would be derived from such improvements are incalculable. The facility which would thereby be afforded to the transportation of the whole of the rich productions of our country to market, would alone more than ample compensate for all the labor and expense attending them. Great, however, as is that advantage, it is one only of many, and by no means the most important. Every power of the

General Government and of the State governments, connected with the strength and resources of the country, would be made more efficient for the purposes intended by them. In war, they would facilitate the transportation of men, ordnance, and provisions, and munitions of war of every kind, to every part of our extensive coast and interior, on which an attack might be made or threatened. Those who have any knowledge of the occurrences of the late war, must know the good effect which would result, in the event of another war, from the command of an interior navigation alone, along the coast, for all the purposes of war as well as of commerce between the different parts of our Union. The impediments to all military operations which proceeded from the want of such a navigation, and the reliance which was placed, notwithstanding those impediments, on such a commerce, cannot be forgotten. In every other line their good effect would be most sensibly felt. Intelligence by means of the Post-Office Department would be more easily, extensively, and rapidly diffused. Parts the most remote from each other would be brought more closely together. Distant lands would be made more valuable, and the industry of our fellow-citizens on every portion of our soil be better rewarded.

It is natural, in so great a variety of climate, that there should be a corresponding difference in the produce of the soil—that one part should raise what the other might want. It is equally natural that the pursuits of industry should vary in like manner; that labor should be cheaper, and manufactures succeed better, in one part than in another; that, were the climate the most severe and the soil less productive, navigation, the fisheries, and commerce, should be most relied on. Hence the motive for an exchange, for mutual accommodation and active intercourse between them. Each part would thus find for the surplus of its labor, in whatever article it consisted, an extensive market at home, which would be the most profitable because free from duty.

There is another view in which these improvements are of still more vital importance. The effect which they would have on the bond of Union itself affords an inducement for them more powerful than any which have been urged, or than all of them united. The only danger to which our system is exposed arises from its expansion over a vast territory. Our Union is not held together by standing armies, or by any ties, other than the positive interests and powerful attractions of its parts towards each other. Ambitious men may hereafter grow up among us, who may promise to themselves advancement from a change, and by practising upon the sectional interests, feelings, and prejudices, endeavor under various pretexts to promote it. The history of the world is replete with examples of this kind—of military commanders and demagogues becoming usurpers and tyrants, and of their fellow-citizens becoming their instruments and slaves. I have little fear of this danger, knowing well how strong the bond which holds us together is, and who the people are who are thus held together. But still it is

proper to look at and to provide against it, and it is not within the compass of human wisdom to make a more effectual provision than would be made by the proposed improvements. With their aid, and the intercourse which would grow out of them, the parts would soon become so compacted and bound together that nothing could break it.

The expansion of our Union over a vast territory cannot operate unfavorably to the States individually. On the contrary, it is believed that the greater the expansion, within practicable limits, and it is not easy to say what are not so, the greater the advantage which the States individually will derive from it. With governments separate, vigorous, and efficient for all local purposes, their distance from each other can have no injurious effect upon their respective interests. It has already been shown, that, in some important circumstances, especially with the aid of these improvements, they must derive great advantage from that cause alone, that is, from their distance from each other. In every other way the expansion of our system must operate favorably for every State in proportion as it operates favorably for the Union. It is in that sense only that it can become a question with the States, or rather with the people who compose them. As States, they can be affected by it only by their relation to each other through the General Government, and by its effect on the operations of that Government. Manifest it is, that to any extent to which the General Government can sustain and execute its functions with complete effect, will the States, that is, the people who compose them, be benefited. It is only when the expansion shall be carried beyond the faculties of the General Government, so as to enfeeble its operations, to the injury of the whole, that any of the parts can be injured. The tendency, in that stage, will be to dismemberment, and not to consolidation. This danger should, therefore, be looked at with profound attention, as one of a very serious character. I will remark here, that, as the operations of the National Government are of a general nature, the States having complete power for internal and local purposes, the expansion may be carried to very great extent, and with perfect safety. It must be obvious to all, that the further the expansion is carried, provided it be not beyond the just limit, the greater will be the freedom of action to both governments, and the more perfect their security; and, in all other respects, the better the effect will be to the whole American people. Extent of territory, whether it be great or small, gives to a nation many of its characteristics. It marks the extent of its resources, of its population, of its physical force. It marks, in short, the difference between a great and a small power.

To what extent it may be proper to expand our system of Government, is a question which does not press for a decision at this time. At the end of the Revolutionary war, in 1783, we had, as we contended and believed, a right to the free navigation of the Mississippi; but it was not until after the expiration of twelve years, in 1795, that that right was acknowledged and enjoyed. Further difficulties occurred, in the

bustling of a contentious world, when, at the expiration of eight years more, the United States, sustaining the strength and energy of their character, acquired the province of Louisiana, with the free navigation of the river, from its source to the ocean, and a liberal boundary on the western side. To this Florida has since been added, so that we now possess all the territory in which the original States had any interest, or in which the existing States can be said, either in a national or local point of view, to be in any way interested. A range of States, on the western side of the Mississippi, which already is provided for, puts us essentially at ease. Whether it will be wise to go further, will turn on other considerations than those which have dictated the course heretofore pursued. At whatever point we may stop, whether it be at a single range of States beyond the Mississippi, or by taking a greater scope, the advantage of such improvements is deemed of the highest importance. It is so, on the present scale. The further we go the greater will be the necessity for them.

It cannot be doubted that improvements for great national purposes would be better made by the National Government than by the governments of the several States. Our experience prior to the adoption of the Constitution demonstrated that, in the exercise by the individual States of most of the powers granted to the United States, a contracted rivalry of interest and misapplied jealousy of each other had an important influence on all their measures, to the great injury of the whole. This was particularly exemplified by the regulations which they severally made of their commerce with foreign nations and with each other. It was this utter incapacity in the State governments, proceeding from these and other causes, to act as a nation and to perform all the duties which the nation owed to itself under any system which left the General Government dependent on the States which produced the transfer of these powers to the United States by the establishment of the present Constitution. The reasoning which was applicable to the grant of any of the powers now vested in Congress is likewise so, at least to a certain extent, to that in question. It is natural that the States, individually, in making improvements should look to their particular and local interests. The members composing their respective legislatures represent the people of each State only, and might not feel themselves at liberty to look to objects, in these respects, beyond that limit. If the resources of the Union were to be brought into operation under the direction of the State assemblies, or in concert with them, it may be apprehended that every measure would become the object of negotiation, of bargain and barter, much to the disadvantage of the system, as well as discredit to both governments. But Congress would look to the whole, and make improvements to promote the welfare of the whole. It is the peculiar felicity of the proposed amendment that, while it will enable the United States to accomplish every national object, the improvements made with that view will eminently promote the welfare of the individual States,

who may also add such others as their own particular interests may require.

The situation of the Cumberland road requires the particular and early attention of Congress. Being formed over very lofty mountains, and in many instances over deep and wide streams, across which valuable bridges have been erected which are sustained by stone walls, as are many other parts of the road, all these works are subject to decay, have decayed, and will decay rapidly, unless timely and effectual measures are adopted to prevent it.

The declivities from the mountains and all the heights must suffer from the frequent and heavy falls of water and its descent to the valleys, as also from the deep congelations during our severe winters. Other injuries have also been experienced on this road, such as the displacing the capping of the walls and other works, committed by worthless people, either from a desire to render the road impassable, or to have the transportation in another direction, or from a spirit of wantonness to create employment for idlers. These considerations show that an active and strict police ought to be established over the whole road, with power to make repairs when necessary; to establish turnpikes and tolls, as the means of raising money to make them, and to prosecute and punish those who commit waste and other injuries.

Should the United States be willing to abandon this road to the States through which it passes, would they take charge of it, each of that portion within its limits, and keep it in repair? It is not to be presumed that they would, since the advantages attending it are exclusively national, by connecting, as it does, the Atlantic with the Western States, and in a line with the seat of the National Government. The most expensive parts of this road lie within Pennsylvania and Virginia, very near the confines of each State, and in a route not essentially connected with the commerce of either.

If it is thought proper to vest this power in the United States, the only mode in which it can be done is by an amendment of the Constitution. The States, individually, cannot transfer the power to the United States, nor can the United States receive it. The Constitution forms an equal and the sole relation between the General Government and the several States, and it recognizes no change in it which shall not in like manner apply to all. If it is once admitted that the General Government may form compacts with individual States not common to the others, and which the others might even disapprove, into what pernicious consequences might it not lead? Such compacts are utterly repugnant to the principles of the Constitution, and of the most dangerous tendency. The States through which this road passes have given their sanction only to the route and to the acquisition of the soil by the United States—a right very different from that of jurisdiction, which cannot be granted without an amendment to the Constitution, and which need not be granted for the purposes of this system, except in the limited manner

heretofore stated. On full consideration, therefore, of the whole subject, I am of opinion that such an amendment ought to be recommended to the several States for their adoption.

I have now essentially executed that part of the task, which I imposed on myself, of examining the right of Congress to adopt and execute a system of internal improvement, and I presume have shown that it does not exist. It is, I think, equally manifest that such a power vested in Congress and wisely executed would have the happiest effect on all the great interests of our Union. It is, however, my opinion that the power should be confined to great national works only, since, if it were admitted, it would be liable to abuse, and might be productive of evil. For all minor improvements the resources of the States, individually, would be fully adequate, and by the States such improvements might be made with greater advantage than by the Union, as they would understand better such as their more immediate and local interests required.

In the view above presented I have thought it proper to trace the origin of our institutions, and particularly of the State and National Governments, for, although they have a common origin in the people, yet, as the point at issue turned on what were the powers granted to the one government, and what were those which remained to the other, I was persuaded that an analysis which should mark distinctly the source of power in both governments, with its progress in each, would afford the best means for obtaining a sound result. In our political career there are, obviously, three great epochs. The colonial state forms the first; the Revolutionary movement, from its commencement to the adoption of the Articles of Confederation, the second; and the intervening space, from that event to the present day, the third. The first may be considered the infant state. It was the school of morality, of political science, and just principles. The equality of rights enjoyed by the people of every colony, under their original charters, forms the basis of every existing institution, and it was owing to the creation by those charters of distinct communities that the power, when wrested from the Crown, passed directly and exclusively to the people of each colony. The Revolutionary struggle gave activity to those principles, and its success secured to them a permanent existence in the governments of our Union, State and National. The third epoch comprises the administration under the Articles of Confederation, with the adoption of the Constitution and administration under it. On the first and last of these epochs it is not necessary to enlarge for any purpose connected with the object of this inquiry. To the second, in which we were transferred by a heroic exertion from the first to the third stage, and whose events give the true character to every institution, some further attention is due. In tracing in greater detail the prominent acts of a movement to which we owe so much, I shall perform an office which, if not useful,

will be gratifying to my own feelings, and I hope not unacceptable to my readers.

Of the Revolutionary movement itself, sentiments too respectful, too exalted, cannot be entertained. It is impossible for any citizen having a just idea of the dangers which we had to encounter to read the record of our early proceedings, and to see the firmness with which they were met and the wisdom and patriotism which were displayed in every stage, without being deeply affected by it. An attack on Massachusetts was considered an attack on every colony, and the people of each moved in her defense as in their own cause. The meeting of the General Congress in Philadelphia on the 6th of September, 1774, appears to have been the result of a spontaneous impulse in every quarter at the same time. The first public act proposing it, according to the journals of the first Congress, was passed by the house of representatives of Connecticut on the 3d of June of that year; but it is presumed that the first suggestion came from Massachusetts, the colony most oppressed, and in whose favor the general sympathy was much excited. The exposition which that Congress made of grievances, in the petition to the King, in the address to the people of Great Britain, and in that to the people of the several colonies, evinced a knowledge so profound of the English constitution and of the general principles of free government and of liberty; of our rights founded on that constitution and on the charters of the several colonies, and of the numerous and egregious violations which had been committed of them, as must have convinced all impartial minds that the talent on this side of the Atlantic was at least equal to that on the other. The spirit in which those papers were drawn, which was known to be in strict accord with the public sentiment, proved that, although the whole people cherished a connection with the parent country, and were desirous of preserving it on just principles, they nevertheless stood embodied at the parting line, ready to separate forever if a redress of grievances, the alternative offered, was not promptly rendered. That alternative was rejected, and in consequence war and dismemberment followed.

The powers granted to the delegates of each colony who composed the first Congress looked primarily to the support of rights and to a redress of grievances, and in consequence to the restoration of harmony, which was ardently desired. They justified, however, any extremity in case of necessity. They were ample for such purposes, and were executed in every circumstance with the utmost fidelity. It was not until after the meeting of the second Congress, which took place on the 10th May, 1775, when full proof was laid before it of the commencement of hostilities in the preceding month, by a deliberate attack of the British troops on the militia and inhabitants of Lexington and Concord, in Massachusetts, that war might be said to be decided on, and measures were taken to support it. The progress even then was slow and reluctant, as will be seen by their second petition to the King and their second address to

the people of Great Britain, which were prepared and forwarded after that event. The arrival, however, of large bodies of troops, and the pressure of war in every direction, soon dispelled all hope of accommodation.

On the 15th of June, 1775, a commander-in-chief of the forces raised and to be raised for the defense of American liberty was appointed by the unanimous vote of Congress, and his conduct in the discharge of the duties of that high trust, which he held through the whole of the war, has given an example to the world for talents as a military commander; for integrity, fortitude, and firmness under the severest trials; for respect to the civil authority and devotion to the rights and liberties of his country, of which neither Rome nor Greece have exhibited the equal. I saw him in my earliest youth, in the retreat through Jersey, at the head of a small band, or rather in its rear, for he was always next the enemy, and his countenance and manner made an impression on me which time can never efface. A lieutenant then in the Third Virginia Regiment, I happened to be on the rear guard at Newark, and I counted the force under his immediate command by platoons as it passed me, which amounted to less than three thousand men. A deportment so firm, so dignified, so exalted, but yet so modest and composed, I have never seen in any other person.

On the 6th July, 1775, Congress published a declaration of the causes which compelled them to take up arms, and immediately afterwards took measures for augmenting the army and raising a navy; for organizing the militia and providing cannon, and small arms and military stores of every kind; for raising a revenue, and pushing the war offensively with all the means in their power. Nothing escaped the attention of that enlightened body. The people of Canada were invited to join the Union, and a force sent into the province to favor the Revolutionary party, which, however, was not capable of affording any essential aid. The people of Ireland were addressed in terms manifesting due respect for the sufferings, the talents, and patriotism of that portion of the British Empire; and a suitable acknowledgment was made to the assembly of Jamaica, for the approbation it had expressed of our cause, and the part it had taken in support of it with the British Government.

On the 2d of June, 1775, the convention of Massachusetts, by a letter signed by their president, of May the 10th, stated to Congress "that they labored under difficulties for the want of a regular form of government, and requested to be favored with 'explicit advice respecting the taking up and exercising the powers of civil government,' and declaring their readiness 'to submit to such a general plan as the Congress might direct for the colonies, or that they would make it their great study to establish such a form of government there as should not only promote their own advantage but the union and interest of all America.'" To this application an answer was given on the 9th by which it was

recommended to the convention "to write letters to the inhabitants of the several places entitled to representation in assembly, requesting them to choose such representatives, and that the assembly, when chosen, should elect councilors, and that said assembly or council should exercise the powers of government, until a governor of His Majesty's appointment will consent to govern the colony according to its charter."

On the 18th October of the same year the delegates from New Hampshire laid before Congress an instruction from their convention "to use their utmost endeavors to obtain the advice and direction of Congress with respect to a method for administering justice, and regulating their civil police." To this a reply was given on the 3d November, by which it was recommended to the convention "to call a full and free representation of the people, and that the representatives, if they thought it necessary, should establish such a form of government as, in their judgment, would best promote the happiness of the people, and most effectually secure peace and good order in the province, during the continuance of the present dispute between Great Britain and the colonies."

On the 4th November it was resolved by Congress "that if the convention of South Carolina shall find it necessary to establish a form of government in that colony, it be recommended to that convention to call a full and free representation of the people, and the said representatives, if they think it necessary, shall establish such a form of government as, in their judgment, will best promote the happiness of the people and most effectually secure peace and good order in the colony, during the continuance of the present dispute between Great Britain and the colonies."

On the 4th December following, a resolution passed recommending the same measure, and precisely in the same words, to the convention of Virginia.

On the 10th May, 1776, "it was recommended to the respective assemblies and convention of the united colonies, where no government sufficient to the exigencies of their affairs has been established, to adopt such government as should, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general."

On the 7th June resolutions respecting independence were moved and seconded, which were referred to a Committee of the Whole on the 8th and 10th, on which latter day it was resolved to postpone a decision on the first resolution, or main question, until the 1st July, but that no time might be lost in case the Congress agree thereto, that a committee be appointed to prepare a declaration to the effect of that resolution.

On the 11th June, 1776, Congress appointed a committee to prepare and digest a plan of confederation for the colonies. On the 12th July the committee reported a draft of articles, which were severally afterwards debated and amended, until the 15th November, 1777, when

they were adopted. These articles were then proposed to the legislatures of the several States, with a request that, if approved by them, they would authorize their delegates to ratify the same in Congress, and which, being done, to become conclusive. It was not until the 21st of March, 1781, as already observed, that they were ratified by the last State, and carried into effect.

On the 4th July, 1776, independence was declared, by an act which arrested the attention of the civilized world, and will bear the test of time. For force and condensation of matter, strength of reason, sublimity of sentiment and expression, it is believed that no document of equal merit exists. It looked to everything, and with a reach, perspicuity, and energy of mind, which seemed to be master of everything.

Thus it appears, in addition to the very important charge of managing the war, that Congress had under consideration at the same time the Declaration of Independence, the adoption of a confederation for the States, and the propriety of instituting State governments, with the nature of those governments, respecting which it had been consulted by the conventions of several of the colonies. So great a trust was never reposed before in a body thus constituted, and I am authorized to add, looking to the great result, that never were duties more ably or faithfully performed.

The distinguishing characteristic of this movement is that although the connection which had existed between the people of the several colonies, before their dismemberment from the parent country, was not only not dissolved, but increased by that event, even before the adoption of the Articles of Confederation, yet the preservation and augmentation of that tie were the result of a new creation, and proceeded altogether from the people of each colony, into whose hands the whole power passed, exclusively, when wrested from the Crown. To the same cause the greater change which has since occurred, by the adoption of the Constitution, is to be traced.

The establishment of our institutions forms the most important epoch that history hath recorded. They extend unexampled felicity to the whole body of our fellow-citizens, and are the admiration of other nations. To preserve and hand them down in their utmost purity to the remotest ages will require the existence and practice of virtues and talents equal to those which were displayed in acquiring them. It is ardently hoped and confidently believed that these will not be wanted.

The veto message was considered by the House of Representatives at the evening session of May 6, and after a brief discussion, the question "Shall this bill pass, notwithstanding the objections of the President of the United States?" was passed in the negative by a vote of 68 yeas against 72 nays. So the bill was rejected.

ANDREW JACKSON.—I

*May 27, 1830.**To the House of Representatives :*

GENTLEMEN: I have maturely considered the bill proposing to authorize "a subscription of stock in the Maysville, Washington, Paris, and Lexington Turnpike Road Company," and now return the same to the House of Representatives, in which it originated, with my objections to its passage.

Sincerely friendly to the improvement of our country by means of roads and canals, I regret that any difference of opinion in the mode of contributing to it should exist between us; and if, in stating this difference, I go beyond what the occasion may be deemed to call for, I hope to find an apology in the great importance of the subject, an unfeigned respect for the high source from which this branch of it has emanated, and an anxious wish to be correctly understood by my constituents in the discharge of all my duties. Diversity of sentiment among public functionaries, actuated by the same general motives, on the character and tendency of particular measures, is an incident common to all Governments, and the more to be expected in one which, like ours, owes its existence to the freedom of opinion, and must be upheld by the same influence. Controlled as we thus are, by a higher tribunal, before which our respective acts will be canvassed with the indulgence due to the imperfections of our nature, and with that intelligence and unbiased judgment which are the true correctives of error, all that our responsibility demands is that the public good should be the measure of our views, dictating alike their frank expression and honest maintenance.

In the message which was presented to Congress at the opening of its present session, I endeavored to exhibit briefly my views upon the important and highly interesting subject, to which our attention is now to be directed. I was desirous of presenting to the Representatives of the several States in Congress assembled, the inquiry, whether some mode could not be devised which would reconcile the diversity of opinion concerning the powers of this Government over the subject of internal improvement, and the manner in which these powers, if conferred by the Constitution, ought to be exercised. The act which I am called upon to consider, has, therefore, been passed with a knowledge of my views on this question, as these are expressed in the message referred to. In that document the following suggestion will be found:

"After the extinction of the public debt, it is not probable that any adjustment of the tariff, upon principles satisfactory to the people of the Union, will, until a remote period, if ever, leave the Government without a considerable surplus in the Treasury, beyond what may be required for its current service. As then the period approaches when the application of the revenue to the payment of debt will cease, the disposition

of the surplus will present a subject for the serious deliberation of Congress; and it may be fortunate for the country that it is yet to be decided. Considered in connection with the difficulties which have heretofore attended appropriations for purposes of internal improvement, and with those which this experience tells us will certainly arise, whenever power over such subjects may be exercised by the General Government, it is hoped that it may lead to the adoption of some plan which will reconcile the diversified interests of the States, and strengthen the bonds which unite them. Every member of the Union, in peace and in war, will be benefited by the improvement of inland navigation and the construction of highways in the several States. Let us then endeavor to attain this benefit in a mode which will be satisfactory to all. That hitherto 'adopted has been deprecated as an infraction of the Constitution by many of our fellow-citizens; while by others it has been viewed as inexpedient. All feel that it has been employed at the expense of harmony in the legislative councils'; and adverting to the constitutional power of Congress to make what I consider a proper disposition of the surplus revenue, I subjoin the following remarks: 'To avoid these evils, it appears to me that the most safe, just, and federal disposition which could be made of the surplus revenue, would be its apportionment among the several States according to their ratio of representation; and should this measure not be found warranted by the Constitution, that it would be expedient to propose to the States an amendment authorizing it.' "

The constitutional power of the Federal Government to construct or promote works of internal improvement, presents itself in two points of view; the first, as bearing upon the sovereignty of the States within whose limits their execution is contemplated, if jurisdiction of the territory which they may occupy, be claimed as necessary to their preservation and use; the second, as asserting the simple right to appropriate money from the National Treasury in aid of such works when undertaken by State authority, surrendering the claim of jurisdiction. In the first view, the question of power is an open one, and can be decided without the embarrassment attending the other, arising from the practice of the Government.

Although frequently and strenuously attempted, the power, to this extent, has never been exercised by the Government in a single instance. It does not, in my opinion, possess it; and no bill, therefore, which admits it, can receive my official sanction.

But, in the other view of the power, the question is differently situated. The ground taken at an early period of the Government, was "that whenever money has been raised by the general authority, and is to be applied to a particular measure, a question arises, whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it; if not, no such application can be made." The document in which this principle was first advanced, is of deservedly high authority, and should be held in grateful remembrance for its immediate agency in rescuing the country from much existing abuse and for its conservative effect upon some of the most valuable principles of the Constitution. The symmetry and

purity of the Government would, doubtless, have been better preserved, if this restriction of the power of appropriation could have been maintained without weakening its ability to fulfil the general objects of its institution; an effect so likely to attend its admission, notwithstanding its apparent fitness, that every subsequent administration of the Government, embracing a period of thirty out of the forty-two years of its existence, has adopted a more enlarged construction of the power. It is not my purpose to detain you, by a minute recital of the acts which sustain this assertion, but it is proper that I should notice some of the most prominent, in order that the reflections which they suggest to my mind, may be better understood.

In the administration of Mr. Jefferson, we have two examples of the exercise of the right of appropriation, which, in the consideration that led to their adoption and in their effects upon the public mind, have had a greater agency in marking the character of the power, than any subsequent events. I allude to the payment of \$15,000,000 for the purchase of Louisiana, and to the original appropriation for the construction of the Cumberland road; the latter act deriving much weight from the acquiescence and approbation of three of the most powerful of the original members of the Confederacy, expressed through their respective legislatures. Although the circumstances of the latter case may be such as to deprive so much of it as relates to the actual construction of the road, of the force of an obligatory exposition of the Constitution, it must, nevertheless, be admitted that, so far as the mere appropriation of money is concerned, they present the principle in its most imposing aspect. No less than twenty-three different laws have been passed through all the forms of the Constitution, appropriating upwards of \$2,000,000 out of the National Treasury in support of that improvement, with the approbation of every President of the United States, including my predecessor, since its commencement.

Independently of the sanction given to appropriations for the Cumberland and other roads and objects, under this power, the administration of Mr. Madison was characterized by an act which furnishes the strongest evidence of his opinion of its extent. A bill was passed through both houses of Congress, and presented for his approval, "setting apart and pledging certain funds for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several States, and to render more easy and less expensive the means and provisions for the common defense." Regarding the bill as asserting a power in the Federal Government to construct roads and canals within the limits of the States in which they were made, he objected to its passage, on the ground of its unconstitutionality, declaring that the assent of the respective States, in the mode provided by the bill, could not confer the power in question; that the only cases in which the consent and cession of particular States can extend the power of Congress, are those speci-

fied and provided for in the Constitution; and superadding to these avowals, his opinion, that "a restriction of the power 'to provide for the common defense and general welfare' to cases which are to be provided for by the expenditure of money, would still leave within the legislative power of Congress all the great and most important measures of Government; money being the ordinary and necessary means of carrying them into execution." I have not been able to consider these declarations in any other point of view than as a concession that the right of appropriation is not limited by the power to carry into effect the measure for which the money is asked, as was formerly contended.

The views of Mr. Monroe upon this subject were not left to inference. During his administration a bill was passed through both houses of Congress conferring the jurisdiction and prescribing the mode by which the Federal Government should exercise it in the case of the Cumberland road. He returned it with objections to its passage, and in assigning them took occasion to say, that in the early stages of the Government he had inclined to the construction that it had no right to expend money, except in the performance of acts authorized by the other specific grants of power, according to a strict construction of them; but, that, on further reflection and observation, his mind had undergone a change; that his opinion then was, "that Congress have an unlimited power to raise money, and that, in its appropriation, they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defense, and of general, not local, national, not State benefit;" and this was avowed to be the governing principle through the residue of his administration. The views of the last administration are of such recent date as to render a particular reference to them unnecessary. It is well known that the appropriating power, to the utmost extent which had been claimed for it, in relation to internal improvements, was fully recognized and exercised by it.

This brief reference to known facts will be sufficient to show the difficulty, if not impracticability, of bringing back the operations of the Government to the construction of the Constitution set up in 1793, assuming that to be its true reading, in relation to the power under consideration; thus giving an admonitory proof of the force of implication, and the necessity of guarding the Constitution with sleepless vigilance, against the authority of precedents which have not the sanction of its most plainly defined powers. For, although it is the duty of all to look to that sacred instrument, instead of the statute book, to repudiate at all times encroachments upon its spirit, which are too apt to be effected by the conjuncture of peculiar and facilitating circumstances, it is not less true that the public good and the nature of our political institutions require, that individual differences should yield to a well settled acquiescence of the people and confederated authorities, in particular constructions of the Constitution, on doubtful points. Not to concede this

much to the spirit of our institutions would impair their stability, and defeat the objects of the Constitution itself.

The bill before me does not call for a more definite opinion upon the particular circumstances which will warrant appropriations of money by Congress, to aid works of internal improvement; for, although the extension of the power to apply money beyond that of carrying into effect the object for which it is appropriated, has, as we have seen, been long claimed and exercised by the Federal Government, yet such grants have always been professedly under the control of the general principle, that the works which might be thus aided, should be "of a general, not local—national, not State" character. A disregard of this distinction would of necessity lead to the subversion of the Federal system. That even this is an unsafe one, arbitrary in its nature, and liable, consequently, to great abuses, is too obvious to require the confirmation of experience. It is, however, sufficiently definite and imperative to my mind, to forbid my approbation of any bill having the character of the one under consideration. I have given to its provisions all the reflection demanded by a just regard for the interests of those of our fellow-citizens who have desired its passage, and by the respect which is due to a co-ordinate branch of the Government; but I am not able to view it in any other light than as a measure of purely local character; or if it can be considered national, that no further distinction between the appropriate duties of the General and State Government, need be attempted; for there can be no local interest that may not with equal propriety be denominated national. It has no connection with any established system of improvements; is exclusively within the limits of a State, starting at a point on the Ohio River, and running out sixty miles to an interior town; and even as far as the State is interested, conferring partial instead of general advantages.

Considering the magnitude and importance of the power, and the embarrassments to which, from the very nature of the thing, its exercise, must necessarily be subjected, the real friends of the internal improvement ought not to be willing to confide it to accident and chance. What is properly *national* in its character, or otherwise, is an inquiry which is often extremely difficult of solution. The appropriations of one year for an object which is considered national, may be rendered nugatory, by the refusal of a succeeding Congress to continue the work, on the ground that it is local. No aid can be derived from the intervention of corporations. The question regards the character of the work, not that of those by whom it is to be accomplished. Notwithstanding the union of the Government with the corporation, by whose immediate agency any work of internal improvement is carried on, the inquiry will still remain, is it national and conducive to the benefit of the whole, or local, and operating only to the advantage of a portion of the Union?

But, although, I might not feel it to be my official duty to, interpose the executive veto, to the passage of a bill, appropriating money for

the construction of such works as are authorized by the States, and are national in their character, I do not wish to be understood as expressing an opinion, that it is expedient at this time for the General Government to embark in a system of this kind, and anxious that my constituents should be possessed of my views on this as well as on all other subjects which they have committed to my discretion, I shall state them frankly and briefly. Besides many minor considerations, there are two prominent views of the subject, which have made a deep impression upon my mind, which, I think, are well entitled to your serious attention, and will, I hope, be maturely weighed by the people.

From the official communication submitted to you, it appears, that if no adverse and unforeseen contingency happens in our foreign relations, and no unusual diversion be made of the funds set apart for the payment of the national debt, we may look with confidence to its entire extinguishment in the short period of four years. The extent to which this pleasing anticipation is dependent upon the policy, which may be pursued in relation to measures of the character of the one now under consideration, must be obvious to all, and equally so, that the events of the present session are well calculated to awaken public solicitude upon the subject. By the statement of the Treasury Department, and those from the clerks of the Senate and House of Representatives, herewith submitted, it appears that the bills which have passed into laws, and those which, in all probability, will pass before the adjournment of Congress, anticipate appropriations which, with the ordinary expenditures for the support of Government, will exceed considerably the amount in the Treasury for the year 1830. Thus, whilst we are diminishing the revenue by a reduction of the duties on tea, coffee, and cocoa, the appropriations for internal improvement are increasing beyond the available means of the Treasury; and if to this calculation be added the amount contained in bills which are pending before the two houses, it may be safely affirmed that ten millions of dollars would not make up the excess over the Treasury receipts, unless the payment of the national debt be postponed, and the means now pledged to that object applied to those enumerated in these bills. Without a well regulated system of internal improvement, this exhausting mode of appropriation is not likely to be avoided, and the plain consequence must be, either a continuance of the national debt, or a resort to additional taxes.

Although many of the States, with a laudable zeal, and under the influence of an enlightened policy, are successfully applying their separate efforts to works of this character, the desire to enlist the aid of the General Government in the construction of such as from their nature ought to devolve upon it, and to which the means of the individual States are inadequate, is both rational and patriotic; and, if that desire is not gratified now, it does not follow that it never will be. The general intelligence and public spirit of the American people furnish a sure guarantee, that, at the proper time, this policy will be made

to prevail under circumstances more auspicious to its successful prosecution than those which now exist. But great as this object undoubtedly is, it is not the only one which demands the fostering care of the Government. The preservation and success of the republican principle rest with us. To elevate its character and extend its influence rank among our most important duties; and the best means to accomplish this desirable end, are those which will rivet the attachment of our citizens to the Government of their choice, by the comparative lightness of their public burdens, and by the attraction which the superior success of its operations will present to the admiration and respect of the world. Through the favor of an overruling and indulgent Providence, our country is blessed with general prosperity, and our citizens exempted from the pressure of taxation, which other less favored portions of the human family are obliged to bear; yet, it is true, that many of the taxes collected from our citizens, through the medium of imposts, have, for a considerable period, been onerous. In many particulars, these taxes have borne severely upon the laboring and less prosperous classes of the community, being imposed on the necessities of life, and this, too, in cases where the burden was not relieved by the consciousness that it would ultimately contribute to make us independent of foreign nations for articles of prime necessity, by the encouragement of their growth and manufacture at home. They have been cheerfully borne, because they were thought to be necessary to the support of Government, and the payment of the debts unavoidably incurred in the acquisition and maintenance of our national rights and liberties. But have we a right to calculate on the same cheerful acquiescence when it is known that the necessity for their continuance would cease were it not for irregular, improvident, and unequal appropriations of the public funds? Will not the people demand, as they have a right to do, such a prudent system of expenditure as will pay the debts of the Union, and authorize the reduction of every tax to as low a point as the wise observance of the necessity to protect that portion of our manufactures and labor whose prosperity is essential to our national safety and independence will allow? When the national debt is paid the duties upon those articles which we do not raise may be repealed with safety, and still leave, I trust without oppression to any section of the country, an accumulating surplus fund, which may be beneficially applied to some well digested system of improvement.

Under this view, the question as to the manner in which the Federal Government can or ought to embark in the construction of roads and canals, and the extent to which it may impose burthens on the people for these purposes, may be presented on its own merits, free of all disguise, and of every embarrassment, except such as may arise from the Constitution itself. Assuming these suggestions to be correct, will not our constituents require the observance of a course by which they can be effected? Ought they not to require it? With the best disposition

to aid, as far as I can conscientiously, in furtherance of works of internal improvement, my opinion is, that the soundest views of national policy at this time point to such a course. Besides the avoidance of an evil influence upon the local concerns of the country, how solid is the advantage which the Government will reap from it in the elevation of its character? How gratifying the effect of presenting to the world the sublime spectacle of a Republic of more than twelve millions of happy people, in the fifth-fourth year of her existence, after having passed through two protracted wars, the one for the acquisition, and the other for the maintenance of liberty—free from debt, and with all her immense resources unfettered. What a salutary influence would not such an exhibition exercise upon the cause of liberal principles and free government throughout the world? Would we not ourselves find, in its effect, an additional guarantee that our political institutions will be transmitted to the most remote posterity without decay? A course of policy destined to witness events like these cannot be benefited by a legislation which tolerates a scramble for appropriations that have no relation to any general system of improvement, and whose good effects must, of necessity, be very limited. In the best view of these appropriations, the abuses to which they lead far exceed the good which they are capable of promoting. They may be resorted to as artful expedients, to shift upon the Government the losses of unsuccessful private speculation, and thus by ministering to personal ambition and self aggrandizement, tend to sap the foundations of public virtue and taint the administration of the Government with a demoralizing influence.

In the other view of the subject, and the only remaining one, which it is my intention to present at this time, is involved the expediency of embarking in a system of internal improvement, without a previous amendment of the Constitution, explaining and defining the precise powers of the Federal Government over it; assuming the right to appropriate money, to aid in the construction of national works, to be warranted by the cotemporaneous and continued exposition of the Constitution, its insufficiency for the successful prosecution of them, must be admitted by all candid minds. If we look to usage to define the extent of the right, that will be found so variant, and embracing so much that has been overruled, as to involve the whole subject in great uncertainty, and to render the execution of our respective duties in relation to it replete with difficulty and embarrassment. It is in regard to such works, and the acquisition of additional territory, that the practice obtained its first footing. In most, if not all other disputed questions of appropriation, the construction of the Constitution may be regarded as unsettled if the right to apply money, in the enumerated cases, is placed on the ground of usage.

This subject has been one of much, and I may add painful, reflection to me. It has bearings that are well calculated to exert a powerful influence upon our hitherto prosperous system of government, and which,

on some accounts, may even excite despondency in the breast of an American citizen. I will not detain you with professions of zeal in the cause of internal improvements. If to be their friend is a virtue which deserves commendation, our country is blessed with an abundance of it; for I do not suppose there is an intelligent citizen who does not wish to see them flourish. But though all are their friend, but few, I trust, are unmindful of the means by which they should be promoted; none certainly are so degenerate as to desire their success at the cost of that sacred instrument, with the preservation of which is indissolubly bound our country's hopes. If different impressions are entertained in any quarter; if it is expected that the people of this country, reckless of their constitutional obligations, will prefer the local interests to the principles of the Union, such expectations will in the end be disappointed; or if it be not so, then indeed has the world but little to hope from the example of free government. When an honest observance of constitutional compacts cannot be obtained from communities like ours, it need not be anticipated elsewhere; and the cause in which there has been so much martyrdom, and from which so much was expected by the friends of liberty, may be abandoned, and the degrading truth that man is unfit for self-government admitted. And this will be the case if *expediency* be made a rule of construction in interpreting the Constitution. Power in no government could desire a better shield for the insidious advances which it is ever ready to make upon the checks that are designed to restrain its action.

But I do not entertain such gloomy apprehensions. If it be the wish of the people that the construction of roads and canals should be conducted by the Federal Government, it is not only highly expedient, but indispensably necessary, that a previous amendment of the Constitution, delegating the necessary power, and defining and restricting its exercise with reference to the sovereignty of the States, should be made. Without it, nothing extensively useful can be effected. The right to exercise as much jurisdiction as is necessary to preserve the works, and to raise funds by the collection of tolls to keep them in repair cannot be dispensed with. The Cumberland road should be an instructive admonition of the consequences of acting without this right. Year after year, contests are witnessed, growing out of efforts to obtain the necessary appropriations for completing and repairing this useful work. Whilst one Congress may claim and exercise the power, a succeeding one may deny it; and this fluctuation of opinion must be unavoidably fatal to any scheme, which, from its extent, would promote the interests and elevate the character of the country. The experience of the past has shown that the opinion of Congress is subject to such fluctuation.

If it be the desire of the people that the agency of the Federal Government should be confined to the appropriation of money, in aid of such undertaking, in virtue of State authorities, then the occasion, the manner, and the extent of the appropriations should be made the sub-

ject of constitutional regulation. This is the more necessary in order that they may be equitable among the several States; promote harmony between the different sections of the Union and their representatives; preserve other parts of the Constitution from being undermined by the exercise of doubtful powers, or the too great extension of those which are not so; and protect the whole subject against the deleterious influence of combinations, to carry, by concert, measures which, considered by themselves, might meet but little countenance.

That a constitutional adjustment of this power upon equitable principles is in the highest degree desirable can scarcely be doubted; nor can it fail to be promoted by every sincere friend to the success of our political institutions. In no government are appeals to the source of power in cases of real doubt more suitable than in ours. No good motive can be assigned for the exercise of power by the constituted authorities, while those for whose benefit it is to be exercised have not conferred it and may not be willing to confer it. It would seem to me that an honest application of the conceded powers of the General Government to the advancement of the common weal present a sufficient scope to satisfy a reasonable ambition. The difficulty and supposed impracticability of obtaining an amendment of the Constitution in this respect is, I firmly believe, in a great degree unfounded. The time has never yet been when the patriotism and intelligence of the American people were not fully equal to the greatest exigency, and it never will when the subject calling forth their interposition is plainly presented to them. To do so with the questions involved in this bill, and to urge them to an early, zealous, and full consideration of their deep importance, is, in my estimation, among the highest of our duties.

A supposed connection between appropriations for internal improvement and the system of protecting duties, growing out of the anxieties of those more immediately interested in their success, has given rise to suggestions which it is proper I should notice on this occasion. My opinions on these subjects have never been concealed from those who had a right to know them. Those which I have entertained on the latter, have frequently placed me in opposition to individuals as well as communities, whose claims upon my friendship and gratitude are of the strongest character; but I trust there has been nothing in my public life which has exposed me to the suspicion of being thought capable of sacrificing my views of duty to private considerations, however strong they may have been or deep the regrets which they are capable of exciting.

As long as the encouragement of domestic manufactures is directed to national ends, it shall receive from me a temperate but steady support. There is no necessary connection between it and the system of appropriations. On the contrary, it appears to me that the supposition of their dependence upon each other is calculated to excite the prejudices of the public against both. The former is sustained on the grounds

of its consistency with the letter and spirit of the Constitution, of its origin being traced to the assent of all the parties to the original compact, and of its having the support and approbation of a majority of the people; on which account it is at least entitled to a fair experiment. The suggestions to which I have alluded refer to a forced continuance of the national debt, by means of large appropriations, as a substitute for the security which the system derives from the principles on which it has hitherto been sustained: Such a course would certainly indicate either an unreasonable distrust of the people or a consciousness that the system does not possess sufficient soundness for its support, if left to their voluntary choice and its own merits. Those who suppose that any policy thus founded can be long upheld in this country have looked upon its history with eyes very different from mine. This policy, like every other, must abide the will of the people who will not be likely to allow any device, however specious, to conceal its character and tendency.

In presenting these opinions I have spoken with the freedom and candor which I thought the occasion for their expression called for, and now respectfully return the bill which has been under consideration for your further deliberation and judgment.

ANDREW JACKSON.

The veto message was considered by the House of Representatives on the day after its reception, and, after a prolonged debate, the question, "That the House, on reconsideration, do agree to pass the bill," was passed in the negative by 96 yeas against 92 nays. So the bill, not being supported by two-thirds of the House, was rejected.

ANDREW JACKSON.—II.

May 31, 1830.

To the Senate of the United States:

GENTLEMEN: I have considered the bill proposing "to authorize a subscription of stock in the Washington Turnpike Road Company," and now return the same to the Senate, in which it originated.

I am unable to approve this bill, and would respectfully refer the Senate to my message to the House of Representatives on returning to that House the bill to authorize "a subscription of stock in the Maysville, Washington, Paris, and Lexington Turnpike Road Company" for a statement of my objections to the bill herewith returned. The message referred to bears date of the 27th instant, and a printed copy of the same is herewith transmitted.

ANDREW JACKSON.

The veto message was considered by the Senate immediately after its reception, and the question "That the Senate, on reconsideration, do agree to pass the bill" was passed in the negative by 21 yeas against 17 nays. So the bill was rejected.

ANDREW JACKSON.—III—IV.

December 7, 1830.

The President, in his annual message to both houses of Congress, at the commencement of the second session of the Twenty-first Congress, said :

* * * * *

Almost at the moment of the adjournment of your last session two bills, the one entitled "An act for making appropriations for building light-houses, light-boats, beacons, and monuments, placing buoys, and for improving harbors and directing surveys," and the other, "An act to authorize a subscription for stock in the Louisville and Portland Canal Company," were submitted for my approval. It was not possible, within the time allowed me, before the close of the session, to give these bills the consideration which was due to their character and importance; and I was compelled to retain them for that purpose. I now avail myself of this early opportunity to return them to the houses in which they respectively originated, with the reasons which, after mature deliberation, compel me to withhold my approval.

The practice of defraying out of the Treasury of the United States the expenses incurred by the establishment and support of light-houses, beacons, buoys, and public piers, within the bays, inlets, harbors, and ports of the United States, to render the navigation thereof safe and easy, is coeval with the adoption of the Constitution, and has been continued without interruption or dispute.

As our foreign commerce increased, and was extended into the interior of the country by the establishment of ports of entry and delivery upon our navigable rivers, the sphere of those expenditures received a corresponding enlargement. Light-houses, beacons, buoys, public piers, and the removal of sand bars, sawyers, and other partial or temporary impediments in the navigable rivers and harbors which were embraced in the revenue districts from time to time established by law, were authorized upon the same principle, and the expense defrayed in the same manner. That these expenses have at times been extravagant and disproportionate, is very probable. The circumstances under which they are incurred are well calculated to lead to such a result, unless their application is subjected to the closest scrutiny. The local advantages arising from the disbursement of public money too frequently, it is to be feared, invite appropriations for objects of this character that are neither necessary nor useful. The number of light-house keepers is already very large, and the bill before me proposes to add to it fifty-one more, of various descriptions. From representations upon the subject which are understood to be entitled to respect, I am induced to believe that there has not only been great improvidence in the past expendi-

tures of the Government upon these objects, but that the security of navigation has, in some instances, been diminished by the multiplication of light-houses, and consequent change of lights, upon the coast. It is in this, as in other respects, our duty to avoid all unnecessary expense, as well as every increase of patronage not called for by the public service. But in the discharge of that duty in this particular it must not be forgotten that, in relation to our foreign commerce, the burden and benefit of protecting and accommodating it necessarily go together, and must do so as long as the public revenue is drawn from the people through the custom-house. It is indisputable that whatever gives facility and security to navigation cheapens imports; and all who consume them are alike interested in whatever produces this effect. If they consume they ought, as they now do, to pay; otherwise, they do not pay. The consumer in the most inland State derives the same advantage from every necessary and prudent expenditure for the facility and security of our foreign commerce and navigation that he does who resides in a maritime State. Local expenditures have not, of themselves, a correspondent operation.

From a bill making *direct* appropriations for such objects I should not have withheld my assent. The one now returned does so in several particulars, but it also contains appropriations for surveys of a local character which I cannot approve. It gives me satisfaction to find that no serious inconvenience has arisen from withholding my approval from this bill; nor will it, I trust, be cause of regret that an opportunity will be thereby afforded for Congress to review its provisions under circumstances better calculated for full investigation than those under which it was passed.

In speaking of direct appropriations, I mean not to include a practice which has obtained to some extent, and to which I have, in one instance, in a different capacity, given my assent—that of subscribing to the stock of private associations. Positive experience, and a more thorough consideration of the subject, have convinced me of the impropriety as well as inexpediency of such investments. All improvements effected by the funds of the nation, for general use, should be open to the enjoyment of all our fellow-citizens, exempt from the payment of tolls, or any imposition of that character. The practice of thus mingling the concerns of the Government with those of the States or of individuals is inconsistent with the object of its institution, and highly impolitic. The successful operation of the federal system can only be preserved by confining it to the few and simple, and yet important, objects for which it was designed.

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ANDREW JACKSON.—V.

*July 10, 1832.**To the Senate :*

The bill "to modify and continue" the act entitled "An act to incorporate the subscribers to the Bank of the United States," was presented to me on the 4th of July instant. Having considered it with that solemn regard to the principles of the Constitution which the day was calculated to inspire, and come to the conclusion that it ought not to become a law, I herewith return it to the Senate, in which it originated, with my objections.

A bank of the United States is, in many respects, convenient for the Government, and useful to the people. Entertaining this opinion, and deeply impressed with the belief that some of the powers and privileges possessed by the existing bank are unauthorized by the Constitution, subversive of the rights of the States, and dangerous to the liberties of the people, I felt it my duty, at an early period of my administration, to call the attention of Congress to the practicability of organizing an institution combining all its advantages, and obviating these objections. I sincerely regret that, in the act before me, I can perceive none of those modifications of the bank charter which are necessary, in my opinion, to make it compatible with justice, with sound policy, or with the Constitution of our country.

The present corporate body, denominated the president, directors, and company of the Bank of the United States, will have existed, at the time this act is intended to take effect, twenty years. It enjoys an exclusive privilege of banking under the authority of the General Government, a monopoly of its favor and support, and, as a necessary consequence, almost a monopoly of the foreign and domestic exchange. The powers, privileges, and favors bestowed upon it in the original charter, by increasing the value of stock far above its par value, operated as a gratuity of many millions to the stockholders.

An apology may be found for the failure to guard against this result, in the consideration that the effect of the original act of incorporation could not be certainly foreseen at the time of its passage. The act before me proposes another gratuity to the holders of the same stock, and in many cases to the same men, of at least seven millions more. This donation finds no apology in any uncertainty as to the effect of the act. On all hands, it is conceded that its passage will increase, at least twenty or thirty per cent. more, the market price of the stock, subject to the payment of the annuity of \$200,000 per year, secured by the act, thus adding, in a moment, one-fourth of its par value. It is not our own citizens only who are to receive the bounty of our Government. More than eight millions of the stock of this bank are held by foreigners. By this act the American Republic proposes virtually to make them a present of some

millions of dollars. For these gratuities to foreigners, and to some of our own opulent citizens, the act secures no equivalent whatever. They are the certain gains of the present stockholders, under the operation of this act, after making full allowance for the payment of the bonus.

Every monopoly, and all exclusive privileges, are granted at the expense of the public, which ought to receive a fair equivalent. The many millions which this act proposes to bestow on the stockholders of the existing bank, must come directly or indirectly out of the earnings of the American people. It is due to them, therefore, if their Government sell monopolies and exclusive privileges, that they should at least exact for them as much as they are worth in open market. The value of the monopoly in this case may be correctly ascertained. The twenty-eight millions of stock would probably be at an advance of 50 per cent. and command in market, at least \$42,000,000, subject to the payment of the present loans. The present valuation of the monopoly, therefore, is \$17,000,000, and this the act proposes to sell for \$3,000,000, payable in fifteen annual installments of \$200,000.

It is not conceivable how the present stockholders can have any claim to the special favor of the Government. The present corporation has enjoyed its monopoly during the period stipulated in the original contract. If we must have such a corporation, why should not the Government sell out the whole stock, and thus secure to the people the full market value of the privileges granted? Why should not Congress create and sell the twenty-eight millions of stock, incorporating the purchases with all the powers and privileges secured in this act, and purchasing the premium upon the sales into the Treasury.

But this act does not permit competition in the purchase of this monopoly. It seems to be predicated on the erroneous idea that the present stockholders have a prescriptive right, not only to the favor, but to the bounty of the Government. It appears that more than a fourth part of the stock is held by foreigners, and the residue is held by a few hundred of our citizens, chiefly of the richest class. For their benefit does this act exclude the whole American people from competition in the purchase of this monopoly, and dispose of it for many millions less than it is worth. This seems the less excusable, because some of our citizens, not now stockholders, petitioned that the door of competition might be opened, and offered to take a charter on terms much more favorable to the Government and country.

But this proposition, although made by men whose aggregate wealth is believed to be equal to all the private stock in the existing bank, has been set aside, and the bounty of our Government is proposed to be again bestowed on the few who have been fortunate enough to secure the stock, and at this moment wield the power of the existing institution. I cannot perceive the justice or policy of this course. If our Government must sell monopolies, it would seem to be its duty to take nothing less than their full value, and if gratuities must be made once

in fifteen or twenty years, let them not be bestowed on the subjects of a foreign Government, nor upon a designated or favored class of men in our own country. It is but justice and good policy, as far as the nature of the case will admit, to confine our favors to our own fellow-citizens, and let each in his turn enjoy an opportunity to profit by our bounty. In the bearings of the act before me upon these points, I find ample reasons why it should not become a law.

It has been urged as an argument in favor of a rechartering the present bank, that calling in its loans will produce great embarrassment and distress. The time allowed to close its concerns is ample; and if it has been well managed, its pressure will be light, and heavy only in case its management has been bad. If, therefore, it shall produce distress, the fault will be its own, and it would furnish a reason against renewing a power which has been so obviously abused. But will there ever be a time when this reason will be less powerful? To acknowledge its force, is to admit that the bank ought to be perpetual, and, as a consequence, the present stockholders, and those inheriting their rights as successors, be established a privileged order, clothed both with great political power, and enjoying immense pecuniary advantages, from their connection with the Government.

The modifications of the existing charter, proposed by this act, are not such, in my view, as make it consistent with the rights of the States, or the liberties of the people. The qualification of the right of the bank to hold real estate, the limitation of its power to establish branches, and the power reserved to Congress to forbid the circulation of small notes, are restrictions comparatively of little value or importance. All the objectionable principles of the existing corporation, and most of its odious features, are retained without alleviation.

The fourth section provides "that the notes or bills of the said corporation, although the same be on the faces thereof respectively made payable at one place only, shall, nevertheless, be received by the said corporation at the bank, or at any of the offices of discount and deposit thereof, if tendered in liquidation of payment of any balance or balances due to said corporation, or to such office of discount and deposit, from any other incorporated bank."

This provision secures to the State banks a legal privilege in the Bank of the United States, which is withheld from all private citizens. If a State bank in Philadelphia owe the Bank of the United States, and have notes issued by the Saint Louis branch, it can pay the debt with those notes; but if a merchant, mechanic, or other private citizen, be in like circumstance, he cannot, by law, pay his debt with those notes, but must sell them at a discount, or send them to Saint Louis to be cashed. This boon, conceded to the State banks, though not unjust in itself, is most odious; because it does not measure out equal justice to the high and the low, the rich and the poor. To the extent of its practical effect, it is a bond of union among the banking establishments of

the nation, erecting them into an interest separate from that of the people; and its necessary tendency is to unite the Bank of the United States and the State banks in any measure which may be thought conducive to their common interest.

The ninth section of the act recognizes principles of worse tendency than any provision of the present charter.

It enacts that "the cashier of the bank shall annually report to the Secretary of the Treasury the names of all stockholders who are not resident citizens of the United States; and on the application of the treasurer of any State, shall make out, and transmit to such treasurer, a list of stockholders residing in, or citizens of, such State, with the amount owned by each."

Although this provision, taken in connection with a decision of the Supreme Court, surrenders, by its silence, the right of the States to tax the banking institutions created by this corporation, under the name of branches, throughout the Union, it is evidently intended to be construed as a concession of their right to tax that portion of the stock which may be held by their own citizens and residents. In this light, if the act becomes a law, it will be understood by the States, who will probably proceed to levy a tax equal to that paid upon the stock of banks incorporated by themselves. In some States that tax is now 1 per cent., either on the capital or on the shares; and that may be assumed as the amount which all citizens or resident stockholders would be taxed under the operation of this act. As it is only the stock held in the States, and not that employed within them, which would be subject to taxation, and as the names of foreign stockholders are not to be reported to the treasurers of the States, it is obvious that the stock held by them will be exempt from this burden. Their annual profits will, therefore, be increased 1 per cent. more than the citizen stockholders; and as the annual dividends of the bank may be safely estimated at 7 per cent., the stock will be worth 10 or 15 per cent. more to foreigners than to citizens of the United States. To appreciate the effect which this state of things will produce, we must take a brief review of the operations and present condition of the Bank of the United States.

By documents submitted to Congress at the present session, it appears that on the 1st of January, 1832, of the \$28,000,000 of private stock in the corporation, \$8,405,500 were held by foreigners, mostly of Great Britain. The amount of stock held in the nine Western States is \$140,200, and in the four Southern States is \$5,623,100, and in the Eastern and Middle States about \$13,522,000. The profits of the bank in 1831, as shown in a statement to Congress, were about \$3,455,598. Of this there accrued in the nine Western States about \$1,640,048, in the four Southern States about \$352,507, and in the Middle and Eastern States about \$1,463,041. As little stock is held in the West, it is obvious that the debt of the people in that section to the bank is principally a debt to the Eastern and foreign stockholders, that the interest

they pay upon it is carried into the Eastern States and into Europe, and that it is a burden upon their industry and a drain of their currency which no country can bear without inconvenience and occasional distress. To meet this burden and equalize the exchange operations of the bank the amount of specie drawn from those States through its branches within the last two years, as shown by its official report, was about \$6,000,000. More than half a million of this amount does not stop in the Eastern States, but passes on to Europe to pay the dividends to the foreign stockholders. In the principle of taxation recognized by this act the Western States had no adequate compensation for this perpetual burden on their industry and drain upon their currency. The branch bank at Mobile made the last year \$95,140, yet under the provisions of this act the State of Alabama can raise no revenue from these profitable operations, because not a share of the stock is held by any of her citizens. Mississippi and Missouri are in the same condition in relation to the branches at Natchez and Saint Louis, and such, in a greater or less degree, is the condition of every Western State. The tendency of the plan of taxation which this act proposes will be to place the whole United States in the same relation to foreign countries which the Western States bear to the Eastern. When by a tax on resident stockholders the stock of this bank is made worth 10 or 15 per cent. more to foreigners than to residents, most of it will inevitably leave the country.

Thus will this provision, in its practical effect, deprive the Eastern, as well as the Southern and Western, States of the means of raising a revenue from the extension of business and the great profits of this institution. It will make the American people debtors to aliens in nearly the whole amount due to this bank and send across the Atlantic from two to five millions of specie every year to pay the bank dividends.

In another of its bearings this provision is fraught with danger. Of the twenty-five directors of this bank five are chosen by the Government and twenty by the citizen stockholders. From all voice in these elections the foreign stockholders are excluded by the charter. In proportion, therefore, as the stock is transferred to foreign holders the extent of suffrage in the choice of directors is curtailed. Already is almost a third of the stock in foreign hands and not represented in elections. It is constantly passing out of the country, and this act will accelerate its departure. The entire control of the institution would necessarily fall into the hands of a few citizen stockholders, and the ease with which the object would be accomplished would be a temptation to designing men to secure that control in their own hands by monopolizing the remaining stock. There is danger that a president and directors would then be able to elect themselves from year to year, and, without responsibility or control, manage the whole concerns of the bank during the existence of the charter. It is easy to conceive that great evils

to our country and its institutions might flow from such a concentration of power in the hands of a few men irresponsible to the people.

Is there no danger to our liberty and independence in a bank that in its nature has so little to bind it to our country? The president of the bank has told us that most of the State banks exist by its forbearance. Should its influence become concentrated, as it may under the operation of such an act as this, in the hands of a self-elected directory whose interests are identified with those of the foreign stockholders, will there not be cause to tremble for the purity of our elections in peace and for the independence of our country in war? Their power would be great whenever they might choose to exert it, but if this monopoly were regularly renewed every fifteen or twenty years on terms proposed by themselves they might seldom in peace put forth their strength to influence elections or control the affairs of the nation, but if any private citizen or public functionary should interpose to curtail its powers or prevent a renewal of its privileges it cannot be doubted that he would be made to feel its influence.

Should the stock of the bank principally pass into the hands of the subjects of a foreign country and we should unfortunately become involved in a war with that country, what would be our condition? Of the course which would be pursued by a bank almost wholly owned by the subjects of a foreign power and managed by those whose interests, if not affections, would run in the same direction there can be no doubt. All its operations within would be in aid of the hostile fleets and armies without. Controlling our currency, receiving our public moneys, and holding thousands of our citizens in dependence it would be more formidable and dangerous than the naval and military power of the enemy.

If we must have a bank with private stockholders every consideration of sound policy and every impulse of American feeling admonishes that it should be purely American. Its stockholders should be composed exclusively of our own citizens, who at least ought to be friendly to our Government and willing to support it in times of difficulty and danger. So abundant is domestic capital that competition in subscribing for the stock of local banks has recently led almost to riots. To a bank exclusively of American stockholders, possessing the powers and privileges granted by this act, subscriptions for two hundred millions of dollars could be readily obtained. Instead of sending abroad the stock of the bank in which the Government must deposit its funds and on which it must rely to sustain its credit in times of emergency it would rather seem to be expedient to prohibit its sale to aliens, under penalty of absolute forfeiture.

It is maintained by the advocates of the bank that its constitutionality in all its features ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I cannot assent. Mere precedent is a dangerous source of authority and

should not be regarded as deciding questions of constitutional power, except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the bank might be based on precedent. One Congress, in 1791, decided in favor of a bank; another, in 1811, decided against it. One Congress, in 1815, decided against a bank; another, in 1816, decided in its favor. Prior to the present Congress, therefore, the precedents drawn from that source were equal. If we resort to the States the expressions of legislative, judicial, and executive opinions against the bank have been, probably, to those in its favor, as four to one. There is nothing in precedent therefore which, if its authority were admitted, ought to weigh in favor of the act before me.

If the opinion of the Supreme Court covered the whole ground of this act it ought not to control the co-ordinate authorities of this Government. The Congress, the Executive, and the court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval as it is of the Supreme judges when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and on that point the President is independent of both. The authority of the Supreme Court must not therefore be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve.

But in the case relied upon the Supreme Court have not decided that all the features of this corporation are compatible with the Constitution. It is true that the court have said that the law incorporating the bank is a constitutional exercise of power by Congress, but taking into view the whole opinion of the court, and the reasoning by which they have come to that conclusion, I understand them to have decided that, inasmuch as a bank is an appropriate means for carrying into effect the enumerated powers of the General Government, therefore the law incorporating it is in accordance with that provision of the Constitution which declares that Congress shall have power "to make all laws which shall be necessary and proper for carrying those powers into execution." Having satisfied themselves that the word "necessary" in the Constitution means "needful," "requisite," "essential," "conducive to," and that "a bank" is a convenient, a useful, and essential instrument in the prosecution of the Government's "fiscal operations," they conclude that to "use one must be within the discretion of Congress" and that "the act to incorporate the Bank of the United States is a law made in pursuance of the Constitution." "But," say they, "where the law is not pro-

hibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground."

The principle here affirmed is that the "degree of its necessity," involving all the details of a banking institution, is a question exclusively for legislative consideration. A bank is constitutional, but it is the province of the legislature to determine whether this or that particular power, privilege, or exemption is "necessary and proper" to enable the bank to discharge its duties to the Government, and from their decision there is no appeal to the courts of justice. Under the decision of the Supreme Court therefore it is the exclusive province of Congress and the President to decide whether the particular features of this act are "necessary and proper" in order to enable the bank to perform, conveniently and efficiently, the public duties assigned to it as a fiscal agent, and therefore constitutional, or unnecessary and improper, and therefore unconstitutional.

Without commenting on the general principle affirmed by the Supreme Court let us examine the details of this act in accordance with the rule of legislative action which they have laid down. It will be found that many of the powers and privileges conferred on it cannot be supposed necessary for the purpose for which it is proposed to be created, and are not therefore means necessary to attain the end in view and consequently not justified by the Constitution.

The original act of incorporation, section 21, enacts "that no other bank shall be established by any future law of the United States during the continuance of the corporation hereby created, for which the faith of the United States is hereby pledged: Provided, Congress may renew existing charters for banks within the District of Columbia, not increasing the capital thereof, and may also establish any other bank or banks in said district, with capitals not exceeding in the whole \$6,000,000, if they shall deem it expedient." This provision is continued in force by the act before me fifteen years from the 3d of March, 1836.

If Congress possesses the power to establish one bank they had power to establish more than one if in their opinion two or more banks had been "necessary" to facilitate the execution of the powers delegated to them by the Constitution. If they possessed the power to establish a second bank it was a power derived from the Constitution to be exercised from time to time and at any time when the interests of the country or the emergencies of the Government might make it expedient. It was possessed by one Congress as well as another, and by all Congresses alike, and alike at every session, but the Congress of 1816 have taken it away from their successors for twenty years and the Congress of 1832 proposes to abolish it for fifteen years more. It cannot be "necessary" or "proper" for Congress to barter away or divest themselves of any of the powers vested in them by the Constitution to be exercised for the

public good. It is not "necessary" to the efficiency of the bank nor is it "proper" in relation to themselves and their successors. They may properly use the discretion vested in them, but they may not limit the discretion of their successors. This restriction on themselves and grant of a monopoly to the bank is therefore unconstitutional.

In another point of view this provision is a palpable attempt to amend the Constitution by an act of legislation. The Constitution declares that "the Congress shall have power" to exercise exclusive legislation in all cases whatsoever over the District of Columbia. Its constitutional power, therefore, to establish banks in the District of Columbia and increase their capital at will is unlimited and uncontrollable by any other power than that which gave authority to the Constitution. Yet this act declares that Congress shall not increase the capital of existing banks nor create other banks with capitals exceeding in the whole \$6,000,000. The Constitution declares that Congress shall have power to exercise exclusive legislation over this District "in all cases whatsoever," and this act declares they shall not. Which is the supreme law of the land? This provision cannot be "necessary" or "proper" or "constitutional" unless the absurdity be admitted that whenever it be "necessary and proper" in the opinion of Congress they have a right to barter away one portion of the powers vested in them by the Constitution as a means of executing the rest.

On two subjects only does the Constitution recognize in Congress the power to grant exclusive privileges on monopolies. It declares that "Congress shall have power to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." Out of this express delegation of power, have grown our laws of patents and copyrights. As the Constitution expressly delegates to Congress the power to grant exclusive privileges in these cases, as the means of executing the substantive power "to promote the progress of science and useful arts," it is consistent with the fair rules of construction to conclude that such a power was not intended to be granted as a means of accomplishing any other end. On every other subject which comes within the scope of congressional power, there is an ever-living discretion in the use of proper means, which cannot be restricted or abolished without an amendment of the Constitution. Every act of Congress, therefore, which attempts, by grants of monopolies, or sale of exclusive privileges for a limited time, or a time without limit, to restrict or extinguish its own discretion in the choice of means to execute its delegated powers, is equivalent to a legislative amendment of the Constitution, and palpably unconstitutional.

This act authorizes and encourages transfers of its stock to foreigners, and grants them an exemption from all State and national taxation. So far from being "necessary and proper" that the bank should possess this power, to make it a safe and efficient agent of the Government in

its fiscal operations, it is calculated to convert the Bank of the United States into a foreign bank, to impoverish our people in time of peace, to disseminate a foreign influence through every section of the Republic, and in war to endanger our independence.

The several States reserved the power, at the formation of the Constitution, to regulate and control titles and transfers of real property; and most, if not all of them, have laws disqualifying aliens from acquiring or holding lands within their limits. But this act, in disregard of the undoubted right of the States to prescribe such disqualifications, gives to aliens, stockholders in this bank, an interest and title, as members of the corporation, to all the real property it may acquire within any of the States of this Union. This privilege granted to aliens is not "necessary" to enable the bank to perform its public duties, nor in any sense "proper," because it is vitally subversive of the rights of the States.

The Government of the United States have no constitutional power to purchase lands within the States, except "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings," and even for these objects only "by the consent of the legislature of the State in which the same shall be." By making themselves stockholders in the bank, and granting to the corporation the power to purchase lands for other purposes, they assume a power not granted in the Constitution, and grant to others what they do not themselves possess. It is not necessary to the receiving, safe-keeping, or transmission of the funds of Government, that the bank should possess this power, and it is not proper that Congress should thus enlarge the powers delegated to them in the Constitution.

The old Bank of the United States possessed a capital of only \$11,000,000, which was found fully sufficient to enable it, with despatch and safety, to perform all the functions required of it by the Government. The capital of the present bank is \$35,000,000, at least twenty-four more than experience has proved to be necessary to enable a bank to perform its public functions. The public debt, which existed during the period of the old bank, and on the establishment of the new, has been nearly paid off, and our revenue will soon be reduced. This increase of capital is, therefore, not for public, but for private purposes.

The Government is the only "proper" judge where its agents should reside and keep their offices, because it best knows where their presence will be "necessary." It cannot, therefore, be "necessary" or "proper" to authorize the bank to locate branches where it pleases, to perform the public service, without consulting the Government, and contrary to its will. The principle laid down by the Supreme Court concedes that Congress cannot establish a bank for the purposes of private speculation and gain, but only as a means of executing the delegated powers of the General Government. By the same principle, a branch bank cannot constitutionally be established for other than public purposes.

The power which this act gives to establish two branches in any State, without the injunction or request of the Government, and for other than public purposes, is not "necessary" to the due execution of the powers delegated to Congress.

The bonus which is exacted from the bank, is a confession, upon the face of the act, that the powers granted by it are greater than are "necessary" to its character as a fiscal agent. The Government does not tax its officers and agents for the privileges of serving it. The bonus of a million and a half, required by the original charter, and that of three millions proposed by this act, are not exacted for the privilege of giving "the necessary facilities for transferring the public funds from place to place, within the United States or the territories thereof, and for distributing the same in payment of the public creditors, without charging commission, or claiming allowance on account of the difference of exchange," as required by the act of incorporation, but for something more beneficial to the stockholders. The original act declares that it (the bonus) is granted "in consideration of the exclusive privileges and benefits conferred by this act upon the said bank," and the act before me declares it to be "in consideration of the exclusive benefits and privileges continued by this act to the said corporation for fifteen years as aforesaid." It is, therefore, for "exclusive privileges and benefits," conferred for their own use and emolument, and not for the advantage of the Government, that a bonus is exacted. These surplus powers, for which the bank is required to pay, cannot be "necessary" to make it the fiscal agent of the Treasury. If they were, the exaction of a bonus for them would not be "proper."

It is maintained by some that the bank is a means of executing the constitutional power "to coin money, and regulate the value thereof." Congress have established a mint to coin money, and passed laws to regulate the value thereof. The money so coined, with its value so regulated, and such foreign coins as Congress may adopt, are the only currency known to the Constitution. But if they have other power to regulate the currency, it was conferred to be exercised by themselves, and not to be transferred to a corporation. If the bank be established for that purpose, with a charter unalterable without its consent, Congress have parted with their power for a term of years, during which the Constitution is a dead letter. It is neither necessary nor proper to transfer its legislative power to such a bank, and therefore unconstitutional.

By its silence, considered in connection with the decision of the Supreme Court, in the case of *McCulloch* against the State of Maryland, this act takes from the States the power to tax a portion of the banking business carried on within their limits, in subversion of one of the strongest barriers which secured them against Federal encroachments. Banking, like farming, manufacturing, or any other occupation or profession, is a business, the right to follow which is not originally derived

from the laws. Every citizen, and every company of citizens, in all our States, possessed the right until the State legislatures deemed it good policy to prohibit private banking by law. If the prohibitory State laws were now repealed, every citizen would again possess the right. The State banks are a qualified restoration of the right which has been taken away by the laws against banking, guarded by such provisions and limitations as, in the opinion of the State legislatures, the public interest requires. These corporations, unless there be an exemption in their charter, are, like private bankers and banking companies, subject to State taxation. The manner in which these taxes shall be laid depends wholly on legislative discretion. It may be upon the bank, upon the stock, upon the profits, or in any other mode which the sovereign power shall will.

Upon the formation of the Constitution, the States guarded their taxing power with peculiar jealousy. They surrendered it only as it regards imports and exports. In relation to every other object within their jurisdiction, whether persons, property, business, or professions, it was secured in as ample a manner as it was before possessed. All persons, though United States' officers, are liable to a poll tax by the States within which they reside; the lands of the United States are liable to the usual land tax, except in the new States, from whom agreements that they will not tax unsold lands are exacted when they are admitted into the Union; horses, wagons, any beasts, or vehicles, tools, or property, belonging to private citizens, though employed in the service of the United States, are subject to State taxation. Every private business, whether carried on by an officer of the General Government or not, whether it be mixed with public concerns or not, even if it be carried on by the Government of the United States itself, separately or in partnership, falls within the scope of the taxing power of the State. Nothing comes more fully within it than banks and the business of banking, by whomsoever instituted and carried on. Over this whole subject-matter, it is just as absolute, unlimited, and uncontrollable, as if the Constitution had never been adopted, because in the formation of that instrument it was reserved without qualification.

The principle is conceded, that the States cannot rightfully tax the operations of the General Government. They cannot tax the money of the Government deposited in the State banks, nor the agency of those banks in remitting it; but will any man maintain that their mere selection to perform this public service for the General Government would exempt the State banks and their ordinary business from State taxation? Had the United States, instead of establishing a bank at Philadelphia, employed a private banker to keep and transmit their funds, would it have deprived Pennsylvania of the right to tax his bank and his usual banking operations? It will not be pretended. Upon what principle, then, are the banking establishments of the Bank of the United States, and their usual banking operations, to be exempted from

taxation? It is not their public agency, or the depositories of the Government, which the States claim a right to tax, but their banks and their banking powers, instituted and exercised within State jurisdiction for their private emolument—those powers and privileges for which they pay a bonus, and which the States tax in their own banks. The exercise of these powers within a State, no matter by whom or under what authority, whether by private citizens in their original right, by corporate bodies created by the States, by foreigners, or the agents of foreign Governments located within their limits, forms a legitimate object of State taxation. From this, and like sources, from the persons, property, and business, that are found residing, located, or carried on, under their jurisdiction, must the States, since the surrender of their right to raise a revenue from imports and exports, draw all the money necessary for the support of their Governments, and the maintenance of their independence. There is no more appropriate subject of taxation than banks, banking, and bank stocks, and none to which the States ought more pertinaciously to cling.

It cannot be necessary to the character of the bank, as a fiscal agent of the Government, that its private business should be exempted from that taxation to which all the State banks are liable. Nor can I conceive it “proper” that the substantive and most essential powers reserved by the States shall be thus attacked and annihilated as a means of executing the powers delegated to the General Government. It may be safely assumed that none of those sages who had an agency in forming or adopting our Constitution ever imagined that any portion of the taxing power of the States, not prohibited to them, nor delegated to Congress, was to be swept away and annihilated as a means of executing certain powers delegated to Congress.

If our power over means is so absolute, that the Supreme Court will not call in question the constitutionality of an act of Congress, the subject of which “is not prohibited, and is really calculated to effect any of the objects entrusted to the Government,” although, as in the case before me, it takes away powers expressly granted to Congress, and rights scrupulously reserved to the States, it becomes us to proceed in our legislation with the utmost caution. Though not directly, our own powers, and the rights of the States, may be indirectly legislated away in the use of means to execute substantive powers. We may not enact that Congress shall not have the power of exclusive legislation over the District of Columbia, but we may pledge the faith of the United States, that, as a means of executing other powers, it shall not be exercised for twenty years, or forever. We may not pass an act prohibiting the States to tax the banking business carried on within their limits, but we may, as a means of executing our powers over other objects, place that business in the hands of our agents, and then declare it exempt from State taxation in their hands. Thus may our own powers and the rights of the States, which we cannot directly curtail or invade, be

frittered away and extinguished in the use of means employed by us to execute other powers. That a Bank of the United States, competent to do all duties which may be required by the Government, might be so organized as not to infringe on our own delegated powers, or the reserved rights of the States, I do not entertain a doubt. Had the Executive been called upon to furnish the project of such an institution, the duty would have been cheerfully performed. In the absence of such a call, it is obviously proper that he should confine himself to pointing out those prominent features in the act presented, which, in his opinion, make it incompatible with the Constitution and sound policy. A general discussion will now take place, eliciting new light, and settling important principles; and a new Congress, elected in the midst of such discussion, and furnishing an equal representation of the people according to the last census, will bear to the capitol the verdict of public opinion, and, I doubt not, bring this important question to a satisfactory result.

Under such circumstances, the bank comes forward and asks for the renewal of its charter for a term of fifteen years, upon conditions which not only operate as a gratuity to the stockholders of many millions of dollars, but will sanction abuses and legalize any encroachments.

Suspensions are entertained, and charges are made, of gross abuses of violation of its charter. An investigation unwillingly conceded, and so restricted in time as necessarily to make it incomplete and unsatisfactory, discloses enough to excite suspicion and alarm. In the practices of the principal bank, partially unveiled in the absence of important witnesses, and in numerous charges confidently made, and as yet wholly uninvestigated, there was enough to induce a majority of the committee of investigation, a committee which was selected from the most able and honorable members of the House of Representatives, to recommend a suspension of further action upon the bill, and a prosecution of the inquiry. As the charter had yet four years to run, and as a renewal now was not necessary to the successful prosecution of its business, it was to have been expected that the bank itself, conscious of its purity, and proud of its character, would have withdrawn its application for the present, and demanded the severest scrutiny into all its transactions. In their declining to do so, there seems to be an additional reason why the functionaries of the Government should proceed with less haste, and more caution, in the renewal of their monopoly.

The bank is professedly established as an agent of the executive branches of the Government, and its constitutionality is maintained on that ground. Neither upon the propriety of present action, nor upon the provisions of this act, was the Executive consulted. It has had no opportunity to say that it neither needs nor wants an agent clothed with such powers and favored by such exemptions. There is nothing in its legitimate functions which makes it necessary or proper. Whatever interest or influence, whether public or private, has given birth to

this act, it cannot be found either in the wishes or necessities of the Executive Department, by which present action is deemed premature, and the powers conferred upon its agent not only unnecessary but dangerous to the Government and country.

It is to be regretted that the rich, and powerful, too, often bend the acts of Government to their selfish purposes. Distinctions in society will always exist under every just Government. Equality of talents, of education, or of wealth cannot be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue every man is equally entitled to protection by law. But when the laws undertake to add to these natural and just advantages artificial distinctions—to grant titles, gratuities, and exclusive privileges—to make the rich richer and the potent more powerful—the humble members of society, the farmers, mechanics, and laborers, who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in Government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.

Nor is our Government to be maintained or our Union preserved by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong we make it weak. Its true strength consists in leaving individuals and States, as much as possible, to themselves, in making itself felt, not in its power, but in its beneficence—not in its control, but in its protection—not in binding the States more closely to the center, but leaving each to move, unobstructed, in its proper orbit.

Experience should teach us wisdom. Most of the difficulties our Government now encounters, and most of the dangers which impend over our Union, have sprung from an abandonment of the legitimate objects of Government by our national legislation and the adoption of such principles as are embodied in this act. Many of our rich men have not been content with equal protection and equal benefits, but have besought us to make them richer by act of Congress. By attempting to gratify their desires we have, in the results of our legislation, arrayed section against section, interest against interest, and man against man in a fearful commotion, which threatens to shake the foundations of our Union. It is time to pause in our career, to review our principles, and, if possible, revive that devoted spirit of patriotism and spirit of compromise which distinguished the sages of the Revolution and the fathers of our Union. If we cannot at once, in justice to interests vested under improvident legislation, make our Government what it ought to be, we can, at least, take a stand against all new grants of monopolies and ex-

clusive privileges, against any prostitution of our Government to the advancement of the few at the expense of the many, and in favor of compromise and gradual reform in code of laws and system of political economy.

I have now done my duty to my country. If sustained by my fellow-citizens I shall be grateful and happy; if not, I shall find in the motives which impel me ample grounds for contentment and peace. In the difficulties which surround us, and the dangers which threaten our institutions, there is cause for neither dismay nor alarm. For relief and deliverance let us firmly rely on that kind Providence which, I am sure, watches with peculiar care over the destinies of our Republic, and on the intelligence and wisdom of our countrymen. Through His abundant goodness and their patriotic devotion our liberty and Union will be preserved.

ANDREW JACKSON.

This veto message gave rise to a prolonged discussion, extending from Wednesday, July 7, until Friday, July 13, when the question was put "Whether the bill should become a law, the President's objections to the contrary notwithstanding," and it was decided in the negative by 22 yeas against 19 nays. So the bill was not passed.

ANDREW JACKSON.—VI.

December 6, 1832.

To the Senate of the United States :

I avail myself of this early opportunity to return to the Senate, in which it originated, the bill entitled "An act providing for the final settlement of the claims of States for interest on advances to the United States, made during the last war," with the reasons which induced me to withhold my approbation, in consequence of which it has failed to become a law.

This bill was presented to me for my signature on the last day of your session, and when I was compelled to consider a variety of other bills of greater urgency to the public service. It obviously embraced a principle, in the allowance of interest, different from that which had been sanctioned by the practice of the accounting officers, or by the previous legislation of Congress, in regard to advances by the States, and without any apparent grounds for the change.

Previously to giving my sanction to so great an extension of the practice of allowing interest upon accounts with the Government, and which, in its consequences, and from analogy, might not only call for large payments from the Treasury, but disturb the great mass of individual accounts long since finally settled, I deemed it my duty to make a more thorough investigation of the subject than it was possible for me to do previously to the close of your last session. I adopted this course the

more readily, from the consideration that, as the bill contained no appropriation, the States which would have been entitled to claim its benefits could not have received them without the fuller legislation of Congress.

The principle which this bill authorizes varies not only from the practice uniformly adopted by many of the accounting officers in the case of individual accounts, and in those of the States finally settled and closed previously to your last session, but also from that pursued under the act of your last session for the adjustment and settlement of the claims of the State of South Carolina. This last act prescribed no particular mode for the allowance of interest, which, therefore, in conformity with the direction of Congress in previous cases, and with the uniform practice of the Auditor by whom the account was settled, was computed on the sums expended by the State of South Carolina for the use and benefit of the United States, and which had been repaid to the State; and the payments made by the United States were deducted from the principal sums, exclusive of the interest, thereby stopping future interest on so much of the principal as had been reimbursed by the payment.

I deem it proper, moreover, to observe that, both under the act of the 5th of August, 1790, and that of the 12th of February, 1793, authorizing the settlement of the accounts between the United States and the individual States, arising out of the war of the revolution, the interest on those accounts was computed in conformity with the practice already adverted to, and from which the bill now returned is a departure.

With these reasons and considerations, I return the bill to the Senate.

ANDREW JACKSON.

The veto message was laid on the table in the Senate, and ordered to be printed.

ANDREW JACKSON.—VII.

December 6, 1832.

To the House of Representatives :

In addition to the general views I have heretofore expressed to Congress on the subject of internal improvement, it is my duty to advert to it again in stating my objections to the bill entitled "An act for the improvement of certain harbors, and the navigation of certain rivers," which was not received a sufficient time before the close of the last session to enable me to examine it before the adjournment.

Having maturely considered that bill within the time allowed me by the Constitution, and being convinced that some of its provisions conflict with the rule adopted for my guide on this subject of legislation, I have been compelled to withhold from it my signature; and it has, therefore, failed to become a law.

To facilitate as far as I can the intelligent action of Congress upon the subjects embraced in this bill, I transmit herewith a report from the Engineer Department, distinguishing, as far as the information in its possession would enable it, between those appropriations which do, and those which do not, conflict with the rules by which my conduct in this respect has hitherto been governed. By that report it will be seen that there is a class of appropriations in the bill for the improvement of streams, that are not navigable, that are not channels of commerce, and that do not pertain to the harbors or ports of entry designated by any law, or have any ascertained connection with the usual establishments for the security of commerce, external or internal.

It is obvious that such appropriations involve the sanction of a principle that concedes to the General Government an unlimited power over the subject of internal improvements; and that I could not, therefore, approve a bill containing them, without receding from the positions taken in my veto of the Maysville road bill, and, afterwards, in my annual message of December 7, 1830.

It is to be regretted that the rules by which this classification of the improvements in this bill has been made by the Engineer Department are not more definite and certain, and that embarrassment may not always be avoided by the observance of them; but, as neither my own reflection, nor the lights derived from other sources, have furnished me with a better guide, I shall continue to apply my best exertions to their application and enforcement. In thus employing my best faculties to exercise the powers with which I am invested, to avoid evils, and to effect the greatest attainable good for our common country, I feel that I may trust to your cordial co-operation; and the experience of the past leaves me no room to doubt the liberal indulgence and favorable consideration of those for whom we act.

The grounds upon which I have given my assent to appropriations for the construction of light-houses, beacons, buoys, public piers, and the removal of sand-bars, sawyers, and other temporary or partial impediments in our navigable rivers and harbors, and with which many of the provisions of this bill correspond, have been so fully stated, that I trust a repetition of them is unnecessary. Had there been incorporated in the bill no provisions for works of a different description, depending on principles which extend the power of making appropriations to every object which the discretion of the Government may select, and losing sight of the distinctions between national and local character, which I had stated would be my future guide on the subject, I should have cheerfully signed the bill.

ANDREW JACKSON.

The veto message was referred by the House of Representatives to its Committee on Internal Improvements.

ANDREW JACKSON.—VIII.

*December 5, 1833.**To the Senate of the United States :*

At the close of the last session of Congress I received from that body a bill entitled "An act to appropriate for a limited time the proceeds of the sales of the public lands of the United States, and for granting lands to certain States." The brief period then remaining before the rising of Congress, and the extreme pressure of official duties, unavoidable on such occasions, did not leave me sufficient time for that full consideration of the subject which was due to its great importance. Subsequent consideration and reflection have, however, confirmed the objections to the bill which presented themselves to my mind upon its first perusal, and have satisfied me that it ought not to become a law. I felt myself, therefore, constrained to withhold from it my approval, and now return it to the Senate, in which it originated, with the reasons on which my dissent is founded.

I am fully sensible of the importance, as it respects both the harmony and union of the States, of making, as soon as circumstances will allow of it, a proper and final disposition of the whole subject of the public lands, and any measure for that object, providing for the reimbursement to the United States of those expenses with which they are justly chargeable that may be consistent with my views of the Constitution, sound policy, and the rights of the respective States, will readily receive my co-operation. This bill, however, is not of that character. The arrangement it contemplates is not permanent, but limited to five years only, and in its terms appears to anticipate alterations within that time at the discretion of Congress, and it furnishes no adequate security against those continued agitations of the subject which it should be the principal object of any measure for the disposition of the public lands to avert.

Neither the merits of the bill under consideration, nor the validity of the objections which I have felt it to be my duty to make to its passage, can be correctly appreciated without a full understanding of the manner in which the public lands, upon which it is intended to operate, were acquired, and the conditions upon which they are now held by the United States. I will, therefore, precede the statement of those objections by a brief but distinct exposition of these points.

The waste lands within the United States constituted one of the early obstacles to the organization of any Government for the protection of their common interests. In October, 1877, while Congress were framing the Articles of Confederation, a proposition was made to amend them to the following effect, viz :

"That the United States in Congress assembled shall have the sole and exclusive right and power to ascertain and fix the western boundary

of such States as claim to the Mississippi or South Sea, and lay out the land beyond the boundary so ascertained into separate and independent States from time to time, as the numbers and circumstance of the people thereof may require."

It was, however, rejected, Maryland only voting for it, and so difficult did the subject appear, that the patriots of that body agreed to waive it in the Articles of Confederation, and leave it for future settlement.

On the submission of the articles to the several State legislatures for ratification, the most formidable objection was found to be in this subject of the waste lands. Maryland, Rhode Island, and New Jersey instructed their delegates in Congress to move amendments to them, providing that the waste or crown lands should be considered the common property of the United States, but they were rejected. All the States except Maryland acceded to the articles, notwithstanding some of them did so with the reservation that their claim to those lands as common property was not thereby abandoned.

On the sole ground that no declaration to that effect was contained in the articles, Maryland withheld her assent, and in May, 1779, embodied her objection in the form of instructions to her delegates, which were entered upon the journals of Congress. The following extracts are from that document, viz :

"Is it possible that those States who are ambitiously grasping at territories, to which, in our judgment, they have not the least shadow of exclusive right, will use with greater moderation the increase of wealth and power derived from those territories when acquired than what they have displayed in their endeavors to acquire them?" &c.

"We are convinced policy and justice require that a country unsettled at the commencement of this war, claimed by the British Crown, and ceded to it by the treaty of Paris, if wrested from the common enemy by the blood and treasure of the thirteen States should be considered as a common property, subject to be parceled out by Congress into free, convenient, and independent governments in such manner and at such times as the wisdom of that assembly shall hereafter direct," &c.

Virginia proceeded to open a land office for the sale of her western lands, which produced such excitement as to induce Congress in October, 1779, to interpose and earnestly recommend to "the said State and all States similarly circumstanced, to forbear settling or issuing warrants for such unappropriated lands, or granting the same during the continuance of the present war."

In March, 1780, the legislature of New York passed an act tendering a cession to the United States of the claims of that State to the western territory, preceded by a preamble to the following effect, viz :

"Whereas nothing under Divine Providence can more effectually contribute to the tranquillity and safety of the United States of America than a federal alliance on such liberal principles as will give satisfaction to its respective members; and whereas the Articles of Confederation and Perpetual Union recommended by the honorable Congress of

the United States of America have not proved acceptable to all the States, it having been conceived that a portion of the waste and uncultivated territory within the limits or claims of certain States ought to be appropriated as a common fund for the expenses of the war, and the people of the State of New York being on all occasions disposed to manifest their regard for their sister States, and their earnest desire to promote the general interest and security, and more especially to accelerate the federal alliance by removing, as far as it depends upon them, the before-mentioned impediment to its final accomplishment," &c.

This act of New York, the instructions of Maryland, and a remonstrance of Virginia, were referred to a committee of Congress, who reported a preamble and resolution thereon, which were adopted on the 6th September, 1780; so much of which as is necessary to elucidate the subject is to the following effect, viz:

"That it appears advisable to press upon those States which can remove the embarrassments respecting the western country a liberal surrender of a portion of their territorial claims, since they cannot be perceived entire without endangering the stability of the general confederacy; to remind them how indispensably necessary it is to establish the Federal Union on a fixed and permanent basis, and on principles acceptable to all its respective members; how essential to public credit and confidence, to the support of our Army, to the vigor of our councils and success of our measures, to our tranquillity at home, our reputation abroad, to our very existence as a free, sovereign, and independent people; that they are fully persuaded the wisdom of the several legislatures will lead them to a full and impartial consideration of a subject so interesting to the United States, and so necessary to the happy establishment of the Federal Union; that they are confirmed in these expectations by a review of the before-mentioned act of the legislature of New York, submitted to their consideration," &c.

"*Resolved*, That copies of the several papers referred to the committee be transmitted with a copy of the report to the legislatures of the several States, and that it be earnestly recommended to those States who have claims to the western country to pass such laws and give their delegates in Congress such powers as may effectually remove the only obstacle to a final ratification of the Articles of Confederation, and that the legislature of Maryland be earnestly requested to authorize their delegates in Congress to subscribe the said articles."

Following up this policy Congress proceeded on the 10th October, 1780, to pass a resolution pledging the United States to the several States as to the manner in which any lands that might be ceded by them should be disposed of, the material parts of which are as follows, viz:

"*Resolved*, That the unappropriated lands which may be ceded or relinquished to the United States by any particular State, pursuant to the recommendation of Congress on the 6th day of September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence as the other States," &c. "That the said lands shall be granted or settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled, or nine or more of them."

In February, 1781, the legislature of Maryland passed an act authorizing their delegates in Congress to sign the Articles of Confederation. The following are extracts from the preamble and body of that act, viz:

"Whereas it hath been said that the common enemy is encouraged by this State not acceding to the Confederation to hope that the union of the sister States may be dissolved, and therefore prosecutes the war in expectation of an event so disgraceful to America; and our friends and illustrious ally are impressed with an idea that the common cause would be promoted by our formally acceding to the Confederation," &c.

The act, of which this is the preamble, authorizes the delegates of that State to sign the articles, and proceeds to declare "that by acceding to the said confederation, this State doth not relinquish nor intend to relinquish any right or interest she hath with the other united or confederated States to the back country," &c.

On the 1st of March, 1781, the delegates of Maryland signed the Articles of Confederation, and the Federal Union under that compact was complete. The conflicting claims to the Western lands, however, were not disposed of, and continued to give trouble to Congress. Repeated and urgent calls were made by Congress upon the States claiming them, to make liberal cessions to the United States, and it was not until long after the present Constitution was formed that the grants were completed.

The deed of cession from New York was executed on the 1st March, 1781, the day the articles of Confederation were ratified, and it was accepted by Congress on the 29th October, 1782. One of the conditions of this cession, thus tendered and accepted, was, that the lands ceded to the United States "*shall be and enure for the use and benefit of such of the United States as shall become members of the Federal Alliance of the said States, and for no other use or purpose whatsoever.*"

The Virginia deed of cession was executed and accepted on the first day of March, 1784. One of the conditions of this cession is as follows, viz:

"That all the lands within the territory as ceded to the United States, and not reserved for, or appropriated to, any of the before-mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, *shall be considered as a common fund for the use and benefit of such of the United States as has become or shall become members of the Confederation or Federal Alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever.*"

Within the years 1785, 1786, and 1787, Massachusetts, Connecticut, and South Carolina, ceded their claims upon similar conditions. The Federal Government went into operation under the existing Constitution on the 4th of March, 1789. The following is the only provision of that Constitution which has a direct bearing on the subject of the public lands, viz:

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belong-

ing to the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

Thus the Constitution left all the compacts, before made, in full force, and the rights of all parties remained the same under the new Government as they were under the Confederation.

The deed of cession of North Carolina was executed in December, 1789, and accepted by an act of Congress, approved April 2, 1790. The third condition of this cession was in the following words, viz:

"That all the lands intended to be ceded by virtue of this act to the United States of America, and not appropriated as before mentioned, *shall be considered as a common fund, for the use and benefit of the United States of America, North Carolina inclusive, according to their respective and usual proportions of the general charge and expenditure, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatsoever.*"

The cession of Georgia was completed on the 16th of June, 1802, and in its leading condition is precisely like that of Virginia and North Carolina. This grant completed the title of the United States to all those lands generally called *public lands*, lying within the original limits of the Confederacy. Those which have been acquired by the purchase of Louisiana and Florida, having been paid for out of the common treasure of the United States, are as much the property of the General Government, to be disposed of for the common benefit, as those ceded by the several States.

By the facts here collected from the early history of our Republic, it appears that the subject of the public lands entered into the elements of its institutions. It was only upon the condition that those lands should be considered as common property, to be disposed of for the benefit of the United States, that some of the States agreed to come into a "perpetual union." The States claiming those lands acceded to those views, and transferred their claims to the United States upon certain specific conditions, and on those conditions the grants were accepted. These solemn compacts, invited by Congress in a resolution declaring the purposes to which the proceeds of these lands should be applied, originating before the Constitution, and forming the basis on which it was made, bound the United States to a particular course of policy in relation to them, by ties as strong as can be invented to secure the faith of nations.

As early as May, 1785, Congress, in execution of these compacts, passed an ordinance providing for the sales of lands in the Western territory, and directing the proceeds to be paid into the Treasury of the United States. With the same object, other ordinances were adopted prior to the organization of the present Government.

In further execution of these compacts, the Congress of the United States, under the present Constitution, as early as the 4th August, 1790,

in "An act making provision for the debt of the United States," enacted as follows, viz:

"That the proceeds of sales which shall be made of lands in the Western territory, now belonging or that may hereafter belong to the United States, shall be, and are hereby appropriated towards sinking or discharging the debts for the payment whereof the United States now are, or by virtue of this act may be holden, and shall be applied solely to that use, until the said debt shall be fully satisfied."

To secure to the Government of the United States, forever, the power to execute these compacts in good faith, the Congress of the Confederation, as early as July 13, 1878, in an ordinance for the government of the territory of the United States northwest of the river Ohio, prescribed to the people inhabiting the Western territory certain conditions which were declared to be "articles of compact between the original States and the people and States in the said territory," which should "forever remain unalterable, unless by common consent." In one of these articles it is declared that—

"The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulation Congress may find necessary for securing the title in such soil to the *bona fide* purchasers."

This condition has been exacted from the people of all the new Territories, and, to put its obligation beyond dispute, each new State, carved out of the public domain, has been required explicitly to recognize it as one of the conditions of admission into the Union. Some of them have declared through their conventions, in separate acts, that their people "forever disclaim all right and title to the waste and unappropriated lands lying within this State, and that the same shall be and remain at the sole and entire disposition of the United States."

With such care have the United States reserved to themselves, in all their acts down to this day—in legislating for the Territories and admitting States into the Union—the unshackled power to execute in good faith the compacts of cession made with the original States. From these facts and proceedings it plainly and certainly results:

1. That one of the fundamental principles on which the Confederation of the United States was originally based, was, that the waste land of the West within their limits should be the common property of the United States.

2. That those lands were ceded to the United States by the States which claimed them, and the cessions were accepted, on the express condition that they should be disposed of for the common benefit of the States, according to their respective proportions in the general charge of expenditure, and for no other purpose whatsoever.

3. That, in execution of these solemn compacts, the Congress of the United States did, under the Confederation, proceed to sell these, and put the avails into the common treasury; and, under the new Constitution, did repeatedly pledge them for the payment of the public debt of

the United States, by which pledge each State was expected to profit, in proportion to the general charge made upon it for that object.

These are the first principles of this whole subject, which, I think cannot be contested by any one who examines the proceedings of the Revolutionary Congress, the cessions of the several States, and the acts of Congress under the new Constitution. Keeping them deeply impressed upon the mind, let us proceed to examine how far the objects of the cessions have been completed, and see whether those compacts are not still obligatory upon the United States.

The debt for which those lands were pledged by Congress may be considered as paid, and they are consequently released from that lien. But that pledge formed no part of the compacts with the States, or of the conditions upon which the cessions were made. It was a contract between new parties—between the United States and their creditors. Upon payment of the debts, the compacts remain in full force, and the obligation of the United States to dispose of the lands for the common benefit is neither destroyed nor impaired. As they cannot now be executed in that mode, the only legitimate question which can arise is, in what other way are these lands to be hereafter disposed of for the common benefit of the several States “*according to their respective and usual proportion in the general charge and expenditure.*” The cessions of Virginia, North Carolina, and Georgia, in express terms, and all the rest impliedly, not only provide thus specifically the proportion according to which each State shall profit by the proceeds of the land sales, but they proceed to declare that they shall be “*faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever.*” This is the fundamental law of the land at this moment, growing out of compacts which are older than the Constitution, and formed the corner-stone on which the Union itself was erected.

In the practice of the Government, the proceeds of the public lands have not been set apart *as a separate fund* for the payment of the public debt, but have been and are now paid into the Treasury, where they constitute a part of the aggregate of revenue upon which the Government draws as well for its current expenditures as for the payment of the public debt. In this manner they have heretofore, and do now, lessen the general charge upon the people of the several States in the exact proportions stipulated in the compacts.

These general charges have been composed not only of the public debt, and the usual expenditures attending the civil and military administrations of the Government, but of the amounts paid to the States with which these compacts were formed, the amounts paid the Indians for their right of possession, the amounts paid for the purchase of Louisiana and Florida, and the amounts paid surveyors, registers, receivers, clerks, &c., employed in preparing for market and selling the Western domain. From the origin of the land system, down to September 30, 1832, the amount expended for all these purposes has been about

\$49,701,280, and the amount received from the sales, deducting payments on account of roads, &c., about \$38,386,624. The revenue arising from public lands, therefore, has not been sufficient to meet the general charges on the Treasury which have grown out of them, by about \$11,314,656. Yet, in having been applied to lessen those charges, the conditions of the compacts have been thus far fulfilled, and each State has profited according to its usual proportion in the general charge and expenditure. The annual proceeds of land sales have increased, and the charges have diminished; so that, at a reduced price, those lands would now defray all current charges growing out of them, and save the Treasury from further advances on their account. Their original intent and object, therefore, would be accomplished as fully as it has hitherto been, by reducing the price, and hereafter, as heretofore, bringing the proceeds into the Treasury. Indeed, as this is the only mode in which the objects of the original compacts can be obtained, it may be considered, for all practical purposes, that it is one of their requirements.

The bill before me begins with an entire subversion of every one of the compacts by which the United States became possessed of their Western domain, and treats the subject as if they never had existence, and as if the United States were the original and unconditional owners of all the public lands. The first section directs—

“That, from and after the 31st of December, 1832, there shall be allowed and paid to each of the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, and Louisiana, over and above what each of the said States is entitled to by the terms of the compacts entered into between them respectively upon their admission into the Union and the United States, the sum of twelve and a half per centum upon the net amount of the sales of the public lands which, subsequent to the day aforesaid, shall be made within the several limits of the said States, which said sum of twelve and a half per centum shall be applied to some object or objects of internal improvement or education within the said States, under the direction of their several legislatures.”

This twelve and a half per centum is to be taken out of the nett proceeds of the land sales before any apportionment is made; and the same seven States which are first to receive this proportion, are also to receive their due proportion of the residue, according to the ratio of general distribution.

Now, waiving all considerations of equity or policy in regard to this provision, what more need be said to demonstrate its objectionable character, than that it is in direct and undisguised violation of the pledge given by Congress to the States before a single cession was made; that it abrogates the condition upon which some of the States came into the Union; and that it sets at naught the terms of cession spread upon the face of every grant under which the title to that portion of the public lands is held by the Federal Government.

In the apportionment of the remaining seven-eighths of the proceeds, this bill, in a manner equally undisguised, violates the conditions upon

which the United States acquired title to the ceded lands. Abandoning altogether the ratio of distribution according to the general charge and expenditure provided by the compacts, it adopts that of the federal representative population. Virginia, and other States, which ceded their lands upon the express condition that they should receive a benefit from their sales, in proportion to their part of the general charge, are by the bill allowed only a portion of seven-eighths of their proceeds; and that not in the proportion of general charge and expenditure, but in the ratio of their federal representative population.

The Constitution of the United States did not delegate to Congress the power to abrogate these compacts; on the contrary, by declaring that nothing in it "*shall be so construed as to prejudice any claims of the United States, or of any particular State,*" it virtually provides that these compacts, and the rights they secure, shall remain untouched by the legislative power, which shall only make all *needful rules and regulations*" for carrying them into effect. All beyond this would seem to be an assumption of undelegated power.

These ancient compacts are invaluable monuments of an age of virtue, patriotism, and disinterestedness. They exhibit the price that great States, which had won liberty, were willing to pay for that union, without which they plainly saw it could not be preserved. It was not for territory or State power that our Revolutionary fathers took up arms; it was for individual liberty and the right of self-government. The expulsion from the continent of British armies and British power was then a barren conquest, if, through the collisions of the redeemed States, the individual rights for which they fought should become the prey of petty military tyrannies established at home. To avert such consequences, and to throw around liberty the shield of union, States, whose relative strength at the time gave them a preponderating power, magnanimously sacrificed domains which would have made them the rivals of empires, only stipulating that they should be disposed of for the common benefit of themselves and the other confederated States. This enlightened policy produced union, and has secured liberty; it has made our waste lands to swarm with busy people, and added many powerful States to our Confederation. As well for the fruits which these noble works of our ancestors have produced, as for the devotedness in which they originated, we should hesitate before we demolish them.

But there are other principles asserted in the bill which would have impelled me to withhold my signature, had I not seen in it a violation of the compacts by which the United States acquired title to a large portion of the public lands. It reasserts the principle contained in the bill authorizing a subscription to the stock of the Maysville, Washington, Paris, and Lexington Turnpike Road Company, from which I was compelled to withhold my consent for reasons contained in my message of the 27th May, 1830, to the House of Representatives. The leading principle then asserted was that Congress possesses no constitutional

power to appropriate any part of the moneys of the United States for objects of a local character within the States. That principle, I cannot be mistaken in supposing, has received the unequivocal sanction of the American people, and all subsequent reflection has but satisfied me more thoroughly that the interests of our people and the purity of our Government, if not its existence, depend on its observance. The public lands are the common property of the United States, and the moneys arising from their sales are a part of the public revenue. This bill proposes to raise from and appropriate a portion of this public revenue to certain States, providing expressly, that it shall "*be applied to objects of internal improvement or education within those States,*" and then proceeds to appropriate the balance to all the States, with the declaration that it shall be applied "*to such purposes as the legislature of the said respective States shall deem proper.*" The former appropriation is expressly for internal improvements or education, without qualification as to the kind of improvements, and therefore in express violation of the principle maintained in my objections to the turnpike road bill, above referred to. The latter appropriation is more broad, and gives the money to be applied to any local purpose whatsoever. It will not be denied that, under the provisions of the bill, a portion of the money might have been applied to making the very road to which the bill of 1830 had reference, and must of course come within the scope of the same principle. If the money of the United States cannot be applied to local purposes *through its own agents* as little can it be permitted to be thus expended *through the agency of the State governments.*

It has been supposed that with all the reductions in our revenue, which could be speedily effected by Congress without injury to the substantial interests of the country, there might be for some years to come a surplus of moneys in the Treasury, and that there was, in principle, no objection to returning them to the people by whom they were paid. As the literal accomplishment of such an object is obviously impracticable, it was thought admissible, as the nearest approximation to it, to hand them over to the State governments, the more immediate representatives of the people, to be by them applied to the benefit of those to whom they properly belonged. The principle and the object was to return to the people an unavoidable surplus of revenue which might have been paid by them under a system which could not at once be abandoned; but even this resource, which at one time seemed to be almost the only alternative to save the General Government from grasping unlimited power over internal improvements, was suggested with doubts of its constitutionality.

But this bill assumes a new principle. Its object is not to return to the people an unavoidable surplus of revenue paid in by them, but to create a surplus for distribution among the States. It seizes the entire proceeds of one source of revenue and sets them apart as a surplus, making it necessary to raise the moneys for supporting the Government

and meeting the general charges from other sources. It even throws the entire land system upon the customs for its support, and makes the public lands a perpetual charge upon the Treasury. It does not return to the people moneys accidentally or unavoidably paid by them to the Government, by which they are not wanted; but compels the people to pay moneys into the Treasury for the mere purpose of creating a surplus for distribution to their State governments. If this principle be once admitted, it is not difficult to perceive to what consequences it may lead. Already this bill, by throwing the land system on the revenues from imports for support, virtually distributes among the States a part of those revenues. The proportion may be increased from time to time without any departure from the principle now asserted, until the State governments shall derive all the funds necessary for their support from the Treasury of the United States, or, if a sufficient supply should be obtained by some States and not by others, the deficient States might complain, and to put an end to all further difficulty, Congress, without assuming any new principle, need go but one step further, and put the salaries of all the State governors, judges, and other officers, with a sufficient sum for other expenses, in their general appropriation bill.

It appears to me that a more direct road to consolidation cannot be devised. Money is power; and, in that government which pays all the public officers of the States, will all political power be substantially concentrated. The State governments, if governments they might be called, would lose all their independence and dignity. The economy which now distinguishes them would be converted into a profusion, limited only by the extent of the supply. Being the dependents of the General Government, and looking to its Treasury as the source of all their emoluments, the State officers, under whatever names they might pass, and by whatever forms their duties might be prescribed, would, in effect, be the mere stipendiaries and instruments of the central power.

I am quite sure that the intelligent people of our several States will be satisfied, on a little reflection, that it is neither wise nor safe to release the members of their local legislatures from the responsibility of levying the taxes necessary to support their State governments, and vest it in Congress, over most of whose members they have no control. They will not think it expedient that Congress shall be the tax-gatherer and paymaster of all their State governments, thus amalgamating all their officers into one mass of common interest and common feeling. It is too obvious that such a course would subvert our well-balanced system of Government, and ultimately deprive us of all the blessings now derived from our happy Union.

However willing I might be that any unavoidable surplus in the Treasury should be returned to the people through their State governments, I cannot assent to the principle that a surplus may be created for the purpose of distribution. Viewing this bill as in effect assuming

the right, not only to create a surplus for that purpose, but to divide the contents of the Treasury among the States without limitation, from whatever source they may be derived, and asserting the power to raise and appropriate money for the support of every State government and institution, as well as for making every local improvement, however trivial, I cannot give it my assent.

It is difficult to perceive what advantages would accrue to the old States or the new, from the system of distribution which this bill proposes, if it were otherwise unobjectionable. It requires no argument to prove that if three millions of dollars a year, or any other sum, shall be taken out of the Treasury by this bill for distribution, it must be replaced by the same sum collected from the people through some other means. The old States will receive annually a sum of money from the Treasury, but they will pay in a larger sum, together with the expenses of collection and distribution. It is only their proportion of seven-eighths of the proceeds of land sales which they are to receive; but they must pay their due proportion of the whole. Disguise it as we may, the bill proposes to them a dead loss, in the ratio of eight to seven, in addition to expenses and other incidental losses. This assertion is not the less true because it may not at first be palpable. Their receipts will be in large sums, but their payments in small ones. The governments of the States will receive seven dollars for which the people of the States will pay eight. The large sums received will be palpable to the senses; the small sums paid, it requires thought to identify. But a little consideration will satisfy the people that the effect is the same as if seven hundred dollars were given them from the public Treasury, for which they were at the same time required to pay in taxes, direct or indirect, eight hundred.

I deceive myself greatly if the new States would find their interests promoted by such a system as this bill proposes. Their true policy consists in the rapid settling and improvement of the waste lands within their limits. As a means of hastening those events, they have long been looking to a reduction in the price of the public lands upon the final payment of the national debt. The effect of the proposed system would be to prevent that reduction. It is true, the bill reserves to Congress the power to reduce the price, but the effect of its details, as now arranged, would probably be forever to prevent its exercise.

With the just men who inhabit the new States, it is a sufficient reason to reject this system, that it is in violation of the fundamental laws of the Republic and its Constitution. But if it were a mere question of interest or expediency, they would still reject it. They would not sell their bright prospect of increasing wealth and growing power at such a price. They would not place a sum of money to be paid into their treasuries in competition with the settlement of their waste lands and the increase of their population. They would not consider a small or a

large annual sum to be paid to their governments and immediately expended, as an equivalent for that enduring wealth which is composed of flocks and herds and cultivated farms. No temptation will allure them from that object of abiding interest, the settlement of their waste lands, and the increase of a hardy race of free citizens—their glory in peace, and their defense in war.

On the whole, I adhere to the opinion expressed by me in my annual message of 1832, that it is our true policy that the public lands shall cease as soon as practicable to be a source of revenue, except for the payment of those general charges which grow out of the acquisition of the lands, their survey and sale. Although these expenses have not been met by the proceeds of sales heretofore, it is quite certain they will be hereafter, even after a considerable reduction in the price. By meeting in the Treasury so much of the general charge as arises from that source, they will hereafter, as they have been heretofore, be disposed of for the common benefit of the United States, according to the compacts of cession. I do not doubt that it is the real interest of each and all the States in the Union, and particularly of the new States, that the price of these lands shall be reduced and graduated; and that after they have been offered for a certain number of years, the refuse remaining unsold shall be abandoned to the States, and the machinery of our land system entirely withdrawn. It cannot be supposed the compacts intended that the United States should retain forever a title to lands within the States which are of no value, and no doubt is entertained that the general interest would be best promoted by surrendering such lands to the States.

This plan for disposing of the public lands impairs no principle, violates no compact, and deranges no system. Already has the price of those lands been reduced from two dollars per acre to one dollar and a quarter, and upon the will of Congress it depends whether there shall be a further reduction. While the burdens of the East are diminishing by the reduction of the duties upon imports, it seems but equal justice that the chief burden of the West should be lightened in an equal degree at least. It would be just to the old States and the new, conciliate every interest, disarm the subject of all its dangers, and add another guarantee to the perpetuity of our happy Union.

Sensible, however, of the difficulties which surround this important subject, I can only add to my regrets at finding myself again compelled to disagree with the legislative power, the sincere declaration that any plan which shall promise a final and satisfactory disposition of the question, and be Compatible with the Constitution and public faith, shall have my hearty concurrence.

ANDREW JACKSON.

ANDREW JACKSON.—IX.

*April 15, 1834.**To the Senate of the United States :*

It appears by the published Journal of the Senate, that, on the 26th of December last, a resolution was offered by a member of the Senate, which, after a protracted debate, was, on the 28th day of March last, modified by the mover, and passed by the votes of twenty-six Senators, out of forty-six who were present and voted, in the following words, viz :

“Resolved, That the President, in the late Executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both.”

Having had the honor, through the voluntary suffrages of the American people, to fill the office of President of the United States during the period which may be presumed to have been referred to in this resolution, it is sufficiently evident that the censure it inflicts was intended for myself. Without notice, unheard and untried, I thus find myself charged on the records of the Senate, and in a form hitherto unknown in our history, with the high crime of violating the laws and Constitution of my country.

It can seldom be necessary for any department of the Government, when assailed in conversation, or debate, or by the strictures of the press or of popular assemblies, to step out of its ordinary path for vindicating its conduct, or of pointing out any irregularity or injustice in the manner of the attack. But when the chief Executive Magistrate is, by one of the most important branches of the Government, in its official capacity, in a public manner, and by its recorded sentence, but without precedent, competent authority, or just cause, declared guilty of a breach of the laws and Constitution, it is due to his station, to public opinion, and to a proper self-respect, that the officer thus denounced should promptly expose the wrong which has been done.

In the present case, moreover, there is even a stronger necessity for such a vindication. By an express provision of the Constitution, before the President of the United States can enter on the execution of his office, he is required to take an oath or affirmation in the following words :

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States; and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

The duty of defending, so far as in him lies, the integrity of the Constitution, would indeed have resulted from the very nature of his office; but by thus expressing it in the official oath or affirmation, which, in

this respect, differs from that of every other functionary, the founders of our Republic have attested their sense of its importance, and have given to it a peculiar solemnity and force. Bound to the performance of this duty by the oath I have taken, by the strongest obligations of gratitude to the American people, and by the ties which unite my every earthly interest with the welfare and glory of my country, and perfectly convinced that the discussion and passage of the above-mentioned resolution were not only unauthorized by the Constitution, but in many respects repugnant to its provisions and subversive of the rights secured by it to other co-ordinate departments, I deem it an imperative duty to maintain the supremacy of that sacred instrument, and the immunities of the department intrusted to my care, by all means consistent with my own lawful powers, with the rights of others, and with the genius of our civil institutions. To this end, I have caused this, my solemn protest against the aforesaid proceedings, to be placed on the files of the Executive department, and to be transmitted to the Senate.

It is alike due to the subject, the Senate, and the people, that the views which I have taken of the proceedings referred to, and which compel me to regard them in the light that has been mentioned, should be exhibited at length, and with the freedom and firmness which are required by an occasion so unprecedented and peculiar.

Under the Constitution of the United States, the powers and functions of the various departments of the Federal Government, and their responsibilities for violation or neglect of duty, are clearly defined, or result by necessary inference. The legislative power, subject to the qualified negative of the President, is vested in the Congress of the United States, composed of the Senate and House of Representatives. The executive power is vested exclusively in the President, except that in the conclusion of treaties and in certain appointments to office he is to act with the advice and consent of the Senate. The judicial power is vested exclusively in the Supreme and other courts of the United States, except in cases of impeachment, for which purpose the accusatory power is vested in the House of Representatives, and that of hearing and determining in the Senate. But although, for the special purposes which have been mentioned, there is an occasional intermixture of the powers of the different departments, yet with these exceptions each of the three great departments is independent of the others in its sphere of action; and when it deviates from that sphere is not responsible to the others, further than it is expressly made so in the Constitution. In every other respect each of them is the co-equal of the other two, and all are the servants of the American people, without power or right to control or censure each other in the service of their common superior, save only in the manner and to the degree which that superior has prescribed.

The responsibilities of the President are numerous and weighty. He is liable to impeachment for high crimes and misdemeanors, and, on

due conviction, to removal from office, and perpetual disqualification; and notwithstanding such conviction, he may also be indicted and punished according to law. He is also liable to the private action of any party who may have been injured by his illegal mandates or instructions, in the same manner and to the same extent as the humblest functionary. In addition to the responsibilities which may thus be enforced by impeachment, criminal prosecution, or suit at law, he is also accountable at the bar of public opinion for every act of his administration. Subject only to the restraints of truth and justice, the free people of the United States have the undoubted right, as individuals or collectively, orally or in writing, at such times, and in such language and form as they may think proper, to discuss his official conduct, and to express and promulgate their opinions concerning it. Indirectly, also, his conduct may come under review in either branch of the legislature, or in the Senate when acting in its executive capacity; and so far as the executive or legislative proceedings of these bodies may require it, it may be examined by them. These are believed to be the proper and only modes in which the President of the United States is to be held accountable for his official conduct.

Tested by these principles, the resolution of the Senate is wholly unauthorized by the Constitution, and in derogation of its entire spirit. It assumes that a single branch of the legislative department may, for the purposes of a public censure, and without any view to legislation or impeachment, take up, consider, and decide upon, the official acts of the Executive. But in no part of the Constitution is the President subjected to any such responsibility; and in no part of that instrument is any such power conferred on either branch of the legislature.

The justice of these conclusions will be illustrated and confirmed by a brief analysis of the powers of the Senate, and a comparison of their recent proceedings with those powers.

The high functions assigned by the Constitution to the Senate are in their nature either legislative, executive, or judicial. It is only in the exercise of its judicial powers, when sitting as a court for the trial of impeachments, that the Senate is expressly authorized and necessarily required to consider and decide upon the conduct of the President, or any other public officer. Indirectly, however, as has been already suggested, it may frequently be called on to perform that office. Cases may occur in the course of its legislative or executive proceedings, in which it may be indispensable to the proper exercise of its powers, that it should inquire into, and decide upon, the conduct of the President or other public officers; and in every such case its constitutional right to do so is cheerfully conceded. But to authorize the Senate to enter on such a task in its legislative or executive capacity, the inquiry must actually grow out of and tend to some legislative or executive action; and the decision, when expressed, must take the form of some appropriate legislative or executive act.

The resolution in question was introduced, discussed, and passed, not as a joint, but as a separate resolution. It asserts no legislative power; proposes no legislative action; and neither possesses the form nor any of the attributes of a legislative measure. It does not appear to have been entertained or passed with any view or expectation of its issuing in a law or joint resolution, or in the repeal of any law or joint resolution, or in any other legislative action.

Whilst wanting both the form and substance of a legislative measure it is equally manifest that the resolution was not justified by any of the executive powers conferred on the Senate. These powers relate exclusively to the consideration of treaties and nominations to office; and they are exercised in secret session, and with closed doors. This resolution does not apply to any treaty or nomination, and was passed in a public session.

Nor does this proceeding in any way belong to that class of incidental resolutions which relate to the officers of the Senate, to their chamber, and other appurtenances, or to subjects of order, and other matters of the like nature—in all which either house may lawfully proceed, without any co-operation with the other, or with the President.

On the contrary, the whole phraseology and sense of the resolution seem to be judicial. Its essence, true character, and only practical effect, are to be found in the conduct which it charges upon the President, and in the judgment which it pronounces on that conduct. The resolution, therefore, though discussed and adopted by the Senate in its legislative capacity, is, in its office, and in all its characteristics, essentially judicial.

That the Senate possesses a high judicial power, and that instances may occur in which the President of the United States will be amenable to it, is undeniable. But under the provisions of the Constitution, it would seem to be equally plain that neither the President nor any other officer can be rightfully subjected to the operation of the judicial power of the Senate, except in the cases and under the forms prescribed by the Constitution.

The Constitution declares that “the President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors”—that the House of Representatives “shall have the sole power of impeachment”—that the Senate “shall have the sole power to try all impeachments”—that “when sitting for that purpose, they shall be on oath or affirmation”—that “when the President of the United States is tried, the Chief Justice shall preside”—that “no person shall be convicted without the concurrence of two-thirds of the members present”—and that “judgment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States.”

The resolution above quoted charges in substance, that in certain proceedings relating to the public revenue, the President has usurped authority and power not conferred upon him by the Constitution and laws, and that in doing so he violated both. Any such act constitutes a high crime—one of the highest, indeed, which the President can commit—a crime which justly exposes him to impeachment by the House of Representatives, and upon due conviction, to removal from office, and to the complete and immutable disfranchisement prescribed by the Constitution.

The resolution, then, was in substance an impeachment of the President; and in its passage, amounts to a declaration, by a majority of the Senate, that he is guilty of an impeachable offense. As such, it is spread upon the Journals of the Senate—published to the nation and to the world—made part of our enduring archives—and incorporated in the history of the age. The punishment of removal from office and future disqualification, does not, it is true, follow this decision; nor would it have followed the like decision, if the regular forms of proceeding had been pursued, because the requisite number did not concur in the result. But the moral influence of a solemn declaration, by a majority of the Senate, that the accused is guilty of the offense charged upon him, has been as effectually secured, as if the like declaration had been made upon an impeachment expressed in the same terms. Indeed, a greater practical effect has been gained, because the votes given for the resolution, though not sufficient to authorize a judgment of guilty on an impeachment, were numerous enough to carry that resolution.

That the resolution does not expressly allege that the assumption of power and authority which it condemns was intentional and corrupt, is no answer to the preceding view of its character and effect. The act thus condemned, necessarily implies volition and design in the individual to whom it is imputed; and being unlawful in its character, the legal conclusion is, that it was prompted by improper motives, and committed with an unlawful intent. The charge is not of a mistake in the exercise of supposed powers, but of the assumption of powers not conferred by the Constitution and laws, but in derogation of both; and nothing is suggested to excuse or palliate the turpitude of the act. In the absence of any such excuse or palliation, there is only room for one inference, and that is, that the intent was unlawful and corrupt. Besides, the resolution not only contains no mitigating suggestion, but on the contrary, it holds up the act complained of, as justly obnoxious to censure and reprobation; and thus as distinctly stamps it with impurity of motive, as if the strongest epithets had been used.

The President of the United States, therefore, has been, by a majority of his constitutional triers, accused and found guilty of an impeachable offense; but in no part of this proceeding have the directions of the Constitution been observed.

The impeachment, instead of being preferred and prosecuted by the House of Representatives, originated in the Senate, and was prosecuted without the aid or concurrence of the other house. The oath or affirmation prescribed by the Constitution, was not taken by the Senators—the Chief Justice did not preside—no notice of the charge was given to the accused—and no opportunity afforded him to respond to the accusation—to meet his accusers face to face—to cross-examine the witnesses—to procure counteracting testimony—or to be heard in his defense. The safeguards and formalities which the Constitution has connected with the power of impeachment, were doubtless supposed by the framers of that instrument, to be essential to the protection of the public servant, to the attainment of justice, and to the order, impartiality, and dignity of the procedure. These safeguards and formalities were not only practically disregarded, in the commencement and conduct of these proceedings, but in their result, I find myself convicted, by less than two-thirds of the members present, of an impeachable offense.

In vain may it be alleged in defense of this proceeding, that the form of the resolution is not that of an impeachment, or of a judgment thereupon; that the punishment prescribed in the Constitution does not follow its adoption; or that in this case, no impeachment is to be expected from the House of Representatives. It is because it did not assume the form of an impeachment, that it is the more palpably repugnant to the Constitution; for it is through that form only that the President is judicially responsible to the Senate; and though neither removal from office nor future disqualification ensues, yet it is not to be presumed that the framers of the Constitution considered either or both of those results, as constituting the whole of the punishment they prescribed. The judgment of guilty by the highest tribunal in the Union; the stigma it would inflict on the offender, his family and fame; and the perpetual record on the Journal, handing down to future generations the story of his disgrace, were doubtless regarded by them as the bitterest portions, if not the very essence of that punishment. So far, therefore, as some of its most material parts are concerned, the passage, recording, and promulgation of the resolution are an attempt to bring them on the President in a manner unauthorized by the Constitution. To shield him and other officers who are liable to impeachment, from consequences so momentous, except when really merited by official delinquencies, the Constitution has most carefully guarded the whole process of impeachment. A majority of the House of Representatives must think the officer guilty, before he can be charged. Two-thirds of the Senate must pronounce him guilty, or he is deemed to be innocent. Forty-six Senators appear by the Journal to have been present when the vote on the resolution was taken. If, after all the solemnities of an impeachment, thirty of those Senators had voted that the President was guilty, yet would he have been acquitted; but by the mode of proceeding adopted in the present case, a lasting record of conviction has been entered up

by the votes of twenty-six Senators, without an impeachment of trial; whilst the Constitution expressly declares that to the entry of such a judgment, an accusation by the House of Representatives, a trial by the Senate, and a concurrence of two-thirds in the vote of guilty shall be indispensable prerequisites.

Whether or not an impeachment was to be expected from the House of Representatives, was a point on which the Senate had no constitutional right to speculate, and in respect to which, even had it possessed the spirit of prophecy, its anticipations would have furnished no just grounds for this procedure. Admitting that there was reason to believe that a violation of the Constitution and laws had been actually committed by the President, still it was the duty of the Senate, as his sole constitutional judges, to wait for an impeachment until the other house should think proper to prefer it. The members of the Senate could have no right to infer that no impeachment was intended. On the contrary, every legal and rational presumption on their part ought to have been, that if there was good reason to believe him guilty of an impeachable offense, the House of Representatives would perform its constitutional duty, by arraigning the offender before the justice of his country. The contrary presumption would involve an application derogatory to the integrity and honor of the representatives of the people. But suppose the suspicion thus implied were actually entertained, and for good cause, how can it justify the assumption by the Senate of powers not conferred by the Constitution?

It is only necessary to look at the condition in which the Senate and the President have been placed by this proceeding, to perceive its utter incompatibility with the provisions and the spirit of the Constitution, and with the plainest dictates of humanity and justice.

If the House of Representatives shall be of opinion that there is just ground for the censure pronounced upon the President, then will it be the solemn duty of that house to prefer the proper accusation, and to cause him to be brought to trial by the constitutional tribunal. But in what condition would he find that tribunal? A majority of its members have already considered the case, and have not only formed, but expressed a deliberate judgment upon its merits. It is the policy of our benign systems of jurisprudence to secure, in all criminal proceedings, and even in the most trivial litigations, a fair, unprejudiced, and impartial trial. And surely it cannot be less important that such a trial should be secured to the highest officer of the Government.

The Constitution makes the House of Representatives the exclusive judges, in the first instance, of the question, whether the President has committed an impeachable offense. A majority of the Senate, whose interference with this preliminary question has, for the best of all reasons, been studiously excluded, anticipate the action of the House of Representatives, assume not only the function which belongs exclusively to that body, but convert themselves into accusers, witnesses,

counsel, and judges, and prejudice the whole case—thus presenting the appalling spectacle, in a free state, of judges going through a labored preparation for an impartial hearing and decision, by a previous *ex parte* investigation and sentence against the supposed offender.

There is no more settled axiom in that Government whence we derived the model of this part of our Constitution, than that "the Lords cannot impeach any to themselves, nor join in the accusation, because they are judges." Independently of the general reasons on which this rule is founded, its propriety and importance are greatly increased by the nature of the impeaching power. The power of arraigning the high officers of Government before a tribunal whose sentence may expel them from their seats and brand them as infamous, is eminently a popular remedy—a remedy designed to be employed for the protection of private right and public liberty, against the abuses of injustice and the encroachments of arbitrary power. But the framers of the Constitution were also undoubtedly aware that this formidable instrument had been and might be abused; and that from its very nature, an impeachment for high crimes and misdemeanors, whatever might be its result, would in most cases be accompanied by so much of dishonor and reproach, solicitude and suffering, as to make the power of preferring it one of the highest solemnity and importance. It was due to both these considerations that the impeaching power should be lodged in the hands of those who, from the mode of their election and the tenure of their offices, would most accurately express the popular will, and at the same time be most directly and speedily amenable to the people. The theory of these wise and benignant intentions is, in the present case, effectually defeated by the proceedings of the Senate. The members of that body represent, not the people, but the States, and though they are undoubtedly responsible to the States, yet, from their extended term of service, the effect of that responsibility, during the whole period of that term, must very much depend upon their own impressions of its obligatory force. When a body, thus constituted, expresses, beforehand, its opinion in a particular case, and thus indirectly invites a prosecution, it not only assumes a power intended for wise reasons to be confined to others, but it shields the latter from that exclusive and personal responsibility under which it was intended to be exercised, and reverses the whole scheme of this part of the Constitution.

Such would be some of the objections to this procedure, even if it were admitted that there is just ground for imputing to the President the offenses charged in the resolution. But if, on the other hand, the House of Representatives shall be of opinion that there is no reason for charging them upon him, and shall therefore deem it improper to prefer an impeachment, then will the violation of privilege as it respects that house, of justice as it regards the President, and of the Constitution as it relates to both, be only the more conspicuous and impressive.

The constitutional mode of procedure on an impeachment has not only been wholly disregarded, but some of the first principles of natural right and enlightened jurisprudence have been violated in the very form of the resolution. It carefully abstains from averring in which of "the late proceedings in relation to the public revenue the President has assumed upon himself authority and power not conferred by the Constitution and laws." It carefully abstains from specifying what laws or what parts of the Constitution have been violated. Why was not the certainty of the offense—"the nature and cause of the accusation"—set out in the manner required in the Constitution, before even the humblest individual, for the smallest crime, can be exposed to condemnation? Such a specification was due to the accused, that he might direct his defense to the real points of attack; to the people, that they might clearly understand in what particulars their institutions had been violated; and to the truth and certainty of our public annals. As the record now stands, whilst the resolution plainly charges upon the President at least one act of usurpation in "the late Executive proceedings in relation to the public revenue," and is so framed that those Senators who believed that one such act, and only one, had been committed, could assent to it, its language is yet broad enough to include several such acts; and so it may have been regarded by some of those who voted for it. But though the accusation is thus comprehensive in the censures it implies, there is no such certainty of time, place, or circumstance, as to exhibit the particular conclusion of fact or law which induced any one Senator to vote for it. And it may well have happened, that whilst one Senator believed that some particular act embraced in the resolution was an arbitrary and unconstitutional assumption of power, others of the majority may have deemed that very act both constitutional and expedient, or if not expedient, yet still within the pale of the Constitution. And thus a majority of the Senators may have been enabled to concur in a vague and undefined accusation, that the President, in the course of "the late Executive proceedings in relation to the public revenue," had violated the Constitution and laws; whilst, if a separate vote had been taken in respect to each particular act included within the general terms, the accusers of the President might, on any such vote, have been found in the minority.

Still further to exemplify this feature of the proceeding, it is important to be remarked, that the resolution, as originally offered to the Senate, specified, with adequate precision, certain acts of the President, which it denounced as a violation of the Constitution and laws, and that it was not until the very close of the debate, and when, perhaps, it was apprehended that a majority might not sustain the specific accusation contained in it, that the resolution was so modified as to assume its present form. A more striking illustration of the soundness and necessity of the rules which forbid vague and indefinite generalities, and require a

reasonable certainty in all judicial allegations, and a more glaring instance of the violation of those rules, has seldom been exhibited.

In this view of the resolution, it must certainly be regarded, not as a vindication of any particular provision of the law or the Constitution, but simply as an official rebuke or condemnatory sentence, too general and indefinite to be easily repelled, but yet sufficiently precise to bring into discredit the conduct and motives of the Executive. But whatever it may have been intended to accomplish, it is obvious that the vague, general, and abstract form of the resolution is in perfect keeping with those other departures from first principles and settled improvements in jurisprudence so properly the boast of free countries in modern times. And it is not too much to say of the whole of these proceedings, that, if they shall be approved and sustained by an intelligent people, then will that great contest with arbitrary power, which had established in statutes, in bills of rights, in sacred charters, and in constitutions of government, the right of every citizen to a notice before trial, to a hearing before conviction, and to an impartial tribunal for deciding on the charge, have been waged in vain.

If the resolution had been left in its original form, it is not to be presumed that it could ever have received the assent of a majority of the Senate, for the acts therein specified as violations of the Constitution and laws were clearly within the limits of the Executive authority. They are, the "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 deposit with the Bank of the United States and its branches, in conformity with the President's opinion, and appointing his successor to effect such removal, which has been done." But as no other specification has been substituted, and as these were the "Executive proceedings in relation to the public revenue" principally referred to in the course of the discussion, they will doubtless be generally regarded as the acts intended to be denounced as "an assumption of authority and power not conferred by the Constitution or laws, but in derogation of both." It is, therefore, due to the occasion that a condensed summary of the views of the Executive in respect to them should be here exhibited.

By the Constitution, "the executive power is vested in a President of the United States." Among the duties imposed upon him, and which he is sworn to perform, is that of "taking care that the laws be faithfully executed." Being thus made responsible for the entire action of the executive department, it was but reasonable that the power of appointing, overseeing, and controlling those who execute the laws—a power in its nature executive—should remain in his hands. It is, therefore, not only his right, but the Constitution makes it his duty, to "nominate, and by and with the advice and consent of the Senate appoint," all "officers of the United States whose appointments are not in the Constitution otherwise provided for," with a proviso that the appoint-

ment of inferior officers may be vested in the President alone, in the courts of justice, or in the heads of Departments.

The executive power vested in the Senate is neither that of "nominating" nor "appointing." It is merely a check upon the Executive power of appointment. If individuals proposed for appointment by the President are by them deemed incompetent and unworthy, they may withhold their consent, and the appointment cannot be made. They check the action of the Executive, but cannot, in relation to those very subjects, act themselves, nor direct him. Selections are still made by the President, and the negative given to the Senate, without diminishing his responsibility, furnishes an additional guarantee to the country that the subordinate executive, as well as the judicial offices, shall be filled with worthy and competent men.

The whole executive power being vested in the President, who is responsible for its exercise, it is a necessary consequence that he should have a right to employ agents of his own choice to aid him in the performance of his duties, and to discharge them when he is no longer willing to be responsible for their acts. In strict accordance with this principle, the power of removal, which, like that of appointment, is an original executive power, is left unchecked by the Constitution in relation to all executive officers, for whose conduct the President is responsible, while it is taken from him in relation to judicial officers, for whose acts he is not responsible. In the Government from which many of the fundamental principles of our system are derived, the head of the executive department originally had power to appoint and remove at will all officers, executive and judicial. It was to take the judges out of this general power of removal, and thus make them independent of the Executive, that the tenure of their offices was changed to good behavior. Nor is it conceivable why they are placed, in our Constitution, upon a tenure different from that of all other officers appointed by the Executive, unless it be for the same purpose.

But if there were any just ground for doubt on the face of the Constitution, whether all executive officers are removable at the will of the President, it is obviated by the contemporaneous construction of the instrument, and the uniform practice under it.

The power of removal was a topic of solemn debate in the Congress of 1789, while organizing the administrative departments of the Government, and it was finally decided that the President derived from the Constitution the power of removal, so far as it regards that department for whose acts he is responsible. Although the debate covered the whole ground, embracing the Treasury as well as all the other Executive departments, it arose on a motion to strike out of the bill to establish a Department of Foreign Affairs, since called the Department of State, a clause declaring the Secretary "to be removable from office by the President of the United States." After that motion had been decided in the negative, it was perceived that these words did not convey

the sense of the House of Representatives, in relation to the true source of the power of removal. With the avowed object of preventing any future inference that this power was exercised by the President in virtue of a grant from Congress, when in fact that body considered it as derived from the Constitution, the words which had been the subject of debate were struck out, and in lieu thereof a clause was inserted in a provision concerning the chief clerk of the Department, which declared that "whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy," the chief clerk should, during such vacancy, have charge of the papers of the office. This change having been made for the express purpose of declaring the sense of Congress, that the President derived the power of removal from the Constitution, the act as it passed has always been considered as a full expression of the sense of the legislature on this important part of the American Constitution.

Here then we have the concurrent authority of President Washington, of the Senate, and the House of Representatives, numbers of whom had taken an active part in the convention which framed the Constitution and in the State conventions which adopted it, that the President derived an unqualified power of removal from that instrument itself, which is "beyond the reach of legislative authority." Upon this principle the Government has now been steadily administered for about forty-five years, during which there have been numerous removals made by the President or by his direction, embracing every grade of executive officers, from the heads of Departments to the messengers of Bureaus.

The Treasury Department, in the discussions of 1789, was considered on the same footing as the other Executive departments, and in the act establishing it the precise words were incorporated indicative of the sense of Congress that the President derives his power to remove the Secretary from the Constitution, which appear in the act establishing the Department of Foreign Affairs. An Assistant Secretary of the Treasury was created, and it was provided that he should take charge of the books and papers of the Department, "whenever the Secretary shall be removed from office by the President of the United States." The Secretary of the Treasury being appointed by the President, and being considered as constitutionally removable by him, it appears never to have occurred to any one in the Congress of 1789, or since, until very recently, that he was other than an executive officer, the mere instrument of the Chief Magistrate in the execution of the laws, subject, like all other heads of Departments, to his supervision and control. No such idea as an officer of the Congress can be found in the Constitution, or appears to have suggested itself to those who organized the Government. There are officers of each house, the appointment of which is authorized by the Constitution, but all officers referred to in that instrument as coming within the appointing power of the Presi-

dent, whether established thereby or created by law, are "officers of the United States." No joint power of appointment is given to the two houses of Congress, nor is there any accountability to them as one body; but as soon as any office is created by law, of whatever name or character, the appointment of the person or persons to fill it devolves by the Constitution upon the President, with the advice and consent of the Senate, unless it be an inferior office, and the appointment be vested by the law itself "in the President alone, in the courts of law, or in the heads of Departments."

But at the time of the organization of the Treasury Department an incident occurred which distinctly evinces the unanimous concurrence of the first Congress in the principle that the Treasury Department is wholly executive in its character and responsibilities. A motion was made to strike out the provision of the bill making it the duty of the Secretary "to digest and report plans for the improvement and management of the revenue, and for the support of public credit," on the ground that it would give the executive department of the Government too much influence and power in Congress. The motion was not opposed on the ground that the Secretary was the officer of Congress and responsible to that body, which would have been conclusive, if admitted, but on other grounds, which conceded his executive character throughout. The whole discussion evinces a unanimous concurrence in the principle that the Secretary of the Treasury is wholly an executive officer, and the struggle of the minority was to restrict his power as such. From that time down to the present, the Secretary of the Treasury, the Treasurer, Register, Comptrollers, Auditors, and clerks, who fill the offices of that Department, have, in the practice of the Government, been considered and treated as on the same footing with corresponding grades of officers in all the other Executive departments.

The custody of the public property, under such regulations as may be prescribed by legislative authority, has always been considered an appropriate function of the Executive department, in this and all other Governments. In accordance with this principle, every species of property belonging to the United States (excepting that which is in the use of the several co ordinate departments of the Government, as means to aid them in performing their appropriate functions) is in charge of officers appointed by the President, whether it be lands, or buildings, or merchandise, or provisions, or clothing, or arms and munitions of war. The superintendents and keepers of the whole are appointed by the President, responsible to him, and removable at his will.

Public money is but a species of public property. It cannot be raised by taxation or custom, nor brought into the Treasury in any other way, except by law; but whenever or howsoever obtained, its custody always has been, and always must be, unless the Constitution be changed, intrusted to the executive department. No officer can be created by Congress for the purpose of taking charge of it whose appointment would

not, by the Constitution, at once devolve on the President, and who would not be responsible to him for the faithful performance of his duties. The legislative power may undoubtedly bind him and the President, by any laws they may think proper to enact; they may prescribe in what place particular portions of the public money shall be kept, and for what reason it shall be removed; as they may direct that supplies for the Army or Navy shall be kept in particular stores; and it will be the duty of the President to see that the law is faithfully executed—yet will the custody remain in the executive department of the Government. Were the Congress to assume, with or without a legislative act, the power of appointing officers independently of the President, to take the charge and custody of the public property contained in the military and naval arsenals, magazines, and storehouses, it is believed that such an act would be regarded by all as a palpable usurpation of executive power, subversive of the form as well as the fundamental principles of our Government. But where is the difference in principle, whether the public property be in the form of arms, munitions of war and supplies, or in gold and silver or bank notes? None can be perceived—none is believed to exist. Congress cannot, therefore, take out of the hands of the executive department the custody of the public property or money without an assumption of executive power and a subversion of the first principles of the Constitution.

The Congress of the United States have never passed an act imperatively directing that the public moneys shall be kept in any particular place or places. From the origin of the Government to the year 1816, the statute-book was wholly silent on the subject. In 1789 a Treasurer was created, subordinate to the Secretary of the Treasury, and through him to the President. He was required to give bond safely to keep and faithfully to disburse the public moneys, without any direction as to the manner or places in which they should be kept. By reference to the practice of the Government, it is found that, from its first organization, the Secretary of the Treasury, acting under the supervision of the President, designated the places in which the public moneys should be kept, and specially directed all transfers from place to place. This practice was continued, with the silent acquiescence of Congress, from 1789 down to 1816; and although many banks were selected and discharged, and although a portion of the moneys was first placed in the State banks, and then in the former Bank of the United States, and upon the dissolution of that, was again transferred to the State banks, no legislation was thought necessary by Congress, and all the operations were originated and perfected by executive authority. The Secretary of the Treasury, responsible to the President, and with his approbation, made contracts and arrangements in relation to the whole subject-matter, which was thus entirely committed to the direction of the President, under his responsibilities to the American people, and to

those who were authorized to impeach and punish him for any breach of this important trust.

The act of 1816, establishing the Bank of the United States, directed the deposits of public money to be made in that bank and its branches, in places in which the said bank and branches thereof may be established, "unless the Secretary of the Treasury should otherwise order and direct," in which event, he was required to give his reasons to Congress. This was but a continuation of his pre-existing powers as the head of an Executive Department, to direct where the deposits should be made, with the superadded obligation of giving his reasons to Congress for making them elsewhere than in the Bank of the United States and its branches. It is not to be considered that this provision in any degree altered the relation between the Secretary of the Treasury and the President, as the responsible head of the executive department, or released the latter from his constitutional obligation to "take care that the laws be faithfully executed." On the contrary, it increased his responsibilities, by adding another to the long list of laws which it was his duty to carry into effect.

It would be an extraordinary result, if, because the person charged by law with a public duty is one of the Secretaries, it were less the duty of the President to see that law faithfully executed than other laws enjoining duties upon subordinate officers or private citizens. If there be any difference, it would seem that the obligation is the stronger in relation to the former, because the neglect is in his presence and the remedy at hand.

It cannot be doubted that it was the legal duty of the Secretary of the Treasury to order and direct the deposits of the public money to be made elsewhere than in the Bank of the United States, whenever sufficient reasons existed for making the change. If, in such a case, he neglected or refused to act, he would neglect or refuse to execute the law. What would then be the sworn duty of the President? Could he say that the Constitution did not bind him to see the law faithfully executed, because it was one of his Secretaries, and not himself, upon whom the service was specially imposed? Might he not be asked whether there was any such limitation to his obligations prescribed in the Constitution?—whether he is not equally bound to take care that the laws be faithfully executed, whether they impose duties on the highest officer of State, or the lowest subordinate in any of the Departments? Might not he be told, that it was for the sole purpose of causing all executive officers, from the highest to the lowest, faithfully to perform the services required of them by law that the people of the United States have made him their Chief Magistrate, and the Constitution has clothed him with the entire executive power of this Government? The principles implied in these questions appear too plain to need elucidation.

But here, also, we have a contemporaneous construction of the act, which shows that it was not understood as in any way changing the

relations between the President and Secretary of the Treasury, or as placing the latter out of executive control, even in relation to the deposits of the public money. Nor on this point are we left to any equivocal testimony. The documents of the Treasury Department show that the Secretary of the Treasury did apply to the President, and obtained his approbation and sanction to the original transfer of the public deposits to the present Bank of the United States, and did carry the measure into effect in obedience to his decision. They also show that transfers of the public deposits from the branches of the Bank of the United States to State banks, at Chillicothe, Cincinnati, and Louisville, in 1819, were made with the approbation of the President, and by his authority. They show that upon all important questions appertaining to his Department, whether they related to the public deposits or other matters, it was the constant practice of the Secretary of the Treasury to obtain for his acts the approval and sanction of the President. These acts, and the principles on which they were founded, were known to all the departments of the Government, to Congress, and the country; and, until very recently appear never to have been called in question.

Thus was it settled by the Constitution, the laws, and the whole practice of the Government, that the entire executive power is vested in the President of the United States; that, as incident to that power, the right of appointing and removing those officers who are to aid him in the execution of the laws, with such restrictions only as the Constitution prescribes, is vested in the President; that the Secretary of the Treasury is one of those officers; that the custody of the public property and money is an executive function, which, in relation to the money, has always been exercised through the Secretary of the Treasury and his subordinates; that in the performance of these duties he is subject to the supervision and control of the President, and in all important measures having relation to them, consults the Chief Magistrate, and obtains his approval and sanction; that the law establishing the bank did not, as it could not, change the relation between the President and the Secretary—did not release the former from his obligation to see the law faithfully executed, nor the latter from the President's supervision and control; that afterwards, and before, the Secretary did in fact consult and obtain the sanction of the President to transfers and removals of the public deposits; and that all departments of the Government, and the nation itself, approved or acquiesced in these acts and principles as in strict conformity with our Constitution and laws.

During the last year the approaching termination, according to the provisions of its charter and the solemn decision of the American people, of the Bank of the United States, made it expedient, and its exposed abuses and corruptions made it, in my opinion, the duty of the Secretary of the Treasury to place the moneys of the United States in other depositories. The Secretary did not concur in that opinion, and declined giving the necessary order and direction. So glaring were the

abuses and corruptions of the bank, so evident its fixed purpose to persevere in them, and so palpable its design, by its money and power to control the Government and change its character, that I deemed it the imperative duty of the executive authority, by the exertion of every power confided to it by the Constitution and laws, to check its career, and lessen its ability to do mischief, even in the painful alternative of dismissing the head of one of the Departments. At the time the removal was made, other causes sufficient to justify it existed; but if they had not, the Secretary would have been dismissed for this cause only.

His place I supplied by one whose opinions were well known to me, and whose frank expressions of them in another situation, and whose generous sacrifices of interest and feeling when unexpectedly called to the station he now occupies, ought forever to have shielded his motives from suspicion and his character from reproach. In accordance with the opinions long before expressed by him, he proceeded, with my sanction, to make arrangements for depositing the moneys of the United States in other safe institutions.

The resolution of the Senate as originally framed and as passed, if it refers to these acts presupposes a right in that body to interfere with this exercise of executive power. If the principle be once admitted it is not difficult to perceive where it may end. If, by a mere denunciation like this resolution the President should ever be induced to act, in a matter of official duty, contrary to the honest convictions of his own mind in compliance with the wishes of the Senate, the constitutional independence of the Executive department would be as effectually destroyed, and its power as effectually transferred to the Senate, as if that end had been accomplished by an amendment of the Constitution. But if the Senate have a right to interfere with the executive powers, they have also the right to make that interference effective; and if the assertion of the power implied in the resolution be silently acquiesced in, we may reasonably apprehend that it will be followed at some future day by an attempt at actual enforcement. The Senate may refuse, except on the condition that he will surrender his opinions to theirs and obey their will, to perform their own constitutional functions; to pass the necessary laws; to sanction appropriations proposed by the House of Representatives; and to confirm proper nominations made by the President. It has already been maintained (and it is not conceivable that the resolution of the Senate can be based on any other principle) that the Secretary of the Treasury is the officer of Congress, and independent of the President; that the President has no right to control him, and consequently none to remove him. With the same propriety, and on similar grounds, may the Secretary of State, the Secretaries of War and the Navy, and the Postmaster-General, each in succession, be declared independent of the President, the subordinates of Congress, and removable only with the concurrence of the Senate.

Followed to its consequences this principle will be found effectually to destroy one co-ordinate department of the Government, to concentrate in the hands of the Senate the whole executive power, and to leave the President as powerless as he would be useless—the shadow of authority after the substance had departed.

The time and the occasion which have called forth the resolution of the Senate seem to impose upon me an additional obligation not to pass it over in silence. Nearly forty-five years had the President exercised, without a question as to his rightful authority, those powers for the recent assumption of which he is now denounced. The vicissitudes of peace and war had attended our Government; violent parties, watchful to take advantage of any seeming usurpation on the part of the Executive, had distracted our counsels; frequent removals, or forced resignations, in every sense tantamount to removals, had been made of the Secretary and other officers of the Treasury; and yet in no one instance is it known that any man, whether patriot or partisan, had raised his voice against it as a violation of the Constitution. The expediency and justice of such changes in reference to public officers of all grades, have frequently been the topics of discussion; but the constitutional right of the President to appoint, control, and remove the head of the Treasury, as well as all other Departments, seems to have been universally conceded. And what is the occasion upon which other principles have been first officially asserted? The Bank of the United States, a great moneyed monopoly, had attempted to obtain a renewal of its charter by controlling the elections of the people and the action of the Government. The use of its corporate funds and power in that attempt was fully disclosed; and it made known to the President that the corporation was putting in train the same course of measures with the view of making another vigorous effort, through an interference in the elections of the people, to control public opinion and force the Government to yield to its demands. This, with its corruption of the press, its violation of its charter, its exclusion of the Government directors from its proceedings, its neglect of duty, and arrogant pretensions, made it, in the opinion of the President, incompatible with the public interest and the safety of our institutions that it should be longer employed as the fiscal agent of the Treasury. A Secretary of the Treasury, appointed in the recess of the Senate, who had not been confirmed by that body, and whom the President might or might not at his pleasure nominate to them, refused to do what his superior in the Executive department considered the most imperative of his duties, and became in fact, however innocent his motives, the protector of the bank. And on this occasion it is discovered for the first time that those who framed the Constitution misunderstood it; that the first Congress and all its successors have been under a delusion; that the practice of near forty-five years is but a continued usurpation; that the Secretary of the Treasury is not responsible to the President; and that to remove him

is a violation of the Constitution and laws, for which the President deserves to stand forever dishonored on the Journals of the Senate.

There are also some other circumstances connected with the discussion and passage of the resolution to which I feel it to be not only my right, but my duty, to refer. It appears by the Journal of the Senate that among the twenty-six Senators who voted for the resolution on its final passage, and who had supported it in debate in its original form, were one of the Senators from the State of Maine, the two Senators from New Jersey, and one of the Senators from Ohio. It also appears by the same Journal, and by the files of the Senate, that the legislatures of these States had severally expressed their opinions in respect to the Executive proceedings drawn in question before the Senate.

The two branches of the legislature of the State of Maine on the 25th of January, 1834, passed a preamble and series of resolutions in the following words:

Whereas at an early period after the election of Andrew Jackson to the Presidency, in accordance with the sentiments which he had uniformly expressed, the attention of Congress was called to the constitutionality and expediency of the renewal of the charter of the United States Bank; and whereas the bank has transcended its chartered limits in the management of its business transactions, and has abandoned the object of its creation, by engaging in political controversies, by wielding its power and influence to embarrass the administration of the General Government, and by bringing insolvency and distress upon the commercial community; and whereas the public security from such an institution consists less in its present pecuniary capacity to discharge its liabilities than in the fidelity with which the trusts reposed in it have been executed; and whereas the abuse and misapplication of the powers conferred have destroyed the confidence of the public in the officers of the bank, and demonstrated that such powers endanger the stability of republican institutions: Therefore—

Resolved, That in the removal of the public deposits from the Bank of the United States, as well as in the manner of their removal, we recognize in the administration an adherence to constitutional rights and the performance of a public duty.

Resolved, That this legislature entertain the same opinion as heretofore expressed by the preceding legislatures of this State, that the Bank of the United States ought not to be rechartered.

Resolved, That the Senators of this State in the Congress of the United States be instructed, and the Representatives be requested, to oppose the restoration of the deposits and the renewal of the charter of the United States Bank.

On the 11th of January, 1834, the house of assembly and council, composing the legislature of the State of New Jersey, passed a preamble and series of resolutions in the following words:

Whereas the present crisis in our public affairs calls for a decided expression of the voice of the people of this State; and whereas we consider it the undoubted right of the legislatures of the several States to instruct those who represent their interests in the councils of the

nation in all matters which intimately concern the public weal, and may affect the happiness or well being of the people: Therefore—

1. *Be it resolved by the council and general assembly of this State*, That while we acknowledge, with feelings of devout gratitude, our obligations to the great Ruler of nations for his mercies to us as a people, that we have been preserved alike from foreign war, from the evils of internal commotions, and the machinations of designing and ambitious men, who would prostrate the fair fabric of our Union, that we ought, nevertheless, to humble ourselves in his presence, and implore his aid for the perpetuation of our republican institutions, and for a continuance of that unexampled prosperity which our country has hitherto enjoyed.

2. *Resolved*, That we have undiminished confidence in the integrity and firmness of the venerable patriot who now holds the distinguished post of Chief Magistrate of this nation, and whose purity of purpose and elevated motives have so often received the unqualified approbation of a large majority of his fellow-citizens.

3. *Resolved*, That we view with agitation and alarm the existence of a great moneyed incorporation which threatens to embarrass the operations of the Government, and by means of its unbounded influence upon the currency of the country, to scatter distress and ruin throughout the community; and that we therefore solemnly believe the present Bank of the United States ought not to be rechartered.

4. *Resolved*, That our Senators in Congress be instructed, and our members of the House of Representatives be requested, to sustain by their votes and influence the course adopted by the Secretary of the Treasury, Mr. Taney, in relation to the Bank of the United States and the deposits of the Government moneys, believing, as we do, the course of the Secretary to have been constitutional, and that the public good required its adoption.

5. *Resolved*, That the governor be requested to forward a copy of the above resolutions to each of our Senators and Representatives from this State in the Congress of the United States.

On the 21st of February last the legislature of the same State reiterated the opinions and instructions before given by joint resolutions in the following words:

Resolved by the council and general assembly of the State of New Jersey, That they do adhere to the resolutions passed by them on the 11th day of January last relative to the President of the United States, the Bank of the United States, and the course of Mr. Taney, in removing the Government deposits.

Resolved, That the legislature of New Jersey have not seen any reason to depart from such resolutions since the passage thereof; and it is their wish that they should receive from our Senators and Representatives of this State in the Congress of the United States that attention and obedience which are due to the opinion of a sovereign State openly expressed in its legislative capacity.

On the 2d of January, 1834, the senate and house of representatives composing the legislature of Ohio passed a preamble and resolutions in the following words:

Whereas there is reason to believe that the Bank of the United States will attempt to obtain a renewal of its charter at the present session of Congress; and whereas it is abundantly evident that said bank has exercised powers derogatory to the spirit of our free institu-

tions, and dangerous to the liberties of these United States; and whereas there is just reason to doubt the constitutional power of Congress to grant acts of incorporation for banking purposes out of the District of Columbia; and whereas we believe the proper disposal of the public lands to be of the utmost importance to the people of these United States, and that honor and good faith require their equitable distribution: Therefore—

Resolved by the general assembly of the State of Ohio, That we consider the removal of the public deposits from the Bank of the United States as required by the best interests of our country, and that a proper sense of public duty imperiously demanded that that institution should be no longer used as a depository of the public funds.

Resolved, also, That we view with decided disapprobation the renewed attempts in Congress to secure the passage of the bill providing for the disposal of the public domain upon the principles proposed by Mr. Clay, inasmuch as we believe that such a law would be unequal in its operations, and unjust in its results;

Resolved, also, That we heartily approve of the principles set forth in the late veto message upon that subject; and

Resolved, That our Senators in Congress be instructed, and our Representatives requested, to use their influence to prevent the rechartering of the Bank of the United States; to sustain the administration in its removal of the public deposits; and to oppose the passage of a land bill containing the principles adopted in the act upon that subject, passed at the last session of Congress.

Resolved, That the governor be requested to transmit copies of the foregoing preamble and resolutions to each of our Senators and Representatives.

It is thus seen that four Senators have declared by their votes that the President in the late executive proceedings in relation to the revenue had been guilty of the impeachable offense of "assuming upon himself authority and power not conferred by the Constitution and laws but in derogation of both," whilst the legislatures of their respective States had deliberately approved those very proceedings, as consistent with the Constitution and demanded by the public good. If these four votes had been given in accordance with the sentiments of the legislatures as above expressed, there would have been but twenty-four votes out of forty-six for censuring the President, and the unprecedented record of his conviction could not have been placed upon the Journals of the Senate.

In thus referring to the resolutions and instructions of the State legislatures, I disclaim and repudiate all authority or design to interfere with the responsibility due from members of the Senate to their own consciences, their constituents, and their country. The facts now stated belong to the history of these proceedings, and are important to the just development of the principles and interests involved in them as well as to the proper vindication of the Executive department; and with that view, and that view only, are they here made the topic of remark.

The dangerous tendency of the doctrine which denies to the President the power of supervising, directing, and removing the Secretary

of the Treasury, in like manner with the other executive officers, would soon be manifest in practice, were the doctrine to be established. The President is the direct representative of the American people, but the Secretaries are not. If the Secretary of the Treasury be independent of the President in the execution of the laws, then is there no direct responsibility to the people in that important branch of this Government to which is committed the care of the national finances. And it is in the power of the Bank of the United States, or any other corporation, body of men, or individuals, if a Secretary shall be found to accord with them in opinion, or can be induced in practice to promote their views, to control through him the whole action of the Government (so far as it is exercised by his Department), in defiance of the Chief Magistrate elected by the people and responsible to them.

But the evil tendency of the particular doctrine adverted to, though sufficiently serious, would be as nothing in comparison with the pernicious consequences which would inevitably flow from the approbation and allowance by the people and the practice by the Senate, of the unconstitutional power of arraigning and censuring the official conduct of the Executive in the manner recently pursued. Such proceedings are eminently calculated to unsettle the foundations of the Government, to disturb the harmonious action of its different departments, and to break down the checks and balances by which the wisdom of its framers sought to insure its stability and usefulness.

The honest differences of opinion which occasionally exist between the Senate and the President, in regard to matters in which both are obliged to participate, are sufficiently embarrassing. But if the course recently adopted by the Senate shall hereafter be frequently pursued, it is not only obvious that the harmony of the relations between the President and the Senate will be destroyed, but that other and graver effects will ultimately ensue. If the censures of the Senate be submitted to by the President, the confidence of the people in his ability and virtue, and the character and usefulness of his administration, will soon be at an end, and the real power of the Government will fall into the hands of a body holding their offices for long terms, not elected by the people, and not to them directly responsible. If on the other hand the illegal censures of the Senate should be resisted by the President, collisions and angry controversies might ensue, discreditable in their progress, and, in the end, compelling the people to adopt the conclusion, either that their Chief Magistrate was unworthy of their respect, or that the Senate was chargeable with calumny and injustice. Either of these results would impair public confidence in the perfection of the system, and lead to serious alterations of its frame-work, or to the practical abandonment of some of its provisions.

The influence of such proceedings on the other departments of the Government, and more especially on the States, could not fail to be extensively pernicious. When the judges, in the last resort of official

misconduct, themselves overleap the bounds of their authority as prescribed by the Constitution, what general disregard of its provisions might not their example be expected to produce? And who does not perceive that such contempt of the Federal Constitution by one of its most important departments would hold out the strongest temptation to resistance on the part of the State sovereignties whenever they shall suppose their just rights to have been invaded? Thus, all the independent departments of the Government, and the States which compose our confederated Union, instead of attending to their appropriate duties, and leaving those who may offend to be reclaimed or punished in the manner pointed out in the Constitution, would fall to mutual crimination and recrimination, and give to the people confusion and anarchy, instead of order and law, until at length some form of aristocratic power would be established on the ruins of the Constitution, or the States be broken into separate communities.

Far be it from me to charge or to insinuate that the present Senate of the United States intend, in the most distant way, to encourage such a result. It is not of their motives or designs, but only of the tendency of their acts, that it is my duty to speak. It is, if possible, to make Senators themselves sensible of the danger which lurks under the precedent set in their resolution, and, at any rate, to perform my duty as the responsible head of one of the co-equal departments of the Government, that I have been compelled to point out the consequences to which the discussion and passage of the resolution may lead, if the tendency of the measure be not checked in its inception.

It is due to the high trust with which I have been charged; to those who may be called to succeed me in it; to the representatives of the people, whose constitutional prerogative has been unlawfully assumed; to the people and to the States; and to the Constitution they have established, that I should not permit its provisions to be broken down by such an attack on the Executive department, without at least some effort "to preserve, protect, and defend" them. With this view, and for the reasons which have been stated, I do hereby SOLEMNLY PROTEST against the aforementioned proceedings of the Senate, as unauthorized by the Constitution; contrary to its spirit and to several of its express provisions; subversive of that distribution of the powers of Government which it has ordained and established; destructive of the checks and safeguards by which those powers were intended on the one hand to be controlled, and on the other to be protected; and calculated by their immediate and collateral effects, by their character and tendency to concentrate in the hands of a body not directly amenable to the people, a degree of influence and power dangerous to their liberties and fatal to the Constitution of their choice.

The resolution of the Senate contains an imputation upon my private as well as upon my public character; and as it must stand forever on their Journals, I cannot close this substitute for that defense which I

have not been allowed to present in the ordinary form, without remarking that I have lived in vain if it be necessary to enter into a formal vindication of my character and purposes from such an imputation. In vain do I bear upon my person enduring memorials of that contest in which American liberty was purchased; in vain have I since periled property, fame, and life in defense of the rights and privileges so dearly bought; in vain am I now without a personal aspiration, or the hope of individual advantage, encountering responsibilities and dangers from which by mere inactivity in relation to a single point I might have been exempt—if any serious doubts can be entertained as to the purity of my purposes and motives. If I had been ambitious, I should have sought an alliance with that powerful institution which even now aspires to no divided empire. If I had been venal, I should have sold myself to its designs. Had I preferred personal comfort and official ease to the performance of my arduous duty, I should have ceased to molest it. In the history of conquerors and usurpers, never, in the fire of youth, nor in the vigor of manhood, could I find an attraction to lure me from the path of duty; and now I shall scarcely find an inducement to commence the career of ambition when gray hairs and a decaying frame, instead of inviting to toil and battle, call me to the contemplation of other worlds, where conquerors cease to be honored and usurpers expiate their crimes. The only ambition I can feel is to acquit myself to Him to whom I must soon render an account of my stewardship, to serve my fellow-men, and live respected and honored in the history of my country. No; the ambition which leads me on is an anxious desire and a fixed determination to return to the people unimpaired the sacred trust they have confided to my charge—to heal the wounds of the Constitution and preserve it from further violation; to persuade my countrymen, so far as I may, that it is not in a splendid Government, supported by powerful monopolies and aristocratical establishments, that they will find happiness, or their liberties protection, but in a plain system, void of pomp—protecting all, and granting favors to none—dispensing its blessings like the dews of Heaven, unseen and unfelt, save in the freshness and beauty they contribute to produce. It is such a Government that the genius of our people requires—such a one only under which our States may remain for ages to come united, prosperous, and free. If the Almighty being who has hitherto sustained and protected me, will but vouchsafe to make my feeble powers instrumental to such a result, I shall anticipate with pleasure the place to be assigned me in the history of my country, and die contented with the belief that I have contributed in some small degree to increase the value and prolong the duration of American liberty.

To the end that the resolution of the Senate may not be hereafter drawn into precedent, with the authority of silent acquiescence on the part of the Executive department, and to the end also that my motives and views in the executive proceeding denounced in that resolu-

tion may be known to my fellow-citizens, to the world, and to all posterity, I respectfully request that this message and protest may be entered at length on the Journals of the Senate.

ANDREW JACKSON.

The veto message, having been read, was, after a brief debate, laid on the table.

ANDREW JACKSON.—X.

April 21, 1834.

To the Senate of the United States :

Having reason to believe that certain passages contained in my message and protest transmitted to the Senate on the 17th instant may be misunderstood, I think it proper to state that it was not my intention to deny in the said message the power and right of the legislative department to provide by law for the custody, safekeeping, and disposition of the public money and property of the United States.

Although I am well satisfied that such a construction is not warranted by anything contained in that message, yet, aware, from experience, that detached passages of an argumentative document, when disconnected from their context, and considered without reference to previous limitations, and the particular positions they were intended to refute or to establish, may be made to bear a construction varying altogether from the sentiments really entertained and intended to be expressed; and deeply solicitous that my views on this point should not, either now or hereafter, be misapprehended, I have deemed it due to the gravity of the subject, to the great interests it involves, and to the Senate, as well as to myself, to embrace the earliest opportunity to make this communication.

I admit, without reserve, as I have before done, the constitutional power of the legislature to prescribe, by law, the place or places in which the public money or other property is to be deposited, and to make such regulations concerning its custody, removal, or disposition as they may think proper to enact. Nor do I claim for the Executive any right to the possession or disposition of the public property or treasure, or any authority to interfere with the same, except when such possession, disposition, or authority is given to him by law. Nor do I claim the right in any manner to supervise or interfere with the person intrusted with such property or treasure, unless he be an officer whose appointment is, under the Constitution and laws, devolved upon the President alone, or in conjunction with the Senate, and for whose conduct he is constitutionally responsible.

As the message and protest referred to may appear on the Journals of the Senate, and remain among the recorded documents of the nation, I am unwilling that opinions should be imputed to me, even through

misconstruction, which I do not entertain; and more particularly am I solicitous that I may not be supposed to claim for myself, or my successors, any power or authority not clearly granted to the President by the Constitution and laws. I have therefore respectfully to request that this communication may be considered a part of that message; and that it may be entered therewith on the Journals of the Senate.

ANDREW JACKSON.

The debate was continued until the 7th of May, when the Senate, by a vote of 27 yeas against 16 nays, agreed to the following resolutions:

“Resolved, That the protest communicated to the Senate on the 17th instant, by the President of the United States, asserts powers as belonging to the President, which are inconsistent with the just authority of the two houses of Congress, and inconsistent with the Constitution of the United States.

“Resolved, That while the Senate is, and ever will be, ready to receive from the President all such messages and communications as the Constitution and laws, and the usual course of business authorize him to transmit to it, yet it cannot recognize any right in him to make a formal protest against votes and proceedings of the Senate, declaring such votes and proceedings to be illegal and unconstitutional, and requesting the Senate to enter such protest on its Journals.

“Resolved, That the aforesaid protest is a breach of the privileges of the Senate, and that it be not entered on the Journal.

“Resolved, That the President of the United States has no right to send a protest to the Senate against any of its proceedings.”

ANDREW JACKSON.—XI.

December 1, 1834.

The President in his annual message to both houses of Congress, at the commencement of the second session of the Twenty-third Congress, said:

* * * * *

I have not been able to satisfy myself that the bill entitled “An act to improve the navigation of the Wabash River,” which was sent to me at the close of your last session, ought to pass, and I have therefore withheld from it my approval, and now return it to the Senate, the body in which it originated.

There can be no question connected with the administration of public affairs, more important or more difficult to be satisfactorily dealt with, than that which relates to the rightful authority and proper action of the Federal Government upon the subject of internal improvements. To inherent embarrassments have been added others resulting from the course of our legislation concerning it.

I have heretofore communicated freely with Congress upon this subject; and in adverting to it again, I cannot refrain from expressing my increased conviction of its extreme importance, as well in regard to its bearing upon the maintenance of the Constitution, and the prudent

management of the public revenue, as on account of its disturbing effect upon the harmony of the Union.

We are in no danger from violations of the Constitution by which encroachments are made upon the personal rights of the citizen. The sentence of condemnation long since pronounced by the American people upon acts of that character will, I doubt not, continue to prove as salutary in its effects as it is irreversible in its nature. But against the dangers of unconstitutional acts which, instead of menacing the vengeance of offended authority, proffer local advantages, and bring in their train the patronage of the Government, we are, I fear, not so safe. To suppose that because our Government has been instituted for the benefit of the people, it must therefore have the power to do whatever may seem to conduce to the public good, is an error into which even honest minds are too apt to fall. In yielding themselves to this fallacy, they overlook the great considerations in which the Federal Constitution was founded. They forget that in consequence of the conceded diversities in the interest and condition of the different States, it was foreseen, at the period of its adoption, that although a particular measure of the Government might be beneficial and proper in one State, it might be the reverse in another—that it was for this reason the States would not consent to make a grant to the Federal Government of the general and usual powers of Government, but of such only as were specifically enumerated, and the probable effects of which they could, as they thought, safely anticipate; and they forget also the paramount obligation upon all to abide by the compact, then so solemnly, and, as it was hoped, so firmly established. In addition to the dangers to the Constitution, springing from the sources I have stated, there has been one which was perhaps greater than all. I allude to the materials which this subject has afforded for sinister appeals for selfish feelings, and the opinion heretofore so extensively entertained of its adaptation to the purposes of personal ambition. With such stimulants it is not surprising that the acts and pretensions of the Federal Government, in this behalf, should sometimes have been carried to an alarming extent. The questions which have arisen upon this subject have related—

1st. To the power of making internal improvements within the limits of a State, with the right of territorial jurisdiction, sufficient at least for their preservation and use.

2d. To the right of appropriating money in aid of such works when carried on by a State or by a company in virtue of State authority, surrendering the claim of jurisdiction; and,

3d. To the propriety of appropriations for improvements of a particular class, viz, for light-houses, beacons, buoys, public piers, and for the removal of sand-bars, sawyers, and other temporary and partial impediments in our navigable rivers and harbors.

The claims of power for the General Government upon each of these points certainly present matter of the deepest interest. The first is,

however, of much the greatest importance, inasmuch as, in addition to the dangers of unequal and improvident expenditures of public moneys, common to all, there is superadded to that the conflicting jurisdictions of the respective governments. Federal jurisdiction, at least to the extent I have stated, has been justly regarded by its advocates as necessarily appurtenant to the power in question, if that exists by the Constitution. That the most injurious conflicts would unavoidably arise between the respective jurisdictions of the State and Federal governments, in the absence of a constitutional provision marking out their respective boundaries, cannot be doubted. The local advantages to be obtained would induce the State to overlook in the beginning the dangers and difficulties to which they might ultimately be exposed. The powers exercised by the Federal Government would soon be regarded with jealousy by the State authorities, and originating, as they must, from implication or assumption, would be impossible to affix to them certain and safe limits. Opportunities and temptations to the assumption of power incompatible with State sovereignty, would be increased, and those barriers which resist the tendency of our system towards consolidation greatly weakened. The officers and agents of the General Government might not always have the discretion to abstain from intermeddling with State concerns; and if they did, they would not always escape the suspicion of having done so. Collisions and consequent irritations would spring up; that harmony which should ever exist between the General Government and each member of the Confederacy, would be frequently interrupted; a spirit of contention would be engendered; and the dangers of disunion greatly multiplied.

Yet we all know that, notwithstanding these grave objections, this dangerous doctrine was at one time apparently proceeding to its final establishment with fearful rapidity. The desire to embark the Federal Government in works of internal improvement, prevailed, in the highest degree, during the first session of the first Congress that I had the honor to meet in my present situation. When the bill authorizing a subscription on the part of the United States for stock in the Maysville and Lexington Turnpike Company, passed the two houses, there had been reported, by the Committee on Internal Improvements, bills containing appropriations for such objects, inclusive of those for the Cumberland road, and for harbors and light-houses, to the amount of about one hundred and six millions of dollars. In this amount was included authority to the Secretary of the Treasury to subscribe for the stock of different companies to a great extent, and the residue was principally for the direct construction of roads by this Government. In addition to these projects, which had been presented to the two houses under the sanction and recommendation of their respective Committees on Internal Improvements, there were then still pending before the committees, and in memorials presented, but not referred, different projects for works of

a similar character, the expense of which cannot be estimated with certainty, but must have exceeded one hundred millions of dollars.

Regarding the bill authorizing a subscription to the stock of the Maysville and Lexington Turnpike Company as the entering wedge of a system, which, however weak at first, might soon become strong enough to rive the bands of the Union asunder, and believing that, if its passage was acquiesced in by the Executive and the people, there would no longer be any limitation upon the authority of the General Government in respect to the appropriation of money for such objects, I deemed it an imperative duty to withhold from it the Executive approval. Although, from the obviously local character of that work, I might well have contented myself with a refusal to approve the bill upon that ground, yet, sensible of the vital importance of the subject, and anxious that my views and opinions in regard to the whole matter should be fully understood by Congress, and by my constituents, I felt it my duty to go further. I therefore embraced that early occasion to apprise Congress that, in my opinion, the Constitution did not confer upon it the power to authorize the construction of ordinary roads and canals within the limits of a State, and to say, respectfully, that no bill admitting such a power could receive my official sanction. I did so in the confident expectation that the speedy settlement of the public mind upon the whole subject would be greatly facilitated by the difference between the two houses and myself, and that the harmonious action of the several departments of the Federal Government in regard to it would be ultimately secured.

So far at least as it regards this branch of the subject, my best hopes have been realized. Nearly four years have elapsed, and several sessions of Congress have intervened, and no attempt, within my recollection, has been made to induce Congress to exercise this power. The applications for the construction of roads and canals, which were formerly multiplied upon your files, are no longer presented; and we have good reason to infer that the current of public sentiment has become so decided against the pretension as effectually to discourage its reassertion. So thinking, I derive the greatest satisfaction from the conviction that thus much at least has been secured upon this important and embarrassing subject.

From attempts to appropriate the national funds to objects which are confessedly of a local character, we cannot, I trust, have anything further to apprehend. My views in regard to the expediency of making appropriations for works which are claimed to be of a national character, and prosecuted under State authority, assuming that Congress have the right to do so, were stated in my annual message to Congress in 1830, and also in that containing my objections to the Maysville Road bill.

So thoroughly convinced am I that no such appropriations ought to be made by Congress, until a suitable constitutional provision is made

upon the subject, and so essential do I regard the point to the highest interests of our country, that I could not consider myself as discharging my duty to my constituents in giving the Executive sanction to any bill containing such an appropriation. If the people of the United States desire that the public treasury shall be resorted to for the means to prosecute such works, they will concur in an amendment of the Constitution, prescribing a rule by which the national character of the works is to be tested, and by which the greatest practicable equality of benefits may be secured to each member of the Confederacy. The effects of such a regulation would be most salutary in preventing unprofitable expenditures, in securing our legislation from the pernicious consequences of a scramble for the favors of Government, and in repressing the spirit of discontent which must inevitably arise from an unequal distribution of treasures which belong alike to all.

There is another class of appropriations for what may be called, without impropriety, internal improvements, which have always been regarded as standing upon different grounds from those to which I have referred. I allude to such as have for their object the improvement of our harbors, the removal of partial and temporary obstructions in our navigable rivers, for the facility and security of our foreign commerce. The grounds upon which I distinguished appropriations of this character from others have already been stated to Congress. I will now only add that at the first session of Congress under the new Constitution, it was provided, by law, that all expenses which should accrue from and after the 15th day of August, 1789, in the necessary support and maintenance, and repairs of all light-houses, beacons, buoys, and public piers, erected, placed, or sunk, before the passage of the act, within any bay, inlet, harbor, or port of the United States, for rendering the navigation thereof easy and safe, should be defrayed out of the Treasury of the United States; and, further, that it should be the duty of the Secretary of the Treasury to provide, by contracts, with the approbation of the President, for rebuilding, when necessary, and keeping in good repair the light-houses, beacons, buoys, and public piers, in the several States, and for furnishing them with supplies. Appropriations for similar objects have been continued from that time to the present, without interruption or dispute. As a natural consequence of the increase and extension of our foreign commerce, ports of entry and delivery have been multiplied and established, not only upon our seaboard, but in the interior of the country, upon our lakes and navigable rivers. The convenience and safety of this commerce have led to the gradual extension of these expenditures; to the erection of light-houses; the placing, planting, and sinking of buoys, beacons, and piers, and to the removal of partial and temporary obstructions in our navigable rivers, and in the harbors upon our great lakes, as well as on the seaboard. Although I have expressed to Congress my apprehension that these expenditures have sometimes been extravagant, and dispropor-

tionate to the advantages to be derived from them, I have not felt it to be my duty to refuse my assent to bills containing them, and have contented myself to follow, in this respect, in the footsteps of all my predecessors. Sensible, however, from experience and observation, of the great abuses to which the unrestricted exercise of this authority of Congress was exposed, I have prescribed a limitation for the government of my own conduct, by which expenditures of this character are confined to places below the ports of entry or delivery established by law. I am very sensible that this restriction is not as satisfactory as could be desired, and that much embarrassment may be caused to the Executive department in its execution, by appropriations for remote, and not well understood, objects. But as neither my own reflections, nor the lights which I may properly derive from other sources, have supplied me with a better, I shall continue to apply my best exertions to a faithful application of the rule upon which it is founded. I sincerely regret that I could not give my assent to the bill entitled "An act to improve the navigation of the Wabash River"; but I could not have done so without receding from the ground which I have, upon the fullest consideration, taken upon this subject, and of which Congress has been heretofore apprised, and without throwing the subject again open to abuses which no good citizen, entertaining my opinions, could desire.

* * * * *

The next day after this message was received by the Senate, a resolution for the improvement of the Wabash River was introduced. It established a port of entry on the river, at Lafayette, which, it was thought, would secure the President's approval. The Senate passed the bill, but the House did not act upon it.

ANDREW JACKSON.—XII.

June 9, 1836.

To the Senate of the United States:

The act of Congress "to appoint a day for the annual meeting of Congress," which originated in the Senate, has not received my signature. The power of Congress to fix, by law, a day for the regular annual meeting of Congress is undoubted; but the concluding part of this act, which is intended to fix the adjournment of every succeeding Congress to the second Monday in May, after the commencement of the first session, does not appear to me in accordance with the provisions of the Constitution of the United States.

The Constitution provides—first article, fifth section:

That neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

First article, sixth section:

That every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on the question of adjournment), shall be presented to the President of the United States, and, before the same shall take effect, shall be approved by him, &c.

Second article, second section:

That he (the President) may, on extraordinary occasions, convene both houses of Congress, or either of them; and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such times as he thinks proper, &c.

According to these provisions, the day of the adjournment of Congress is not the subject of legislative enactment. Except in the event of disagreement between the Senate and House of Representatives, the President has no right to meddle with the question, and, in that event, his power is exclusive, but confined to fixing the adjournment of the Congress whose branches have disagreed. The question of adjournment is obviously to be decided by each Congress for itself, by the separate action of each house for the time being, and is one of those subjects upon which the framers of that instrument did not intend one Congress should act, with or without the executive aid, for its successors. As a substitute for the present rule, which requires the two houses by consent to fix the day of adjournment, and in the event of disagreement, the President to decide, it is proposed to fix the day by law, to be binding in all future time, unless changed by consent of both houses of Congress, and to take away the contingent power of the Executive, which, in anticipated cases of disagreement, is vested in him. This substitute is to apply, not to the present Congress and Executive, but to our successors. Considering, therefore, that this subject exclusively belongs to the two houses of Congress, whose day of adjournment is to be fixed, and that each has at that time the right to maintain and insist upon its own opinion, and to require the President to decide in the event of disagreement with the other, I am constrained to deny my sanction to the act herewith respectfully returned to the Senate. I do so with greater reluctance, as, apart from this constitutional difficulty, the other provisions of it do not appear to me objectionable.

ANDREW JACKSON.

The veto message was considered by the Senate on the 27th of June, and after a brief debate, it was passed in the negative by a vote of 16 yeas against 23 nays. So the bill was rejected. The House then passed a bill to change the time for the annual meeting of Congress, to the first Monday in November, which the Senate indefinitely postponed.

ANDREW JACKSON.—XIII.

March 3, 1837, 11.45 p. m.

The bill from the Senate entitled "An act designating and limiting the funds receivable for the revenues of the United States" came to my hands yesterday, at two o'clock p. m. On perusing it, I found its provisions so complex and uncertain, that I deemed it necessary to obtain the opinion of the Attorney-General of the United States on several important questions, touching its construction and effect, before I could decide on the disposition to be made of it. The Attorney-General took up the subject immediately, and his reply was reported to me this day, at five o'clock p. m. As this officer, after a careful and laborious examination of the bill, and a distinct expression of his opinion on the points proposed to him, still came to the conclusion that the construction of the bill, should it become a law, would be yet a subject of much perplexity and doubt (a view of the bill entirely coincident with my own), and as I cannot think it proper, in a matter of such interest and of such constant application, to approve a bill so liable to diversity of interpretations and more especially as I have not had time; amid the duties constantly pressing on me, to give the subject that deliberate consideration which its importance demands, I am constrained to retain the bill, without acting definitively thereon, and to the end that my reasons for this step may be fully understood, I shall cause this paper, with the opinion of the Attorney-General, and the bill in question, to be deposited in the Department of State.

ANDREW JACKSON.

—
ATTORNEY-GENERAL'S OFFICE,
March 3, 1837.

SIR: I have had the honor to receive the several questions proposed to me by you, on the bill which has just passed the two houses of Congress, entitled "*An act designating and limiting the funds receivable for the revenues of the United States*," and which is now before you for consideration. These questions may be arranged under three general heads, and, in that order, I shall proceed to reply to them.

"I. Will the proposed bill, if approved, repeal or alter the laws now in force designating the currency required to be received in payment of the public dues, for lands or otherwise?"

"Will it compel the Treasury officers to receive the notes of specie-paying banks, having the characteristics described in its first and second sections?"

"In what respect does it differ from, and how far will it change, the joint resolution of April 30, 1836?"

Answer. In order to a correct reply to this question, and indeed to any other question arising on this obscurely penned bill, we must first obtain a general view of all its provisions.

The first section requires the Secretary of the Treasury to take measures for collecting the public revenue; first, in the legal currency of the

United States (*i. e.*, gold and silver); or, second, in the notes of such specie-paying banks as shall, from time to time, conform to certain conditions in regard to small bills, described in the section. This section does not expressly give the Secretary power to direct that any particular notes *shall* be received for lands or for duties, but it *forbids* the receipt of any paper currency other than such bank notes as are described in the section; and it requires the Secretary to adopt measures, in his discretion, to effectuate that prohibition.

The second section extends the prohibition still further, by forbidding the receipt of any notes which the banks in which they are to be deposited shall not, under the supervision and control of the Secretary of the Treasury, agree to pass to the credit of the United States as *cash*; to which is added a proviso, authorizing the Secretary to withdraw the public deposits from any bank which shall refuse to receive as cash, from the United States, any notes receivable under the law, which such bank receives, in the ordinary course of business, on general deposit.

The third and last section allows the receipt, as heretofore, of land scrip and Treasury certificates for public lands, and forbids the Secretary of the Treasury to make any discrimination in the funds receivable (other than such as results from the receipt of land scrip or Treasury certificates) between the different branches of the public revenue.

From this analysis of the bill, it appears that, so far as regards bank notes, the bill designates and limits their receivableness for the revenues of the United States: first, by forbidding the receipts of any except such as have all the characteristics described in the first and second sections of the bill; and secondly, by restraining the Secretary of the Treasury from making any discrimination, in this respects, between the different branches of the public revenue. In this way the bill performs, to a certain extent, the office of "designating and limiting the funds receivable for the revenues of the United States," as mentioned in its title; but it would seem, from what has been stated, that it is only in this way that any such office is performed. This impression will be fully confirmed as we proceed.

The bill, should it be approved, will be supplementary to the laws now in force, relating to the same subject, but as it contains no repealing clause, no provision of those former laws, except such as may be plainly repugnant to the present bill, will be repealed by it.

The existing laws embraced in the above question, and applicable to the subject, are—

1st. *As to the duties on goods imported.*—The 74th section of the collection law of the 2d of March, 1799, the first part of which, re-enacting, in this respect, the act of the 31st of July, 1789, provides "that all duties and fees to be collected shall be *payable in money of the United States, or in foreign gold and silver coins*, at the following rates," &c. The residue of the section, as to rates, has been altered by subsequent laws, and the clause quoted was varied during the existence of the Bank of the United States, the notes of which were expressly made receivable in all payments to the United States, and during the existence of the act making Treasury notes receivable, by such acts, but in no other respects has it ever been repealed.

2d. *As to public lands.*—The general land law of the 10th of May, 1800, section 5, provided that no lands should be sold, "at either public or private sale, for less than two dollars per acre, and payment may be made for the same, by all purchasers, *either in specie or in evidences of the public debt of the United States*, at the rates prescribed" by a prior law. This provision was varied by the acts relative to Treasury notes

and the Bank of the United States, in like manner as above mentioned. The second section of the general land law of the 24th of April, 1820, abrogated the allowance of credits on the sale of public lands after the 1st day of July then next; required every purchaser at public sale to make complete payment on the day of purchase; and the purchaser at private sale to produce to the register a receipt from the Treasurer of the United States, or from the receiver of the district, for the amount of the purchase money. The proviso to the 4th section of the same law enacted, in respect to reverted lands, and lands remaining unsold, that they should not be sold for less price than one dollar and twenty-five cents per acre, "nor on any other terms than that of *cash* payment." This latter act has been further modified by the act allowing Virginia land scrip to be received in payment for public lands.

3d. *As to both duties and lands.*—The joint resolution of the 30th of April, 1816, provides that the Secretary of the Treasury "be required and directed to adopt such measures as he may deem necessary to cause, as soon as may be, all duties, taxes, debts, or sums of money, accruing or becoming payable to the United States, to be collected and paid in the legal currency of the United States, or Treasury notes, or notes of the Bank of the United States, *as by law provided and declared*, or in notes of banks which are payable and paid on demand in the said legal currency of the United States, and that, from and after the 20th day of February next no such duties, taxes, debts, or sums of money, accruing or becoming payable to the United States, as aforesaid, ought to be collected or received otherwise than in the legal currency of the United States, or Treasury notes, or notes of the Bank of the United States, or in notes of banks which are payable and paid on demand in the legal currency of the United States." According to the opinion given by me, as a member of your cabinet, in the month of July last, and to which I still adhere, this resolution was mandatory only as it respected the legal currency of the United States, Treasury notes and notes of the Banks of the United States; and in respect to the notes of the State banks, though payable and paid in specie, was permissive merely, in the discretion of the Secretary; and in accordance with this opinion has been the practical construction given to the resolution by the Treasury Department. It is known to you, however, that distinguished names have been vouched for the opinion that the resolution was mandatory as to the notes of all specie-paying banks; that the debtor had the right, at his option, to make payment in such notes; and that, if tendered by him, the Treasury officers had no discretion to refuse them.

It is thus seen that the laws now in force, so far as they *positively enjoin* the receipt of any particular currency in payment of the public dues, are confined to gold and silver, except that in certain cases Virginia land scrip and Treasury certificates are directed to be received on the sale of public lands. In my opinion, there is nothing in the bill before me repugnant to those laws. The bill does not *expressly* declare and enact that any particular species of currency *shall be receivable* in payment of the public revenue. On the contrary, as the provisions of the first and second sections are chiefly of a *negative* character, I think they do not take away the power of the Secretary, previously possessed under the acts of Congress, and as the agent of the President, to *forbid* the receipt of any bank notes which are not, by some act of Congress, expressly made absolutely receivable in payment of the public dues.

The above view will, I think, be confirmed by a closer examination of the bill. It sets out with the assumption that there is a currency established by law (*i. e.*, gold and silver); and it further assumes that

the public revenue of all descriptions ought to be collected exclusively in such legal currency, or in bank notes of a certain character; and therefore it provides that the Secretary of the Treasury *shall* take measures to effect a collection of the revenue "in the legal currency of the United States, *or* in notes of banks which are payable and, paid on demand in the said legal currency," under certain restrictions, afterwards mentioned in the act.

This question, then, arises: Are bank notes, having the requisite characteristics, placed by the clause just quoted on the same footing with the legal currency, so as to make it the duty of the Secretary of the Treasury to allow the receipt of them, when tendered by the debtor? In my judgment, such is not the effect of the provision.

If Congress had intended to make so important an alteration of the existing law as to compel the receiving officers to take payment in the bank notes described in the bill, the natural phraseology would have been, "in the legal currency of the United States, *and* in notes of banks which are payable and paid in the said legal currency," &c. And it is reasonable to presume that Congress would have used such phraseology, or would have gone on to make a distinct provision, expressly declaring that such bank notes *should be receivable*, as was done in the bank charters of 1790 and 1816; and as was also done by the acts relative to the evidences of debt, Treasury notes, and Virginia land scrip. The form of one of these provisions (the 14th section of the act incorporating the late Bank of the United States) will illustrate the idea I desire to present:

"SEC. 14. *And be it further enacted*, That the bills or notes of the said corporation, originally made payable, or which shall have become payable, on demand, *shall be receivable* in all payments to the United States, unless otherwise directed by act of Congress."

The difference between the language there used and that employed in the present bill is too obvious to require comment. It is true that the word "*or*," when it occurs in wills and agreements, is sometimes construed to mean *and*, in order to give effect to the plain intent of the parties; and such a construction of the word may sometimes be given when it occurs in statutes, where the general intent of the law-makers evidently requires it. But this construction of the word, in the present case, is not only unnecessary, but, in my opinion, repugnant to the whole scope of the bill, which, so far from commanding the public officers to receive bank notes in cases not required by the existing laws, introduces several new prohibitions on the receipt of such notes.

Nor do I think this one of those cases in which a choice is given to the debtor to pay in one or other of two descriptions of currency, both of which are receivable by law. Such a choice was given by the land law of the 10th of May, 1800, section 5, between specie and the evidences of the public debt of the United States then receivable by law; and also by the joint resolution of the 30th of April, 1816, between "the legal currency of the United States, or Treasury notes, or notes of the Bank of the United States, as by law provided and declared." The option given by that resolution continued in force so long as the laws providing and declaring that Treasury notes and notes of the Bank of the United States should be receivable in payments to the United States, and ceased when those laws expired. The distinction between that description of paper currency, which is by law expressly made receivable in payment of public dues, and the notes of the State banks, which were only *permitted* to be received, is plainly marked in the resolution of 1816. While the former are placed on the same footing with the legal currency,

because, by previous laws, it had been so "*provided and declared*," the latter were left to be received or not received, at the discretion of the Secretary of the Treasury, except that he was restricted from allowing any to be received which were not payable and paid on demand in the legal currency. The bank notes spoken of in the bill before me, having never been made receivable by law, must be regarded as belonging to the latter class, and not to the former; and there can, therefore, be no greater obligation under the present bill, should it become a law, to receive them in payment, than there was to receive the paper of the State banks under the resolution of 1816.

As to the difference between this bill and the joint resolution of 1816. The bill differs from that resolution in the following particulars:

1st. It says nothing of Treasury notes and the notes of the Bank of the United States, which, by the resolution of 1816, are recognized as having been made receivable, by laws then in force, in payment of public dues of all descriptions.

2d. It abridges the discretion left with the Secretary of the Treasury by that resolution, by positively forbidding the receipt of bank notes not having the characteristics described in the first and second sections of the bill; whereas the receipt of some of the notes so forbidden might, under the resolution of 1816, have been allowed by the Secretary.

2d. It forbids the making of any discrimination, in respect to the receipt of bank notes, between the different branches of the public revenue; whereas the Secretary of the Treasury, under the resolution of 1816, was subject to no such restraint, and had the power to make the discrimination forbidden by this bill, except as to the notes of the Bank of the United States and Treasury notes.

This bill, if approved, will change the resolution of 1816, so far as it now remains in force, in the second and third particulars just mentioned; but, in my opinion, as already suggested, will change it in no other respect.

"II. What is the extent of the supervision and control allowed by this bill to the Secretary of the Treasury over the notes to be received by the deposit banks?

"And does it allow him to direct what particular notes shall or shall not be received for lands or for duties?"

Answer. After maturely considering, so far as time has been allowed me, the several provisions of the bill, I think the following conclusions may fairly be drawn from them, when taken in connection with the laws now in force, and above referred to; and that, should it become a law, they will probably express its legal effect.

1st. That the Secretary of the Treasury *cannot direct* the receipt of any notes, except such as are issued by banks which conform to the first section of the law, and such as will be passed by the proper deposit bank, to the credit of the United States, as *cash*.

2d. That he *may direct* the receipt of notes issued by banks which conform to the first section; provided the deposit bank in which the notes are to be deposited shall agree to credit them as *cash*.

3d. That if the deposit bank in which the money is to be deposited shall refuse to receive, as *cash*, the notes designated by the Secretary, and which such bank receives, in the ordinary course of business, on general deposit, he may withdraw the public deposits, and select another depository which will agree to receive them.

4th. That if he cannot find a depository which will so agree, then that the Secretary cannot direct or authorize the receipt of any notes, except

such as the deposit bank, primarily entitled to the deposits, will agree to receive and deposit as cash.

5th. That although a deposit bank might be willing to receive from the collectors and receivers, and to credit it as *cash*, notes of certain banks which conform to the first section, yet, for the reasons before stated, I am of the opinion that the Secretary is not *obliged* to allow the receipt of such notes.

6th. The Secretary is forbidden to make any discrimination in the *funds receivable*, "between the different branches of the public revenue"; and, therefore, though he may forbid the receipt of the notes of any particular bank or class of banks, not excluded by the bill, and may forbid the receipt of notes of denominations larger than those named in the bill, yet, when he issues any such prohibition, it must apply to *all* the branches of the public revenue.

7th. If I am right in the foregoing propositions, the result will be, that the proposed law will leave in the Secretary of the Treasury power to *prohibit* the receipt of particular notes, *provided his prohibition apply to both lands and duties*; and power to *direct* what particular notes, allowed by the law, shall be received, *provided he can find a deposit bank which will agree to receive and credit them as cash*.

"III. Are the deposit banks the sole judges, under this bill, of what notes they will receive? Or are they bound to receive the notes of every specie-paying bank, chartered or unchartered, wherever situated, in any part of the United States?"

Answer. In my opinion, the deposit banks, under the bill in question, will be the sole judges of the notes to be received by them from any collector or receiver of public money; and they will not be bound to receive the notes of any other bank whose notes they may choose to reject; provided they apply the same rule to the United States which they apply to their other depositors. In other words, the general rule, as to what notes are to be received as cash, prescribed by each deposit bank for the regulation of its ordinary business, must be complied with by the collectors and receivers whose moneys are to be deposited with that bank. But it will not, therefore, follow that those officers will be bound to receive what the bank generally receives; because, as already stated, they may refuse, of their own accord, or under the direction of the Secretary of the Treasury, any bank notes not expressly directed by act of Congress to be received in payment of the public dues.

I have thus answered the several questions proposed on the bill before me; and though I have been necessarily obliged to examine the subject with much haste, I have no other doubts as to the soundness of the construction above given, than such as belong to discussions of this nature, and to a proper sense of the fallibility of human judgment. It is, however, my duty to remind you that very different opinions were expressed, in the course of the debates on the proposed law, by some of the members who took part therein. It would seem, from those debates, that the bill, in some instances at least, was supported under the impression that it would compel the Treasury officers to receive all bank notes possessing all the characteristics described in the first and second sections; and that the Secretary of the Treasury would have no power to forbid their receipt. It must be confessed that the language is sufficiently ambiguous to give some plausibility to such a construction; and that it seems to derive some support from the refusal of the House of Representatives to consider an amendment reported by the Committee of Ways and Means of that House, which would, substantially, have

given to the bill, in explicit terms, the interpretation I have put on it, and have removed the uncertainty which now pervades it. Under these circumstances, it may reasonably be expected that the true meaning of the bill, should it be passed into a law, will become a subject of discussion and controversy, and probably remain involved in much perplexity and doubt, until it shall have been settled by a judicial decision. How far these latter considerations are to be regarded by you in your decision on the bill, is a question which belongs to another place, and on which, therefore, I forbear to enlarge in this communication.

I have the honor to be, sir, with high respect, your obedient servant,
B. F. BUTLER.

To the PRESIDENT OF THE UNITED STATES.

AN ACT designating and limiting the funds receivable for the revenues of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and hereby is, required to adopt such measures as he may deem necessary to effect a collection of the public revenue of the United States, whether arising from duties, taxes, debts, or sales of lands, in the manner and on the principles herein provided; that is, that no such duties, taxes, debts, or sums of money, payable for lands, shall be collected or received otherwise than in the legal currency of the United States, or in notes of banks which are payable and paid on demand in the said legal currency of the United States, under the following restrictions and conditions in regard to such notes, to wit: from and after the passage of this act, the notes of no bank which shall issue or circulate bills or notes of a less denomination than five dollars shall be received on account of the public dues; and, from and after the thirtieth day of December, eighteen hundred and thirty-nine, the notes of no bank which shall issue or circulate bills or notes of a less denomination than ten dollars shall be so receivable; and, from and after the thirtieth day of December, one thousand eight hundred and forty-one, the like prohibition shall be extended to the notes of all banks issuing bills or notes of a less denomination than twenty dollars.

SEC. 2. *And be it further enacted,* That no notes shall be received by the collectors or receivers of the public money which the banks in which they are to be deposited, shall not, under the supervision and control of the Secretary of the Treasury, agree to pass to the credit of the United States as cash: *Provided,* That, if any deposit bank shall refuse to receive and pass to the credit of the United States, as cash, any notes receivable under the provisions of this act, which said bank, in the ordinary course of business, receives on general deposit, the Secretary of the Treasury is hereby authorized to withdraw the public deposits from said bank.

SEC. 3. *And be it further enacted,* That this act shall not be so construed as to prohibit receivers or collectors of the dues of the Government from receiving for the public lands any kind of land scrip or Treasury certificates now authorized by law, but the same shall hereafter be received for the public lands, in the same way and manner as has heretofore been practiced; and it shall not be lawful for the Secre-

tary of the Treasury to make any discrimination in the funds receivable between the different branches of the public revenue, except as is provided in this section.

JAMES K. POLK,
Speaker of the House of Representatives.
 W. R. KING,
President of the Senate pro tempore.

I certify that this bill did originate in the Senate.

ASBURY DICKINS, *Secretary.*

JOHN TYLER.—I.

August 16, 1841.

To the Senate of the United States:

The bill entitled "An act to incorporate the subscribers to the Fiscal Bank of the United States," which originated in the Senate, has been considered by me, with a sincere desire to conform my action in regard to it, to that of the two houses of Congress. By the Constitution it is made my duty, either to approve the bill by signing it, or to return it with my objections to the house in which it originated. I cannot conscientiously give it my approval, and I proceed to discharge the duty required of me by the Constitution—to give my reasons for disapproving.

The power of Congress to create a national bank to operate *per se* over the Union, has been a question of dispute from the origin of our Government. Men most justly and deservedly esteemed for their high intellectual endowments, their virtue, and their patriotism, have, in regard to it, entertained different and conflicting opinions. Congresses have differed. The approval of one President has been followed by the disapproval of another. The people at different times have acquiesced in decisions both for and against. The country has been, and still is, deeply agitated by this unsettled question. It will suffice for me to say that my own opinion has been uniformly proclaimed to be against the exercise of any such power by this Government. On all suitable occasions, during a period of twenty-five years, the opinions thus entertained have been unreservedly expressed. I declared it in the legislature of my native State. In the House of Representatives of the United States it has been openly vindicated by me. In the Senate chamber, in the presence and hearing of many who are at this time members of that body, it has been affirmed and reaffirmed, in speeches and reports there made, and by votes there recorded. In popular assemblies I have unhesitatingly announced it; and the last public declaration which I made, and that but a short time before the late Presidential election, I referred to my previously expressed opinions as being those then entertained by me; with a full knowledge of the opinions thus entertained,

and never concealed, I was elected by the people Vice-President of the United States. By the occurrence of a contingency provided for by the Constitution, and arising under an impressive dispensation of Providence, I succeeded to the Presidential office. Before entering upon the duties of that office, I took an oath that I would "preserve, protect, and defend the Constitution of the United States." Entertaining the opinions alluded to, having taken this oath, the Senate and the country will see that I could not give my sanction to a measure of the character described, without surrendering all claim to the respect of honorable men—all confidence on the part of the people—all self-respect—all regard for moral and religious obligations; without an observance of which no Government can be prosperous, and no people can be happy. It would be to commit a crime which I would not willfully commit to gain any earthly reward, and which would justly subject me to the ridicule and scorn of all virtuous men.

I deem it entirely unnecessary at this time to enter upon the reasons which have brought my mind to the convictions I feel and entertain on this subject. They have been over and over again repeated. If some of those who have preceded me in this high office have entertained and avowed different opinions, I yield all confidence that their convictions were sincere. I claim only to have the same measure meted out to myself. Without going further into the argument, I will say that, in looking to the powers of this Government to collect, safely keep, and disburse the public revenue, and incidentally to regulate the commerce and exchanges, I have not been able to satisfy myself that the establishment by this Government of a bank of discount, in the ordinary acceptation of that term, was a necessary means, or one demanded by propriety, to execute those powers. What can the local discounts of the bank have to do with the collecting, safe-keeping, and disbursing of the revenue? So far as the mere discounting of paper is concerned, it is quite immaterial to this question whether the discount be obtained at a State bank or a United States bank. They are both equally local—both beginning and both ending in a local accommodation. What influence have local discounts, granted by any form of bank, in the regulating of the currency and the exchanges? Let the history of the late United States Bank aid us in answering this inquiry.

For several years after the establishment of that institution, it dealt almost exclusively in local discounts; and during that period the country was, for the most part, disappointed in the consequences anticipated from its incorporation. A uniform currency was not provided, exchanges were not regulated, and little or nothing was added to the general circulation; and in 1820 its embarrassments had become so great, that the directors petitioned Congress to repeal that article of the charter which made its notes receivable everywhere in payment of the public dues. It had, up to that period, dealt to but a very small extent in exchanges, either foreign or domestic, and as late as 1823 its operations

in that line amounted to a little more than \$7,000,000 per annum. A very rapid augmentation soon after occurred, and in 1833 its dealings in exchanges amounted to upwards of \$1,000,000, including the sales of its own drafts; and all these immense transactions were effected without the employment of extraordinary means. The currency of the country became sound, and the negotiations in the exchanges were carried on at the lowest possible rates. The circulation was increased to more than \$22,000,000, and the notes of the bank were regarded as equal to specie all over the country; thus showing, almost conclusively, that it was the capacity to deal in exchanges, and not in local discounts, which furnished these facilities and advantages. It may be remarked, too, that, notwithstanding the immense transactions of the bank in the purchase of exchange, the losses sustained were merely nominal, while in the line of discounts the suspended debt was enormous, and proved most disastrous to the bank and the country. Its power of local discount has, in fact, proved to be a fruitful source of favoritism and corruption, alike destructive to the public morals and to the general weal.

The capital invested in banks of discount in the United States, created by the States, at this time, exceeds \$350,000,000, and if the discounting of local paper could have produced any beneficial effects, the United States ought to possess the soundest currency in the world; but the reverse is lamentably the fact.

Is the measure now under consideration of the objectionable character to which I have alluded? It is clearly so, unless by the sixteenth fundamental article of the eleventh section it is made otherwise. That article is in the following words:

“The directors of the said corporation shall establish one competent office of discount and deposit in any State in which two thousand shares shall have been subscribed, or may be held, whenever, upon application of the legislature of such State, Congress may, by law, require the same. And the said directors may also establish one or more competent offices of discount and deposit in any Territory or District of the United States, and in any State, with the assent of such State; and when established, the said office or offices shall be only withdrawn or removed by the said directors prior to the expiration of this charter, with the previous assent of Congress: *Provided*, In respect to any State which shall not, at the first session of the legislature thereof held after the passage of this act, by resolution, or other usual legislative proceeding, unconditionally assent or dissent to the establishment of such office or offices within it, such assent of the said State shall be thereafter presumed: *And provided, nevertheless*, That whenever it shall become necessary and proper for carrying into execution any of the powers granted by the Constitution to establish an office or offices in any of the States whatever, and the establishment thereof shall be directed by law, it shall be the duty of the said directors to establish such office or offices accordingly.”

It will be seen that by this clause the directors are invested with the fullest power to establish a branch in any State which has yielded its assent; and, having once established such branch, it shall not after-

wards be withdrawn except by order of Congress. Such assent is to be *implied*, and to have the force and sanction of an actually expressed assent, "provided in respect to any State which shall not, at the *first session* of the legislature thereof held after the passage of this act, by *resolution or other usual legislative proceeding, unconditionally* assent or dissent to the establishment of such office or offices within it, such assent of said States shall be thereafter presumed." The assent or dissent is to be expressed *unconditionally at the first session of the legislature, by some formal legislative act*; and, if not so expressed, its assent is to be *implied*, and the directors are thereupon invested with power, at such time thereafter as they may please, to establish branches, which cannot afterwards be withdrawn except by resolve of Congress. No matter what may be the cause which may operate with the legislature, which either prevents it from speaking or addresses itself to its wisdom, to induce delay, its assent is to be implied. This iron rule is to give way to no circumstance—it is unbending and inflexible. It is the language of the master to the vassal—an unconditional answer is claimed forthwith; and delay, postponement, or incapacity to answer, produces an implied assent, which is ever after irrevocable. Many of the State elections have already taken place, without any knowledge, on the part of the people, that such a question was to come up. The Representatives may desire a submission of the question to their constituents preparatory to final action upon it, but this high privilege is denied; whatever may be the motives and views entertained by the Representatives of the people to induce delay, their assent is to be presumed, and is ever afterwards binding, unless their dissent shall be unconditionally expressed at their first session after the passage of this bill into a law. They may by formal resolution declare the question of assent or dissent to be undecided and postponed, and yet, in opposition to their express declaration to the country, their assent is to be implied. Cases innumerable might be cited to manifest the irrationality of such an inference. Let one or two in addition suffice. The popular branch of the legislature may express its dissent by an unanimous vote, and its resolution may be defeated by a tie vote of the Senate, and yet the assent is to be implied. Both branches of the legislature may concur in a resolution of decided dissent, and yet the governor may exert the *veto* power conferred on him by the State constitution, and their legislative action be defeated, and yet the assent of the legislative authority is implied, and the directors of this contemplated institution are authorized to establish a branch or branches in such State whenever they may find it conducive to the interest of the stockholders to do so; and having once established it, they can under no circumstances withdraw it, except by act of Congress. The State may afterwards protest against such unjust inference, but its authority is gone. Its assent is implied by its failure or inability to act at its first session, and its voice can never afterwards be heard. To inferences so violent, and, as they seem to me, irrational, I

cannot yield my consent. No court of justice would or could sanction them, without reversing all that is established in judicial proceedings, by introducing presumptions at variance with fact and inferences at the expense of reason. A State in a condition of duress would be *presumed* to speak, as an individual manacled and in prison might be presumed to be in the enjoyment of freedom. Far better to say to the States boldly and frankly—Congress wills and submission is demanded.

It may be said that the directors may not establish branches under such circumstances. But this is a question of power, and this bill invests them with full authority to do so. If the legislature of New York or Pennsylvania or any other State should be found to be in such condition as I have supposed, could there be any security furnished against such a step on the part of the directors? Nay, is it not fairly to be presumed that this proviso was introduced for the sole purpose of meeting the contingency referred to? Why else should it have been introduced? And I submit to the Senate whether it can be believed that any State would be likely to sit quietly down under such a state of things. In a great measure of public interest their patriotism may be successfully appealed to, but to infer their assent from circumstances at war with such inference I cannot but regard as calculated to excite a feeling of fatal enmity with the peace and harmony of the country. I must, therefore, regard this clause as asserting the power to be in Congress to establish offices of discount in a State, not only without its assent but against its dissent, and so regarding it I cannot sanction it. On general principles, the right in Congress to prescribe terms to any State implies a superiority of power and control, deprives the transaction of all pretence to compact between them, and terminates, as we have seen, in the total abrogation of freedom of action on the part of the States. But further, the State may express, after the most solemn form of legislation, its dissent, which may from time to time thereafter be repeated, in full view of its own interest, which can never be separated from the wise and beneficent operation of this Government; and yet Congress may, by virtue of the last proviso, overrule its law, and upon grounds which, to such State, will appear to rest on a constructive necessity and propriety, and nothing more. I regard the bill as asserting for Congress the right to incorporate a United States bank with power and right to establish offices of discount and deposit in the several States of this Union with or without their consent, a principle to which I have always heretofore been opposed, and which can never obtain my sanction. And waiving all other considerations growing out of its other provisions, I return it to the house in which it originated, with these my objections to its approval.

JOHN TYLER.

The veto message was considered by the Senate on the 19th of August, and after debate on it, it was passed in the negative by 25 yeas against 24 nays. There not being the constitutional majority of two-thirds in favor of the bill, which would be requisite to entitle it to be sent to the House of Representatives for a like concurrence there, the bill remained finally rejected.

JOHN TYLER.—II.

*September 9, 1841.**To the House of Representatives of the United States :*

It is with extreme regret that I feel myself constrained by the duty faithfully to execute the office of President of the United States, and to the best of my ability to "preserve, protect, and defend the Constitution of the United States," to return to the House, in which it originated, the bill "To provide for the better collection, safe-keeping, and disbursement of the public revenue, by means of a corporation to be styled the Fiscal Corporation of the United States," with my written objections.

In my message sent to the Senate on the 16th day of August last, returning the bill "To incorporate the subscribers to the Fiscal Bank of the United States," I distinctly declared that my own opinion had been uniformly proclaimed to be against the exercise "of the power of Congress to create a national bank to operate *per se* over the Union;" and, entertaining that opinion, my main objection to that bill was based upon the highest moral and religious obligations of conscience and the Constitution. I readily admit that whilst the qualified *veto* with which the Chief Magistrate is invested should be regarded, and was intended by the wise men who made it a part of the Constitution, as a great conservative principle of our system, without the exercise of which, on important occasions, a mere representative majority might urge the Government in its legislation beyond the limits fixed by its framers, or might exert its just powers too hastily or oppressively, yet it is a power which ought to be most cautiously exerted, and perhaps never, except in a case eminently involving the public interest, or one in which the oath of the President, acting under his convictions, both mental and moral, imperiously requires its exercise. In such a case he has no alternative. He must either exert the negative power intrusted to him by the Constitution, chiefly for its own preservation, protection, and defense, or commit an act of gross moral turpitude. Mere regard to the will of a majority must not, in a constitutional republic like ours, control this sacred and solemn duty of a sworn officer. The Constitution itself I regard and cherish as the embodied and written will of the whole people of the United States. It is their fixed and fundamental law, which they unanimously prescribe to the public functionaries—their mere trustees and servants. This *their* will, and the law which *they* have given us as the rule of our action, have no guard, no guarantee of preservation, protection, and defense, but the oaths which it prescribes to the public officers, the sanctity with which they shall religiously observe those oaths, and the patriotism with which the people shall shield it by their own sovereign will, which has made the Constitution supreme. It must be exerted against the will of a mere repre-

sentative majority, or not at all. It is alone in pursuance of that will that any measure can reach the President; and to say that because a majority in Congress have passed a bill he should therefore sanction it is to abrogate the power altogether, and to render its insertion in the Constitution a work of absolute supererogation. The duty is to guard the fundamental will of the people themselves from (in this case, I admit unintentional) change or infraction by a majority in Congress. And in that light alone do I regard the constitutional duty which I now most reluctantly discharge. Is this bill now presented for my approval or disapproval such a bill as I have already declared could not receive my sanction? Is it such a bill as calls for the exercise of the negative power under the Constitution? Does it violate the Constitution by creating a national bank to operate *per se* over the Union? Its title, in the first place, describes its general character. It is "An act to provide for the better collection, safe-keeping, and disbursement of the *public* revenue by means of a *corporation* to be styled the *Fiscal Corporation* of the *United States*." In style, then, it is plainly national in its character. Its powers, functions, and duties are those which pertain to the *collecting, keeping, and disbursing* the *public* revenue. The means by which these are to be exerted is a *corporation* to be styled the *Fiscal Corporation* of the United States. It is a corporation created by the Congress of the United States, in its character of a national legislature for the whole Union, to perform the *fiscal* purposes, meet the *fiscal* wants and exigencies, supply the *fiscal* uses, and exert the *fiscal* agencies of the Treasury of United States. Such is its own description of itself. Do its provisions contradict its title? They do not. It is true that, by its first section, it provides that it shall be established in the District of Columbia; but the amount of its capital—the manner in which its stock is to be subscribed for and held; the persons and bodies, corporate and politic, by whom its stock may be held; the appointment of its directors, and their powers and duties; its fundamental articles, especially that to establish agencies in any part of the Union; the corporate powers and business of such agencies; the prohibition of Congress to establish any other corporation with similar powers for twenty years, with express reservation in the same clause to modify or create any bank for the District of Columbia, so that the aggregate capital shall not exceed five millions—without enumerating other features which are equally distinctive and characteristic, clearly show that it cannot be regarded as other than a bank of the United States, with powers seemingly more limited than have heretofore been granted to such an institution. It operates *per se* over the Union by virtue of the unaided and, in my view, assumed authority of Congress as a national legislature, as distinguishable from a bank created by Congress for the District of Columbia, as the local legislature of the District. Every United States bank heretofore created has had power to deal in bills of exchange as well as local discounts. Both were trading privileges conferred, and both were ex-

exercised by virtue of the aforesaid power of Congress over the whole Union. The question of power remains unchanged without reference to the extent of privilege granted. If this proposed corporation is to be regarded as a local bank of the District of Columbia, invested by Congress with general powers to operate over the Union, it is obnoxious to still stronger objections. It assumes that Congress may invest a local institution with general or national powers. With the same propriety that it may do this in regard to a bank of the District of Columbia, it may as to a State bank. Yet, who can indulge the idea that this Government can rightfully, by making a State bank its fiscal agent, invest it with the absolute and unqualified powers conferred by this bill? When I come to look at the details of the bill, they do not recommend it strongly to my adoption. A brief notice of some of its provisions will suffice.

1st. It may justify substantially a system of discounts of the most objectionable character. It is to deal in bills of exchange, drawn in one State and payable in another, without any restraint. The bill of exchange may have an unlimited time to run, and its renewability is nowhere guarded against. It may, in fact, assume the most objectionable form of accommodation paper. It is not required to rest on any actual, real, or substantial exchange basis; a drawer in one place becomes the acceptor in another, and so in turn the acceptor may become the drawer upon a mutual understanding. It may, at the same time, indulge in mere local discounts under the name of bills of exchange. A bill drawn at Philadelphia on Camden, New Jersey, at New York on a border town in New Jersey, at Cincinnati on Newport in Kentucky, not to multiply other examples, might, for anything in this bill to restrain it, become a mere matter of local accommodation. Cities thus relatively situated would possess advantages over cities otherwise situated of so decided a character as most justly to excite dissatisfaction.

2d. There is no limit prescribed to the premium in the purchase of bills of exchange, thereby correcting none of the evils under which the community now labors, and operating most injuriously upon the agricultural States, in which the irregularities in the rates of exchange are most severely felt. Nor are these the only consequences. A resumption of specie payments by the banks of those States would be liable to indefinite postponement; for, as the operation of the agencies of the interior would chiefly consist in selling bills of exchange, and the purchases could only be made in specie or the notes of banks paying specie, the State banks would either have to continue with their doors closed, or exist at the mercy of this national monopoly of brokerage. Nor can it be passed over without remark that whilst the District of Columbia is made the seat of the principal bank, its citizens are excluded from all participation in any benefit it might afford, by a positive prohibition on the bank from all discounting within the District.

These are some of the objections which prominently exist against the details of the bill; others might be urged of much force, but it would be unprofitable to dwell upon them; suffice it to add that this charter is designed to continue for twenty years without a competitor; that the defects to which I have alluded, being founded on the fundamental law of the corporation, are irrevocable; and that, if the objections be well-founded, it would be over-hazardous to pass the bill into a law.

In conclusion, I take leave most respectfully to say that I have felt the most anxious solicitude to meet the wishes of Congress in the adoption of a fiscal agent which, avoiding all constitutional objections, should harmonize conflicting opinions. Actuated by this feeling, I have been ready to yield much, in a spirit of conciliation, to the opinions of others. And it is with great pain that I now feel compelled to differ from Congress a second time in the same session. At the commencement of this session, inclined from choice to defer to the legislative will, I submitted to Congress the propriety of adopting a fiscal agent which, without violating the Constitution, would separate the public money from the Executive control, and perform the operations of the Treasury without being burdensome to the people or inconvenient or expensive to the Government. It is deeply to be regretted that this department of the Government cannot, upon constitutional and other grounds, concur with the legislative department in this last measure proposed to attain these desirable objects. Owing to the brief space between the period of the death of my lamented predecessor and my own installation into office, I was, in fact, not left time to prepare and submit a definitive recommendation of my own in my regular message; and since, my mind has been wholly occupied in a most anxious attempt to conform my action to the legislative will. In this communication I am confined by the Constitution to my objections simply to this bill; but the period of the regular session will soon arrive, when it will be my duty, under another clause of the Constitution, "to give to Congress information of the state of the Union, and recommend to their consideration such measures as" I "shall judge necessary and expedient." And I most respectfully submit, in a spirit of harmony, whether the present differences of opinion should be pressed further at this time, and whether the peculiarity of my situation does not entitle me to a postponement of this subject to a more auspicious period for deliberation. The two houses of Congress have distinguished themselves at this extraordinary session by the performance of an immense mass of labor, at a season very unfavorable both to health and action, and have passed many laws which I trust will prove highly beneficial to the interests of the country, and fully answer its just expectations. It has been my good fortune and pleasure to concur with them in all measures except this. And why should our difference on this alone be pushed to extremes? It is my anxious desire that it should not be. I, too, have been burdened with extraordinary labors of late, and I sincerely desire time for deep and deliberate

reflection on this the greatest difficulty of my administration. May we not now pause until a more favorable time, when, with the most anxious hope that the Executive and Congress may cordially unite, some measure of finance may be deliberately adopted promotive of the good of our common country?

I will take this occasion to declare that the conclusions to which I have brought myself are those of a settled conviction, founded, in my opinion, on a just view of the Constitution; that, in arriving at it, I have been actuated by no other motive or desire than to uphold the institutions of the country as they have come down to us from the hands of our godlike ancestors; and that I shall esteem my efforts to sustain them, even though I perish, more honorable than to win the applause of men by a sacrifice of my duty and my conscience.

JOHN TYLER.

The veto message was discussed in the House on the 10th of September, and was passed in the negative by a vote of 103 yeas against 80 nays. So the vote required by the Constitution not having been obtained, the bill was rejected.

JOHN TYLER.—III.

March 23, 1842.

To the House of Representatives of the United States:

A resolution adopted by the House of Representatives on the 16th instant, in the following words, viz: "*Resolved*, That the President of the United States and the heads of the several Departments be requested to communicate to the House of Representatives the names of such of the members (if any) of the Twenty-sixth and Twenty-seventh Congress who have been applicants for office, and for what office, distinguished between those who have applied in person, and those whose applications were made by friends, whether in person or by writing"—has been transmitted to me for my consideration.

If it were consistent with the rights and the duties of the Executive department, it would afford me great pleasure to furnish in this, as in all cases in which proper information is demanded, a ready compliance with the wishes of the House of Representatives. But since, in my view, general considerations of policy and propriety, as well as a proper defense of the rights and safeguards of the Executive department, require of me, as the Chief Magistrate, to refuse compliance with the terms of this resolution, it is incumbent on me to urge, for the consideration of the House of Representatives, my reasons for declining to give the desired information.

All appointments to office made by a President become, from the date of their nomination to the Senate, official acts, which are matter of rec-

ord, and are at the proper time made known to the House of Representatives and to the country. But applications for office, or letters respecting appointments, or conversations held with individuals on such subjects, are not official proceedings, and cannot by any means be made to partake of the character of official proceedings, unless, after the nomination of such person so writing or conversing, the President shall think proper to lay such correspondence or such conversations before the Senate. Applications for office are in their very nature confidential; and, if the reasons assigned for such applications, or the names of the applicants, were communicated, not only would such implied confidence be wantonly violated, but, in addition, it is quite obvious that a mass of vague, incoherent, and personal matter, would be made public at a vast consumption of time, money, and trouble, without accomplishing, or tending in any manner to accomplish, as it appears to me, any useful object connected with a sound and constitutional administration of the Government in any of its branches.

But there is a consideration of a still more effective and lofty character, which is with me entirely decisive of the correctness of the view that I have taken of this question. While I shall ever evince the greatest readiness to communicate to the House of Representatives all proper information which the House shall deem necessary to a due discharge of its constitutional obligations and functions, yet it becomes me, in defense of the Constitution and laws of the United States, to protect the Executive department from all encroachment on its powers, rights, and duties. In my judgment, a compliance with the resolution which has been transmitted to me would be a surrender of duties and powers which the Constitution has conferred exclusively on the Executive; and, therefore, such compliance cannot be made by me, nor by the heads of Departments by my direction. The appointing power, so far as it is bestowed on the President by the Constitution, is conferred without reserve or qualification. The reason for the appointment, and the responsibility of the appointment, rest with him alone. I cannot perceive anywhere in the Constitution of the United States any right conferred on the House of Representatives to hear the reasons which an applicant may urge for an appointment to office under the Executive Department, or any duty resting upon the House of Representatives by which it may become responsible for any such appointment.

Any assumption or misapprehension on the part of the House of Representatives of its duties and powers in respect to appointments, by which it encroaches on the rights and duties of the Executive Department, is, to the extent to which it reaches, dangerous, impolitic, and unconstitutional.

For these reasons, so perfectly convincing to my mind, I beg leave respectfully to repeat, in conclusion, that I cannot comply with the request contained in the above resolution.

JOHN TYLER.

JOHN TYLER.—IV.

*June 29, 1842.**To the House of Representatives :*

I return the bill which originated in the House of Representatives, entitled "An act to extend, for a limited period, the present laws for laying and collecting duties on imports," with the following objections :

It suspends—in other words, abrogates for the time—the provisions of the act of 1833, commonly called the "compromise act." The only ground on which this departure from the solemn adjustment of a great and agitating question seems to have been regarded as expedient, is the alleged necessity of establishing, by legislative enactments, rules and regulations for assessing the duties to be levied on imports, after the 30th June, according to the home valuation ; and yet the bill expressly provides that "if, before the first of August, there be no further legislation upon the subject, the laws for laying and collecting duties shall be the same as though this act had not been passed." In other words, that the act of 1833, imperfect as it is considered, shall in that case continue to be, and to be executed, under such rules and regulations as previous statutes had prescribed, or had enabled the Executive department to prescribe for that purpose, leaving the supposed chasm in the revenue laws such as it was before.

I am certainly far from being disposed to deny that additional legislation upon the subject is very desirable ; on the contrary, the necessity, as well as difficulties, of establishing uniformity in the appraisements to be made in conformity with the true intention of that act, was brought to the notice of Congress in my message to Congress at the opening of its present session. But however sensible I may be of the embarrassments to which the Executive, in the absence of all aid from the superior wisdom of the legislature, will be liable, in the enforcement of the existing laws, I have not, with the sincerest wish to acquiesce in its expressed will, been able to persuade myself that the exigency of the occasion is so great as to justify me in signing the bill in question, with my present views of its character and effects. The existing laws, as I am advised, are sufficient to authorize and enable the collecting officers, under the directions of the Secretary of the Treasury, to levy the duties imposed by the act of 1833.

That act was passed under peculiar circumstances, to which it is not necessary that I should do more than barely allude. What may be, in theory, its character, I have always regarded it as imparting the highest moral obligation. It has now existed for nine years, unchanged in any essential particular, with as general acquiescence, it is believed, of the whole country, as that country has ever manifested for any of her wisely established institutions. It has insured to it the repose

which always flows from timely, wise and moderate counsels—a repose the more striking, because of the long and augry agitations which preceded it. This salutary law proclaims, in express terms, the principle which, while it led to the abandonment, of a scheme of indirect taxation founded on a false basis, and pushed to dangerous excess, justifies any enlargement of duties that may be called for by the real exigencies of the public service. It provides “that duties shall be laid for the purpose of raising such revenue as may be necessary to an economical administration of the Government.” It is therefore in the power of Congress to lay duties as high as its discretion may dictate, for the necessary uses of the Government, without infringing upon the objects of the act of 1833. I do not doubt that the exigencies of the Government do require an increase of the tariff of duties above 20 per cent.; and I as little doubt that Congress may, above as well as below that rate, so discriminate as to give incidental protection to manufacturing industry—thus to make the burdens which it is compelled to impose upon the people, for the purposes of Government, productive of a double benefit. This most of the reasonable opponents of protective duties seem willing to concede; and, if we may judge from the manifestations of public opinion in all quarters, this is all that the manufacturing interests really require. I am happy in the persuasion that this double object can be most easily and effectually accomplished, at the present juncture, without any departure from the spirit and principle of the statute in question. The manufacturing classes have now an opportunity which may never occur again, of permanently identifying their interests with those of the whole country, and making them, in the highest sense of the term, a national concern. The moment is propitious to the interests of the whole country, in the introduction of harmony among all its parts and all its several interests. The same rate of imposts, and no more, as will most surely re-establish the public credit, will secure to the manufacturer all the protection he ought to desire, with every prospect of permanence and stability which the hearty acquiescence of the whole country, on a reasonable system, can hold out to him.

But of this universal acquiescence, and the harmony and confidence, and the many other benefits that will certainly result from it, I regard the suspension of the law for distributing the proceeds of the sales of the public lands as an indispensable condition. This measure is, in my judgment, called for by a large number, if not a great majority, of the people of the United States; by the state of the public credit and finances; by the critical posture of our various foreign relations; and, above all, by that most sacred of all duties—public faith. The act of September last, which provides for the distribution, couples it inseparably with the condition that it shall cease—first, in case of war; second, as soon and so long as the rate of duties shall, for any reason whatever, be

raised above 20 per cent. Nothing can be more clear, express, or imperative, than this language. It is in vain to allege that a deficit in the Treasury was known to exist, and that means were taken to supply this deficit by loan when the act was passed. It is true that a loan was authorized at the same session during which the distribution law was passed; but the most sanguine of the friends of the two measures entertained no doubt but that the loan would be eagerly sought after and taken up by capitalists, and speedily reimbursed by a country destined, as they hoped, soon to enjoy an overflowing prosperity. The very terms of the loan, making it redeemable *in three years*, demonstrate this beyond all cavil. Who, at the time, foresaw or imagined the possibility of the present real state of things, when a nation that has paid off her whole debt since the last peace, while all the other great powers have been increasing theirs, and whose resources, already so great, are yet but in the infancy of their development, should be compelled to haggle in the money market for a paltry sum not equal to one year's revenue upon her economical system? If the distribution law is to be indefinitely suspended, according not only to its own terms, but by universal consent, in the case of war, wherein are the actual exigencies of the country, or the moral obligation to provide for them, less under present circumstances, than they could be were we actually engaged in war? It appears to me to be the indispensable duty of all concerned in the administration of public affairs to see that a state of things so humiliating and so perilous should not last a moment longer than absolutely unavoidable. Much less excusable should we be in parting with any portion of our available means, at least until the demands of the Treasury are fully supplied. But, besides the urgency of such considerations, the fact is undeniable, that the distribution act could not have become a law without the guarantee in the proviso of the act itself.

This connection, thus meant to be inseparable, is severed by the bill presented to me. The bill violates the principle of the acts of 1833 and September, 1841, by suspending the first, and rendering, for a time, the last inoperative. Duties above 20 per cent. are proposed to be levied, and yet the *proviso* in the distribution act is disregarded. The proceeds of the sales are to be distributed on the 1st of August; so that, while the duties proposed to be enacted exceed 20 per cent., no suspension of the distribution to the States is permitted to take place. To abandon the principle for a month, is to open the way for its total abandonment. If such is not meant, why postpone at all? Why not let the distribution take place on the 1st of July, if the law so directs? (which, however, is regarded as questionable). But why not have limited the provision to that effect? Is it for the accommodation of the Treasury? I see no reason to believe that the Treasury will be in better condition to meet the payment on the 1st of August than on the 1st of July.

The bill assumes that a distribution of the proceeds of the public lands is, by existing laws, to be made on the 1st day of July, 1842; notwithstanding there has been an imposition of duties on imports exceeding 20 per cent. up to that day, and directs it to be made on the 1st of August next. It seems to me very clear that this conclusion is equally erroneous and dangerous; as it would divert from the Treasury a fund sacredly pledged for the general purposes of the Government, in the event of a rate of duty above 20 per cent. being found necessary for an economical administration of the Government.

The bill under consideration is designed only as a temporary measure; and thus a temporary measure, passed merely for the convenience of Congress, is made to affect the vital principle of an important act. If the proviso of the act of September, 1841, can be suspended for the whole period of a temporary law, why not for the whole period of a permanent law? In fact, a doubt may be well entertained, according to strict legal rules, whether the condition, having been thus expressly suspended by this bill, and rendered inapplicable to a case where it would otherwise have clearly applied, will not be considered as ever after satisfied and gone. Without expressing any decided opinion on this point, I see enough in it to justify me in adhering to the law as it stands, in preference to subjecting a condition so vitally affecting the peace of the country, and so solemnly enacted at a momentous crisis, and so steadfastly adhered to ever since, and so replete, if adhered to, with good to every interest of the country, to doubtful or captious interpretation.

In discharging the high duties thus imposed on me by the Constitution, I repeat to the House my entire willingness to co-operate in all financial measures, constitutional and proper, which in its wisdom it may judge necessary and proper to re-establish the credit of the Government. I believe that the proceeds of the sales of the public lands being restored to the Treasury—or, more properly speaking, the proviso of the act of September, 1841, being permitted to remain in full force—a tariff of duties may easily be adjusted, which, while it will yield a revenue sufficient to maintain the Government in vigor, by restoring its credit, will afford ample protection, and infuse a new hope into all our manufacturing establishments. The condition of the country calls for such legislation, and it will afford me the most sincere pleasure to co-operate in it.

JOHN TYLER.

The veto message was considered by the House of Representatives, from the 29th of June until the 4th of July, when the question was taken "Shall this bill pass, notwithstanding the objections of the President?" and decided in the negative by a vote of 114 yeas against 97 nays. So the bill was rejected.

JOHN TYLER.—V.

*August 9, 1842.**To the House of Representatives of the United States :*

It is with unfeigned regret that I find myself under the necessity of returning to the House of Representatives, with my objections, a bill entitled "An act to provide revenue from imports, and to change and modify existing laws imposing duties on imports, and for other purposes." Nothing can be more painful to any individual called upon to perform the chief executive duties under our limited Constitution, than to be constrained to withhold his assent from an important measure adopted by the legislature. Yet he would neither fulfill the high purposes of his station, nor consult the true interests or the solemn will of the people—the common constituents of both branches of the Government—by yielding his well-considered, most deeply fixed, and repeatedly-declared opinions, on matters of great public concernment, to those of a co-ordinate department, without requesting that department seriously to re-examine the subject of their difference. The exercise of some independence of judgment in regard to all acts of legislation, is plainly implied in the responsibility of approving them. At all times a duty, it becomes a peculiarly solemn and impressive one when the subjects passed upon by Congress happen to involve, as in the present instance, the most momentous issues; to affect variously the various parts of a great country; and to have given rise, in all quarters, to such a conflict of opinions as to render it impossible to conjecture, with any certainty, on which side the majority really is. Surely, if the pause for reflection intended by the wise authors of the Constitution, by referring the subject back to Congress for reconsideration, be ever expedient and necessary, it is in precisely such a case as the present.

On the subject of distributing the proceeds of the sales of the public lands, in the existing state of the finances, it has been my duty to make known my settled convictions on various occasions during the present session of Congress. At the opening of the extra session, upwards of twelve months ago, sharing fully in the general hope of returning prosperity and credit, I recommended such a distribution; but that recommendation was even then expressly coupled with the condition that the duties on imports should not exceed the rate of 20 per cent. provided by the compromise act of 1833. These hopes were not a little encouraged, and these views strengthened, by the report of Mr. Ewing, then Secretary of the Treasury, which was shortly thereafter laid before Congress, in which he recommended the imposition of duties at the rate of 20 per cent. ad valorem on all free articles, with specified exceptions; and stated, "if this measure be adopted, there will be received into the Treasury from customs, in the last quarter of the present year (1841), \$5,300,000; in all of the year, 1842, about \$22,500,000; and in the year

1843, after the final reduction under the act of March 2, 1833, about \$20,800,000;" and adds, "it is believed that, after the heavy expenditures required by the public service in the present year shall have been provided for, the revenue which will accrue from that, or a nearly approximate rate of duty, will be sufficient to defray the expenses of the Government, and leave a surplus to be annually applied to the gradual payment of the national debt, leaving the proceeds of the *public lands* to be disposed of as Congress shall see fit." I was most happy that Congress, at the time, seemed entirely to concur in the recommendations of the Executive; and, anticipating the correctness of the Secretary's conclusions, and in view of an actual surplus, passed the distribution act of the 4th September last, wisely limiting its operation to two conditions—having reference, both of them, to a possible state of the Treasury, different from that which had been anticipated by the Secretary of the Treasury, and to the paramount necessities of the public service. It ordained that if, at any time during the existence of that act, there should be an imposition of duties on imports inconsistent with the provisions of the act of 2d March, 1833, and beyond the rate of duties fixed by that act (to wit, 20 per cent. on the value of such imports, or any of them), then the distribution should be suspended, and should continue so suspended, until that cause should be removed. By a previous clause it had, in a like spirit of wise and cautious patriotism, provided for another case (in which all are even now agreed), that the proceeds of the sales of the public lands should be used for the defense of the country. It was enacted that the act should continue and be in force until otherwise provided by law, unless the United States should become involved in war with any foreign power; in which event, from the commencement of hostilities, the act should be suspended until the cessation of hostilities.

Not long after the opening of the present session of Congress, the unprecedented and extraordinary difficulties that have recently embarrassed the finances of the country began to assume a serious aspect. It soon became quite evident that the hopes under which the act of 4th September was passed, and which alone justified it in the eyes either of Congress who imposed, or of the Executive who approved, the first of the two conditions just recited, were not destined to be fulfilled. Under the pressure, therefore, of the embarrassments which had thus unexpectedly arisen, it appeared to me that the course to be pursued had been clearly marked out for the Government by that act itself. The condition contemplated in it, as requiring a suspension of its operation had occurred. It became necessary, in the opinions of all, to raise the rate of duties upon imports above 20 per cent.; and with a view both to provide available means to meet present exigencies, and to lay the foundation for a successful negotiation of a loan, I felt it incumbent upon me to urge upon Congress to raise the duties accordingly, imposing them in a spirit of a wise discrimination, for the twofold object of

affording ample revenue for the Government, and incidental protection to the various branches of domestic industry. I also pressed, in the most emphatic but respectful language I could employ, the necessity of making the land sales available to the Treasury, as the basis of public credit. I did not think that I could stand excused, much less justified, before the people of the United States, nor could I reconcile it to myself, to recommend the imposition of additional taxes upon them, without, at the same time, urging the employment of all the legitimate means of the Government towards satisfying its wants. These opinions were communicated in advance of any definitive action of Congress on the subject either of the tariff or land sales, under a high sense of public duty, and in compliance with an express injunction of the Constitution; so that if a collision (extremely to be deprecated as such collisions always are) has seemingly arisen between the executive and legislative branches of the Government, it has assuredly not been owing to any capricious interference, or to any want of a plain and frank declaration of opinion, on the part of the former. Congress differed in its views with those of the Executive, as it had undoubtedly a right to do; and passed a bill virtually for a time repealing the proviso of the act of the 4th September, 1841. The bill was returned to the house in which it originated with my objections to its becoming a law. With a view to prevent, if possible, an open disagreement of opinion on a point so important, I took occasion to declare that I regarded it as an indispensable prerequisite to an increase of duties above 20 per cent. that the act of the 4th September should remain unrepealed in its provisions. My reasons for that opinion were elaborately set forth in the message which accompanied the return of the bill—which no constitutional majority appears to have been found for passing into a law.

The bill which is now before me proposes, in its 27th section, the total repeal of one of the provisos in the act of September; and, while it increases the duties above 20 per cent., directs an unconditional distribution of the land proceeds. I am therefore subjected a second time, in the period of a few days, to the necessity of either giving my approval to a measure which, in my deliberate judgment, is in conflict with great public interests or of returning it to the house in which it originated, with my objections. With all my anxiety for the passage of a law which would replenish an exhausted Treasury, and furnish a sound and healthy encouragement to mechanical industry, I cannot consent to do so at the sacrifice of the peace and harmony of the country, and the clearest convictions of public duty.

For some of the reasons which have brought me to this conclusion, I refer to my previous messages to Congress, and briefly subjoin the following:

1. The bill unites two subjects, which, so far from having any affinity to one another, are wholly incongruous in their character. It is both a revenue and an appropriation bill. It thus imposes on the Executive,

in the first place, the necessity of either approving that which he would reject, or rejecting that which he might otherwise approve. This is a species of constraint to which the judgment of the Executive ought not, in my opinion, to be subjected. But that is not my only objection to the act in its present form. The union of subjects wholly dissimilar in their character in the same bill, if it grew into a practice, would not fail to lead to consequences destructive of all wise and conscientious legislation. Various measures, each agreeable only to a small minority, might, by being thus united (and the more, the greater chance of success), lead to the passing of laws, of which no single provision could, if standing alone, command a majority in its favor.

2. While the Treasury is in a state of extreme embarrassment, requiring every dollar which it can make available; and when the Government has not only to lay additional taxes, but to borrow money to meet pressing demands; the bill proposes to give away a fruitful source of revenue—which is the same thing as raising money by loan and taxation—not to meet the wants of the Government, but for distribution: a proceeding which I must regard as highly impolitic, if not unconstitutional.

A brief review of the present condition of the public finances will serve to illustrate the true condition of the Treasury, and exhibit its actual necessities. On the 5th of August (Friday last) there was in the Treasury, in round numbers, \$2,150,000:

Necessary to be retained to meet trust funds	\$360,000
Interest on public debt due in October	80,000
To redeem Treasury notes and pay the interest . . .	100,000
Land distribution, under the act of September 4, 1841	640,000
	\$1,180,000

Leaving an available amount of 970,000

The Navy Department had drawn requisitions on the Treasury, at that time, to meet debts actually due; among which are bills under protest for \$1,414,000—thus leaving an actual deficit of \$444,000

There was on hand about \$100,000 of unissued Treasury notes, assisted by the accruing revenue (amounting to about \$150,000 per week, exclusive of receipts on unpaid bonds), to meet requisitions for the Army and the demands of the civil list.

The withdrawal of the sum of \$640,000 to be distributed among the States, as soon as the statements and accounts can be made up and completed, by virtue of the provisions of the act of the 4th September last (of which nearly a moiety goes to a few States, and only about \$383,000 is to be divided among all the States), while it adds materially to the embarrassments of the Treasury, affords to the States no decided relief.

No immediate relief from this state of things is anticipated, unless (what would most deeply be deplored) the Government could be reconciled to the negotiations of loans already authorized by law, at a rate of discount ruinous in itself, and calculated most seriously to affect the public credit. So great is the depression of trade, that even if the present bill were to become a law, and prove to be productive, some time would elapse before sufficient supplies would flow into the Treasury; while, in the mean time, its embarrassments would be continually augmented by the semi-annual distribution of the land proceeds.

Indeed, there is but too much ground to apprehend that, even if this bill were permitted to become a law—alienating, as it does, the proceeds of the land sales—an actual deficit in the Treasury would occur, which would more than probably involve the necessity of a resort to direct taxation.

Let it be also remarked, that \$5,500,000 of the public debt becomes redeemable in about two years and a half, which, at any sacrifice, must be met; while the Treasury is always liable to demands for the payment of outstanding Treasury notes. Such is the gloomy picture which our financial department now presents, and which calls for the exercise of a rigid economy in the public expenditures, and the rendering available of all the means within the control of the Government. I most respectfully submit whether this is a time to give away the proceeds of the land sales when the public lands constitute a fund which, of all others, may be made most useful in sustaining the public credit. Can the Government be generous and munificent to others when every dollar it can command is necessary to supply its own wants? And if Congress would not hesitate to suffer the provisions of the act of 4th September last to remain unrepealed, in case the country was involved in war, is not the necessity for such a course now just as imperative as it would be then?

3. A third objection remains to be urged, which would be sufficient, in itself, to induce me to return the bill to the House with my objections. By uniting two subjects so incongruous as tariff and distribution, it inevitably makes the fate of the one dependent upon that of the other, in future contests of party. Can anything be more fatal to the merchant or manufacturer than such an alliance? What they most of all require is a system of moderate duties, so arranged as to withdraw the tariff question, as far as possible, completely from the arena of political contention. Their chief want is permanency and stability. Such an increase of the tariff I believe to be necessary, in order to meet the economical expenditures of Government. Such an increase, made in the spirit of moderation and judicious discrimination, would, I have no doubt, be entirely satisfactory to the American people. In the way of accomplishing a measure so salutary and so imperatively demanded by every public interest, the legislative department will meet with a cordial co-operation on the part of the Executive. This is all that the manufacturer can desire, and it would be a burden readily borne by the people.

But I cannot too earnestly repeat, that, in order to be beneficial, it must be permanent; and in order to be permanent, it must command general acquiescence. But can such permanency be justly hoped for, if the tariff question be coupled with that of distribution—as to which a serious conflict of opinion exists among the States and the people; which enlists in its support a bare majority—if, indeed there be a majority—of the two houses of Congress? What permanency or stability can attach to a measure which, warring upon itself, gives away a fruitful source of revenue at the moment it proposes a large increase of taxes on the people? Is the manufacturer prepared to stake himself and his interests upon such an issue?

I know that it is urged (but most erroneously, in my opinion) that instability is just as apt to be produced by retaining the public lands as a source of revenue as from any other cause; and this is ascribed to a constant fluctuation, as it is said, in the amount of sales. If there be anything in this objection, it equally applies to every imposition of duties on imports. The amount of revenue annually derived from duties is constantly liable to change. The regulations of foreign Governments, the varying productiveness of other countries, periods of excitement in trade, and a great variety of other circumstances, are constantly arising to affect the state of commerce, foreign and domestic, and, of consequence, the revenue levied upon it. The sales of the public domain in ordinary times are regulated by fixed laws which have their basis in a demand increasing only in the ratio of the increase of population. In recurring to the statistics connected with this subject, it will be perceived that for a period of ten years preceeding 1834 the average amount of land sales did not exceed \$2,000,000.

For the increase which took place in 1834-'5 and '6, we are to look to that peculiar condition of the country which grew out of one of the most extraordinary excitements in business and speculation that have ever occurred in the history of commerce and currency. It was the fruit of a wild spirit of adventure, engendered by a vicious system of credits, under the evils of which the country is still laboring, and which it is fondly hoped will not soon recur. Considering the vast amount of investments made by private individuals in the public lands during those three years, and which equaled \$43,000,000 (equal to more than 20 year's purchase) taking the average of sales of the ten preceding years, it may be safely asserted that the result of the public land sales can hold out nothing to alarm the manufacturer with the idea of instability in the revenues, and consequently in the course of the Government.

Under what appears to me, therefore, the soundest considerations of public policy, and in view of the interests of every branch of domestic industry, I return you the bill, with these my objections to its becoming a law.

I take occasion emphatically to repeat my anxious desire to co-operate with Congress in the passing of a law which, while it shall assist in supplying the wants of the Treasury, and re-establish public credit,

shall afford to the manufacturing interests of the country all the incidental protection they require.

After all, the effect of what I do is substantially to call on Congress to reconsider the subject. If, on such reconsideration, a majority of two-thirds of both houses should be in favor of the measure, it will become a law, notwithstanding my objections. In a case of clear and manifest error on the part of the President, the presumption of the Constitution is, that such majorities will be found. Should they be so found in this case, having conscientiously discharged my own duty, I shall cheerfully acquiesce in the result.

JOHN TYLER.

The veto message was considered by the House of Representatives on the 10th of August, and referred to a select committee of thirteen, of which John Quincy Adams was chairman. This committee reported on the 16th of August, and on the 17th the question "Shall the bill pass, notwithstanding the President's objection?" was decided in the negative by a vote of 92 yeas against 87 nays.

JOHN TYLER.—VI.—VII.

December 14, 1842.

To the House of Representatives of the United States :

Two bills were presented to me at the last session of Congress, which originated in the House of Representatives, neither of which was signed by me, and both having been presented within ten days of the close of the session, neither has become a law.

The first of these was a bill entitled "An act to repeal the proviso of the sixth section of the act entitled 'An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights,' approved September 4, 1841."

The bill was presented to me on Tuesday the 30th of August, at twenty-four minutes after 4 o'clock in the afternoon. For my opinions relative to the provisions contained in this bill, it is only necessary that I should refer to previous communications made by me to the House of Representatives.

The other bill was entitled "An act regulating the taking of the testimony in cases of contested elections, and for other purposes." This bill was presented to me at a quarter past 1 o'clock, on Wednesday, the 31st day of August. The two houses, by concurrent vote, had already agreed to terminate the session by adjournment at 2 o'clock on that day; that is to say, within three-quarters of an hour from the time the bill was placed in my hands. It was a bill containing twenty-seven sections, and I need not say of an important nature.

On its presentment to me, its reading was immediately commenced, but was interrupted by so many communications from the Senate and so many other causes operating at the last hour of the session, that it

was impossible to read the bill understandingly and with proper deliberation before the hour fixed for the adjournment of the two houses, and this, I presume, is a sufficient reason for neither signing the bill nor returning it with my objections.

The 17th joint rule of the two houses of Congress declares that "no bill or resolution that shall have passed the House of Representatives and the Senate, shall be presented to the President of the United States for his approbation on the last day of the session.

This rule was evidently designed to give to the President a reasonable opportunity of perusing important acts of Congress, and giving them some degree of consideration, before signing or returning the same.

It is true that the two houses have been in the habit of suspending this rule toward the close of the session in relation to particular bills, and it appears by the printed Journal that by concurrent votes of the two houses, passed on the last day of the session, the rule was agreed to be suspended so far as the same should relate to all such bills as should have been passed by the two houses at 1 o'clock on that day. It is exceedingly to be regretted that a necessity should ever exist for such suspension in the case of bills of great importance, and therefore demanding careful consideration.

As the bill has failed under the provisions of the Constitution to become a law, I abstain from expressing any opinion upon its several provisions, keeping myself wholly committed as to my ultimate action on any similar measure should the House think proper to originate it *de novo*, except so far as my opinion of the unqualified power of each house to decide for itself upon the election returns and qualifications of its own members has been expressed by me in a paper lodged in the Department of State at the time of signing an act entitled "An act for the apportionment of Representatives among the several States, according to the sixth census, approved June 22, 1842," a copy of which is in possession of the House.

JOHN TYLER.

JOHN TYLER.—VIII.

December 18, 1843.

To the House of Representatives of the United States :

I received, within a few hours of the adjournment of the last Congress, a resolution "directing payment of the certificates or awards issued by the commissioners, under the treaty with the Cherokee Indians." Its provisions involved principles of great importance, in reference to which, it required more time to obtain the necessary information than was allowed.

The balance of the fund provided by Congress for satisfying claims under the seventeenth article of the Cherokee treaty, referred to in the

resolution, is wholly insufficient to meet the claims still pending. To direct the payment, therefore, of the whole amount of those claims which happened to be first adjudicated, would prevent a ratable distribution of the fund among those equally entitled to its benefits. Such a violation of the individual rights of the claimants would impose upon the Government the obligation of making further appropriations to indemnify them; and thus Congress would be obliged to enlarge a provision liberal and equitable, which it had made for the satisfaction of all the demands of the Cherokees. I was unwilling to sanction a measure which would thus indirectly overturn the adjustment of our differences with the Cherokees, accomplished with so much difficulty, and to which time is reconciling those Indians.

If no such indemnity should be provided, then a palpable and very gross wrong would be inflicted upon the claimants who had not been so fortunate as to have their claims taken up in preference to others. Besides, the fund having been appropriated by law to a specific purpose, in fulfilment of the treaty, it belongs to the Cherokees, and the authority of this Government to direct its application to particular claims is more than questionable.

The direction in the joint resolution, therefore, to pay the awards of the commissioners, to the amount of \$100,000, seems to me quite objectionable and could not be approved.

The further direction, that the certificates required to be issued by the treaty, and in conformity with the practice of the board heretofore, shall be proper and sufficient vouchers, upon which payments shall be made at the Treasury, is a departure from the system established soon after the adoption of the Constitution, and maintained ever since. That system requires that payments, under the authority of any Department, shall be made upon its requisition, countersigned by the proper Auditor and Comptroller. The greatest irregularity would ensue from the mode of payment prescribed by the resolution.

I have deemed it respectful and proper to lay before the House of Representatives these reasons for having withheld my approval of the above-mentioned joint resolution.

JOHN TYLER.

JOHN TYLER.—IX.

June 11, 1844.

To the House of Representatives of the United States:

I return to the House of Representatives, in which it originated, the bill entitled "An act making appropriations for the improvement of certain harbors and rivers," with the following objections to its becoming a law:

At the adoption of the Constitution each State was possessed of a separate and independent sovereignty and an exclusive jurisdiction over

all streams and water-courses within its territorial limits. The Articles of Confederation in no way affected this authority or jurisdiction; and the present Constitution, adopted for the purpose of correcting the defects which existed in the original articles, expressly reserves to the States all powers not delegated. No such surrender of jurisdiction is made by the States to this Government by any express grant, and if it is possessed, it is to be deduced from the clause in the Constitution which invests Congress with authority "to make all laws which are necessary and proper for carrying into execution" the granted powers. There is, in my view of the subject, no pretense whatever for the claim to power which the bill now returned substantially sets up. The inferential power, in order to be legitimate, must be clearly and plainly incidental to some granted power and necessary to its exercise.

To refer it to the head of convenience or usefulness would be to throw open the door to a boundless and unlimited discretion, and to invest Congress with an unrestrained authority. The power to remove obstructions from the water-courses of the States is claimed under the granted power "to regulate commerce with foreign nations, *among the several States*, and with the Indian tribes;" but the plain and obvious meaning of this grant is, that Congress may adopt rules and regulations prescribing the terms and conditions on which the citizens of the United States may carry on commercial operations with foreign states or kingdoms, and on which the citizens or subjects of foreign states or kingdoms may prosecute trade with the United States, or either of them. And so the power to regulate commerce *among the several States* no more invests Congress with jurisdiction over the water-courses of the States than the first branch of the grant does over the water-courses of foreign powers, which would be an absurdity.

The right of common use of the people of the United States to the navigable waters of each and every State arises from the express stipulation contained in the Constitution, that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." While, therefore, the navigation of any river in any State is, by the laws of such State, allowed to the citizens thereof, the same is also secured by the Constitution of the United States, on the same terms and conditions, to the citizens of every other State, and so of any other privilege or immunity.

The application of the revenue of this Government, if the power to do so was admitted, to improving the navigation of the rivers by removing obstructions or otherwise would be for the most part productive only of local benefit. The consequences might prove disastrously ruinous to as many of our fellow-citizens as the exercise of such power would benefit. I will take one instance furnished by the present bill—out of no invidious feeling, for such it would be impossible for me to feel, but because of my greater familiarity with locations—in illustration of the above opinion: Twenty thousand dollars are proposed to be appropriated to—

ward improving the harbor of Richmond, in the State of Virginia. Such improvement would furnish advantages to the city of Richmond and add to the value of the property of its citizens, while it might have a most disastrous influence over the wealth and prosperity of Petersburg, which is situated some twenty-five miles distant on a branch of James River, and which now enjoys its fair proportion of the trade. So, too, the improvement of James River to Richmond and the Appamattox to Petersburg might, by inviting the trade of those two towns, have the effect of prostrating the town of Norfolk. This, too, might be accomplished without adding a single vessel to the number now engaged in the trade of the Chesapeake Bay or bringing into the Treasury a dollar of additional revenue. It would produce, most probably, the single effect of concentrating the commerce ever profitably enjoyed by three places upon one of them. This case furnishes an apt illustration of the effect of this bill in several other particulars.

There cannot, in fact, be drawn the slightest discrimination between the improving the streams of a State under the power to regulate commerce and the most extended system of internal improvements on land. The excavating a canal, the paving a road, are equally as much incident to such a claim of power as the removing obstructions from water-courses; nor can such power be restricted, by any fair course of reasoning, to the mere fact of making the improvement. It reasonably extends, also, to the right of seeking a return of the means expended, through the exaction of tolls and the levying of contributions. Thus, while the Constitution denies to this Government the privilege of acquiring a property in the soil of any State, even for the purpose of erecting a necessary fortification, without a grant from such State, this claim to power would invest it with control and dominion over the waters and soil of each State without restriction. Power so incongruous cannot exist in the same instrument.

The bill is also liable to serious objection because of its blending appropriations for numerous objects, but few of which agree in their general features. This necessarily produces the effect of embarrassing executive action. Some of the appropriations would receive my sanction if separated from the rest, however much I might deplore the reproduction of a system which for some time past has been permitted to sleep with apparently the acquiescence of the country. I might particularize the Delaware Breakwater as an improvement which looks to the security from the storms of our extended Atlantic seaboard of the vessels of all the country engaged either in the foreign or the coastwise trade, as well as to the safety of the revenue; but when, in connection with that, the same bill embraces improvements of rivers at points far in the interior, connected alone with the trade of such river and the exertion of mere local influences, no alternative is left me but to use the qualified veto with which the Executive is invested by the Constitution, and to return the bill to the house in which it originated, for its ultimate reconsideration and decision.

In sanctioning a bill of the same title with that returned, for the improvement of the Mississippi and its chief tributaries, and certain harbors on the lakes—if I bring myself apparently in conflict with any of the principles herein asserted, it will arise on my part exclusively from the want of a just appreciation of localities. The Mississippi occupies a footing altogether different from the river and water courses of the different States. No one State or any number of States can exercise any other jurisdiction over it than for the punishment of crimes and the service of civil process. It belongs to no particular State or States, but of common right, by express reservation, to all the States. It is reserved as a great common highway for the commerce of the whole country. To have conceded to Louisiana, or to any other State admitted as a new State into the Union, the exclusive jurisdiction, and consequently the right to make improvements and to levy tolls on the segments of the river embraced within its territorial limits, would have disappointed the chief object in the purchase of Louisiana, which was, to secure the free use of the Mississippi to all the people of the United States. Whether levies on commerce were made on foreign or domestic government would have been equally burdensome and objectionable. The United States, therefore, is charged with its improvement for the benefit of all, and the appropriation of governmental means to its improvement becomes indispensably necessary for the good of all.

As to the harbors on the lakes, the act originates no new improvements, but makes appropriations for the continuance of work already begun.

It is as much the duty of the Government to construct good harbors, without reference to the location or interests of cities, for the shelter of the extensive commerce of the lakes, as to build breakwaters on the Atlantic coast for the protection of the trade of that ocean. These great inland seas are visited by destructive storms; and the annual loss of ships and cargoes, and consequently of revenue to the Government, is immense. If, then, there be any work embraced by the act, which is not required in order to afford shelter and security to the shipping against the tempests which so often sweep over those great inland seas, but has, on the contrary, originated more in a spirit of speculation and local interest than in one of the character alluded to, the House of Representatives will regard my approval of the bill more as the result of misinformation, than any design to abandon or modify the principles laid down in this message. Every system is liable to run into abuse, and none more so than that under consideration; and measures cannot be too soon taken by Congress to guard against this evil.

JOHN TYLER.

The veto message was considered by the House immediately after it was read. After a brief debate, the question "Shall the bill pass, notwithstanding the President's objections?" was taken, and decided in the negative, by a vote of 104 yeas against 84 nays. So two-thirds not voting in the affirmative the bill was not passed.

JOHN TYLER.—X.

*February 20, 1845.**To the Senate of the United States :*

I herewith return the bill entitled "An act relating to revenue cutters and steamers," with the following objections to its becoming a law :

The Executive has found it necessary, and esteemed it important to the public interests, to direct the building of two revenue boats, to be propelled by wind or steam, as occasion may require, the one for the coast of Georgia and the other for Mobile Bay, to be used as dispatch vessels if necessary. The models have been furnished by the Navy Department, and side-wheels have been ordered, as being best tested and least liable to failure. The one boat is directed to be built at Richmond, Va., the other at Pittsburgh, Pa., and contracts have been regularly entered into for their construction. The contractors have made and are making all necessary arrangement in procuring materials and sites for building, &c., and have doubtless been at considerable expense in the necessary preparations for completing their engagements. It was no part of the intention of the Senate in originating the bill, I am well convinced, to violate the sanctity of contracts regularly entered into by the Government. The language of the act, nevertheless, is of a character to produce, in all probability, that effect. Its language is "that no revenue cutter or revenue steamer shall hereafter be built (*except such as are now in the course of building or equipment*), nor purchased, unless an appropriation be first made by law therefor." The building of the two cutters under contract can not be said properly to have commenced, although preparations have been made for building; but even if the construction be ambiguous, it is better that all ambiguity should be removed, and thus the hazard of violating the pledged faith of the country be removed along with it.

I am free to confess that existing contracts being guarded and protected, the law to operate *in futuro* would be regarded as both proper and wise.

With these objections, I return the bill to the house in which it originated for its final constitutional action.

JOHN TYLER.

After the veto message had been read its consideration was postponed until the following day, when it was again postponed, and the vote was not taken until the evening of March 3, when, without debate, the vote was taken on the question " Shall the bill pass, the President's objections notwithstanding?" which was decided in the affirmative by a vote of 41 yeas against 1 nay. So the bill was passed.

JAMES K. POLK.—I.

*August 3, 1846.**To the House of Representatives :*

I have considered the bill entitled "An act making appropriations for the improvement of certain harbors and rivers" with the care which its importance demands, and now return the same to the House of Representatives, in which it originated, with my objections to its becoming a law. The bill proposes to appropriate one million three hundred and seventy-eight thousand four hundred and fifty dollars to be applied to more than forty distinct and separate objects of improvement. On examining its provisions, and the variety of objects of improvement which it embraces, many of them of a local character, it is difficult to conceive, if it shall be sanctioned and become a law, what practical constitutional restraint can hereafter be imposed upon the most extended system of internal improvements by the Federal Government in all parts of the Union. The Constitution has not, in my judgment, conferred upon the Federal Government the power to construct works of internal improvement within the States, or to appropriate money from the Treasury for that purpose. That this bill assumes for the Federal Government the right to exercise this power, cannot, I think, be doubted. The approved course of the Government, and the deliberately expressed judgment of the people, have denied the existence of such a power under the Constitution. Several of my predecessors have denied its existence in the most solemn forms.

The general proposition that the Federal Government does not possess this power is so well settled, and has for a considerable period been so generally acquiesced in, that it is not deemed necessary to reiterate the arguments by which it is sustained. Nor do I deem it necessary, after the full and elaborate discussions which have taken place before the country on this subject, to do more than state the general considerations which have satisfied me of the unconstitutionality and inexpediency of the exercise of such a power.

It is not questioned that the Federal Government is one of limited powers. Its powers are such, and such only, as are expressly granted in the Constitution, or are properly incident to the expressly granted powers, and necessary to their execution. In determining whether a given power has been granted, a sound rule of construction has been laid down by Mr. Madison. That rule is, that "whenever a question arises concerning a particular power, the first question is, whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an expressed power, and necessary to its execution. If it be, it may be exercised by Congress. If it be not, Congress cannot exercise it." It is not pretended that there is any express

grant in the Constitution conferring on Congress the power in question. Is it, then, an incidental power, necessary and proper for the execution of any of the granted powers? All the granted powers, it is confidently affirmed, may be effectually executed without the aid of such an incident. "A power, to be incidental, must not be exercised for ends which make it a principal, or substantive power, independent of the principal power to which it is an incident." It is not enough that it may be regarded by Congress as *convenient*, or that its exercise would advance the public weal. It must be *necessary and proper* to the execution of the principal expressed power to which it is an incident, and without which such principal power cannot be carried into effect. The whole frame of the Federal Constitution proves that the Government which it creates was intended to be one of limited and specified powers. A construction of the Constitution so broad as that by which the power in question is defended tends imperceptibly to a consolidation of power in a Government intended by its framers to be thus limited in its authority. "The obvious tendency and inevitable result of a consolidation of the States into one sovereignty would be to transform the republican system of the United States into a monarchy." To guard against the assumption of all powers which enroach upon the reserved sovereignty of the States, and which consequently tend to consolidation, is the duty of all the true friends of our political system. That the power in question is not properly an incident to any of the granted powers, I am fully satisfied; but if there were doubts on this subject, experience has demonstrated the wisdom of the rule that all the functionaries of the Federal Government should abstain from the exercise of all questionable or doubtful powers. If an enlargement of the powers of the Federal Government should be deemed proper, it is safer and wiser to appeal to the States and the people in the mode prescribed by the Constitution for the grant desired, than to assume its exercise without an amendment of the Constitution. If Congress does not possess the general power to construct works of internal improvement within the States, or to appropriate money from the Treasury for that purpose, what is there to exempt some, at least, of the objects of appropriation included in this bill from the operation of the general rule? This bill assumes the existence of the power, and in some of its provisions asserts the principle that Congress may exercise it as fully as though the appropriations which it proposes were applicable to the construction of roads and canals. If there be a distinction in principle, it is not perceived, and should be clearly defined. Some of the objects of appropriation contained in this bill are local in their character, and lie within the limits of a single State; and though, in the language of the bill, they are called *harbors*, they are not connected with foreign commerce, nor are they places of refuge or shelter for our Navy or commercial marine on the ocean or lake shores. To call the mouth of a creek, or a shallow inlet on our coast, a harbor cannot confer the authority to ex-

pend the public money in its improvement. Congress have exercised the power coeval with the Constitution of establishing light-houses, beacons, buoys, and piers, on our ocean and lake shores, for the purpose of rendering navigation safe and easy, and of affording protection and shelter for our Navy and other shipping. These are safeguards placed in existing channels of navigation. After the long acquiescence of the Government through all preceding administrations, I am not disposed to question or disturb the authority to make appropriations for such purposes.

When we advance a step beyond this point, and in addition to the establishment and support, by appropriations from the Treasury, of light-houses, beacons, buoys, piers, and other improvements within the bays, inlets, and harbors on our ocean and lake coasts immediately connected with our foreign commerce, and attempt to make improvements in the interior at points unconnected, with foreign commerce, and where they are not needed for the protection and security of our Navy and commercial marine, the difficulty arises in drawing a line beyond which appropriations may not be made by the Federal Government.

One of my predecessors, who saw the evil consequences of the system proposed to be revived by this bill, attempted to define this line by declaring that "expenditures of this character" should be "confined *below* the ports of entry or delivery established by law!" Acting on this restriction, he withheld his sanction from a bill which had passed Congress "to improve the navigation of the Wabash River." He was at the same time "sensible that this restriction was not as satisfactory as could be desired, and that much embarrassment may be caused to the executive department in its execution, by appropriations for remote and not well-understood objects." This restriction, it was soon found, was subject to be evaded and rendered comparatively useless in checking the system of improvements which it was designed to arrest, in consequence of the facility with which ports of entry and delivery may be established by law upon the upper waters, and in some instances, almost at the head springs of some of the most unimportant of our rivers, and at points on our coast possessing no commercial importance, and not used as places of refuge and safety by our Navy and other shipping. Many of the ports of entry and delivery now authorized by law, so far as foreign commerce is concerned, exist only in the statute-books. No entry on foreign goods is ever made, and no duties are ever collected at them. No exports of American products bound for foreign countries ever clear from them. To assume that their existence in the statute-book as ports of entry or delivery warrant expenditures on the waters leading to them, which would be otherwise unauthorized, would be to assert the proposition that the law-making power may ingraft new provisions on the Constitution. If the restriction be a sound one, it can only apply to the bays, inlets, and rivers connected

with or leading to such ports as actually have foreign commerce; ports at which foreign importations arrive in bulk, paying the duties charged by law, and from which exports are made to foreign countries. It will be found by applying the restriction thus understood to the bill under consideration, that it contains appropriations for more than twenty objects of internal improvement, called in the bill *harbors*, at places which have never been declared by law either ports of entry or delivery, and at which, as appears from the records of the Treasury, there has never been an arrival of foreign merchandise, and from which there has never been a vessel cleared for a foreign country. It will be found that many of these works are new, and at places for the improvement of which appropriations are now for the first time proposed. It will be found, also, that the bill contains appropriations for rivers upon which there not only exists no foreign commerce, but upon which there has not been established even a paper port of entry, and for the mouths of creeks, denominated harbors, which, if improved, can benefit only the particular neighborhood in which they are situated. It will be found, too, to contain appropriations the expenditure of which will only have the effect of improving one place at the expense of the local, natural advantages of another in its vicinity. Should this bill become a law, the same *principle* which authorizes the appropriations which it proposes to make would also authorize similar appropriations for the improvement of all the other bays, inlets, and creeks, which may with equal propriety be called harbors, and of all the rivers, important or unimportant, in every part of the Union. To sanction the bill with such provisions would be to concede the *principle* that the Federal Government possesses the power to expend the public money in a general system of internal improvements, limited in its extent only by the ever-varying discretion of successive Congresses and successive Executives. It would be to efface and remove the limitations and restrictions of power, which the Constitution has wisely provided to limit the authority and action of the Federal Government to a few well-defined and specified objects. Besides these objections, the practical evils which must flow from the exercise, on the part of the Federal Government, of the powers asserted in this bill, impress my mind with a grave sense of my duty to avert them from the country, as far as my constitutional action may enable me to do so.

It not only leads to a consolidation of power in the Federal Government at the expense of the rightful authority of the States, but its inevitable tendency is to embrace objects for the expenditure of the public money which are local in their character, benefiting but few at the expense of the common treasury of the whole. It will engender sectional feelings and prejudices calculated to disturb the harmony of the Union. It will destroy the harmony which should prevail in our legislative councils. It will produce combinations of local and sectional interests, strong enough when united to carry propositions for appropriations of

public money which could not of themselves, and standing alone, succeed, and cannot fail to lead to wasteful and extravagant expenditures.

It must produce a disreputable scramble for the public money, by the conflict which is inseparable from such a system, between local and individual interests and the general interest of the whole. It is unjust to those States which have with their own means constructed their own internal improvements, to make from the common treasury appropriations for similar improvements in other States.

In its operation it will be oppressive and unjust towards those States whose representatives and people either deny or doubt the existence of the power, or think its exercise inexpedient, and who, while they equally contribute to the Treasury, cannot, consistently with their opinions, engage in the general competition for a share of the public money. Thus a large portion of the Union in numbers and in geographical extent, contributing its equal proportion of taxes to the support of the Government, would, under the operation of such a system, be compelled to see the national treasure—the common stock of all—unequally disbursed, and often improvidently wasted for the advantage of small sections, instead of being applied to the great national purposes in which all have a common interest, and for which alone the power to collect the revenue was given. Should the system of internal improvements proposed prevail, all these evils will multiply and increase with the increase of the number of the States and the extension of the geographical limits of the settled portions of our country. With the increase of our numbers and the extension of our settlements, the local objects demanding appropriations of the public money for their improvement will be proportionately increased. In each case the expenditure of the public money would confer benefits, direct or indirect, only on a section, while these sections would become daily less in comparison with the whole.

The wisdom of the framers of the Constitution in withholding power over such objects from the Federal Government, and leaving them to the local governments of the States, becomes more and more manifest with every year's experience of the operations of our system.

In a country of limited extent, with but few such objects of expenditure (if the form of government permitted it), a common treasury might be used for their improvement with much less inequality and injustice than in one of the vast extent which ours now presents in population and territory. The treasure of the world would hardly be equal to the improvement of every bay, inlet, creek, and river in our country which might be supposed to promote the agricultural, manufacturing, or commercial interests of a neighborhood.

The Federal Constitution was wisely adapted in its provisions to any expansion of our limits and population; and with the advance of the confederacy of the States in the career of national greatness, it becomes the more apparent that the harmony of the Union and the equal justice to which all its parts are entitled require that the Federal Government should confine its action within the limits prescribed by the Constitu

tion to its power and authority. Some of the provisions of this bill are not subject to the objections stated, and did they stand alone I should not feel it to be my duty to withhold my approval.

If no constitutional objections existed to the bill, there are others of a serious nature which deserve some consideration. It appropriates between one and two millions of dollars for objects which are of no pressing necessity; and this is proposed at a time when the country is engaged in a foreign war, and when Congress, at its present session, has authorized a loan, or the issue of Treasury notes, to defray the expenses of the war, to be resorted to if the "exigencies of the Government shall require it." It would seem to be the dictate of wisdom under such circumstances to husband our means, and not to waste them on comparatively unimportant objects, so that we may reduce the loan or issue of Treasury notes which may become necessary to the smallest practicable sum. It would seem to be wise, too, to abstain from such expenditures with a view to avoid the accumulation of a large public debt, the existence of which would be opposed to the interests of our people as well as to the genius of our free institutions.

Should this bill become a law, the principle which it establishes will inevitably lead to large and annually increasing appropriations and drains upon the Treasury, for it is not to be doubted that numerous other localities not embraced in its provisions, but quite as much entitled to the favor of the Government as those which are embraced, will demand, through their representatives in Congress, to be placed on an equal footing with them. With such an increase of expenditure must necessarily follow either an increased public debt or increased burdens upon the people by taxation, to supply the Treasury with the means of meeting the accumulated demands upon it.

With profound respect for the opinions of Congress, and ever anxious, as far as I can consistently with my responsibility to our common constituents, to co-operate with them in the discharge of our respective duties, it is with unfeigned regret that I find myself constrained, for the reasons which I have assigned, to withhold my approval from this bill.

JAMES K. POLK.

The veto message was considered by the House of Representatives immediately after its reception, and after a debate, extending over two days, the question "Shall this bill become a law, the objections of the President to the contrary notwithstanding?" was determined in the negative by a vote of 97 yeas against 91 nays. So the bill was rejected.

JAMES K. POLK.—II.

August 8, 1846.

To the Senate of the United States :

I return to the Senate, in which it originated, the bill entitled "An act to provide for the ascertainment and satisfaction of claims of American citizens for spoliations committed by the French prior to the 31st

of July, 1801," which was presented to me on the 6th instant, with my objections to its becoming a law.

In attempting to give the bill the careful examination it requires, difficulties presented themselves in the outset, from the remoteness of the period to which the claims belong, the complicated nature of the transactions in which they originated, and the protracted negotiations to which they led between France and the United States. The short time intervening between the passage of the bill by Congress, and the approaching close of their session, as well as the pressure of other official duties, have not permitted me to extend my examination of the subject into its minute details. But, in the consideration that I have been able to give to it, I find objections of a grave character to its provisions.

For the satisfaction of the claims provided for, it is proposed to appropriate five millions of dollars. I can perceive no legal or equitable ground upon which this appropriation can rest. A portion of the claims have been more than half a century before the Government, in its executive or legislative departments, and all of them had their origin in events which occurred prior to 1800. Since 1802, they have been from time to time before Congress. No greater necessity or propriety exists for providing for these claims at this time than has existed for nearly half a century; during all which period this questionable measure has never, until the present time, received the favorable consideration of Congress. It is scarcely probable, if the claim had been regarded as obligatory upon the Government, or constituting an equitable demand upon the Treasury, that those who were contemporaneous with the events which gave rise to it, should not long since have done justice to the claimants. The Treasury has often been in a condition to enable the Government to do so without inconvenience, if the claims had been considered just. Mr. Jefferson, who was fully cognizant of the early dissensions between the Government of the United States and France, out of which the claims arose, in his annual message in 1808 adverted to the large surplus then in the Treasury, and its "probable accumulation," and inquired whether it would lie "unproductive in the public vaults"; and yet these claims, though then before Congress, were not recognized or paid. Since that, the public debt of the Revolution and of the war of 1812 has been extinguished, and at several periods since the Treasury has been in possession of large surpluses over the demands upon it. In 1836, the surplus amounted to many millions of dollars, and, for want of proper objects to which to apply it, it was directed by Congress to be deposited with the States.

During this extended course of time—embracing periods eminently favorable for satisfying all just demands upon the Government, the claims embraced in this bill met with no favor in Congress, beyond the reports of committees, in one or the other branch. These circumstances alone are calculated to raise strong doubts in respect to these claims; and especially as all information necessary to a correct judgment con-

cerning them has been long before the public. These doubts are strengthened in my mind by the examination I have been enabled to give to the transaction in which they originated.

The bill assumes that the United States have become liable in those ancient transactions, to make reparation to the claimants for injuries committed by France. Nothing was obtained for claimants by negotiation; and the bill assumes that the Government has become many ways responsible for these claims. The limited time allowed me, before your adjournment, makes it impossible to reiterate the facts and arguments by which, in preceding Congresses, these claims have been successfully resisted. The present is a period particularly unfavorable for the satisfaction of claims of so large an amount, and, to say the least of them, of so doubtful a character. There is no surplus in the Treasury. A public debt of several millions has been created within the last few years. We are engaged in a foreign war, uncertain as to its duration, and involving heavy expenditures; to prosecute which war, Congress has, at its present session, authorized a further loan. So that, in effect, the Government, should this bill become a law, would have to borrow money and increase the public debt to pay these claims. It is true that, by the provisions of the bill, payment is directed to be made in land scrip instead of money, but the effect upon the Treasury will be the same. The public lands constitute one of the sources of public revenue, and if these claims be paid in land scrip, it will, from the date of the issue, to a great extent, cut off from the Treasury the annual income from the sale of public lands; because payments for the lands sold by the Government may be expected to be made in scrip until it is all redeemed. If those claims be just, they ought to be paid in money, and nothing less valuable. The bill provides that they shall be paid in land scrip, whereby they are in effect to be a mortgage upon the public lands in the new States—a mortgage, too, held in great part, if not wholly, by non-residents of the States in which the lands lie, who may secure these lands to the amount of several millions of acres, and then demand for them exorbitant prices from the citizens of other States, who may desire to purchase them for settlement, or they may keep them out of the market, and thus retard the prosperity and growth of the States in which they are situated. Why this unusual mode of satisfying claimants upon the Treasury has been resorted to, does not appear. It is not consistent with a sound public policy. If it be done in this case, it may be done in all others. It will form a precedent for the satisfaction of all other stale and questionable claims, and would undoubtedly be resorted to by all claimants, who, after successive trials, shall fail to have their claims recognized and paid in money by Congress.

The bill proposes to pay five millions of dollars, to be paid in land scrip, and provides "that no claim or memorial shall be received by the commissioners" authorized by the act, "unless accompanied by a release or discharge of the United States from all other and further compensa-

tion than the claimant may be entitled to receive under the provision of the act." These claims are estimated to amount to a much larger sum than five millions of dollars, and yet the claimant is required to release to the Government all other compensation, and to accept his share of a fund known to be inadequate.

If these claims be well founded, it would be unjust to the claimants to repudiate any portion of them, and the remaining sum could hereafter be resisted. The bill proposes to pay these claims not in the currency known to the Constitution, and not to their full amount.

Passed, as this bill has been, near the close of the session, and when many measures of importance necessarily demand the attention of Congress, and possibly without that full and deliberate consideration which the large sum it appropriates and the existing state of the Treasury and of the country demand, I deem it to be my duty to withhold my approval, that it may hereafter undergo the revision of Congress. I have come to this conclusion with regret. In interposing my objections to its becoming a law, I am truly sensible that it should be an extreme case which would make it the duty of the Executive to withhold his approval of any bill passed by Congress upon the ground of its expediency alone. Such case I consider this to be.

JAMES K. POLK.

The veto message was considered by the Senate immediately after its reception, and the question being put "Shall this bill pass, notwithstanding the objections of the President?" it was decided in the negative by a vote of 27 yeas against 15 nays. So the bill did not pass.

JAMES K. POLK.—III

December 15, 1847.

To the House of Representatives :

On the last day of the last session of Congress a bill, entitled "An act to provide for continuing certain works in the Territory of Wisconsin, and for other purposes," which had passed both houses, was presented to me for my approval. I entertained insuperable objections to its becoming a law ; but the short period of the session which remained afforded me no sufficient opportunity to prepare my objections and communicate them, with the bill, to the House of Representatives, in which it originated. For this reason the bill was retained, and I deem it proper now to state objections to it.

Although, from the title of the bill, it would seem that its main object was to make provision for continuing certain works already commenced in the Territory of Wisconsin, it appears, on examination of its provisions, that it contains only a single appropriation of six thousand dollars to be applied within that Territory, while it appropriates more than half a million of dollars for the improvement of numerous harbors

and rivers, lying within the limits and jurisdiction of several of the States of the Union.

At the preceding session of Congress it became my duty to return, with my objections, to the house in which it originated a bill making similar appropriations and involving like principles, and the views then expressed remain unchanged.

The circumstances under which this heavy expenditure of public money was proposed were of imposing weight in determining upon its expediency. Congress had recognized the existence of war with Mexico, and, to prosecute it to "a speedy and successful termination," had made appropriations exceeding our ordinary revenues. To meet the emergency and provide for the expenses of the Government a loan of twenty-three millions of dollars was authorized at the same session, which has since been negotiated. The practical effect of this bill, had it become a law, would have been to add the whole amount appropriated by it to the national debt. It would, in fact, have made necessary an additional loan to that amount as effectually as if in terms it had required the Secretary of the Treasury to borrow the money therein appropriated. The main question in that aspect is, whether it is wise, while all the means and credit of the Government are needed to bring the existing war to an honorable close, to impair the one and endanger the other by borrowing money to be expended in a system of internal improvements capable of an expansion sufficient to swallow up the revenues not only of our own country but of the civilized world? It is to be apprehended that, by entering upon such a career at this moment, confidence at home and abroad in the wisdom and prudence of the Government would be so far impaired as to make it difficult, without an immediate resort to heavy taxation, to maintain the public credit and to preserve the honor of the nation and the glory of our arms in prosecuting the existing war to a successful conclusion. Had this bill become a law it is easy to foresee that largely increased demands upon the Treasury would have been made at each succeeding session of Congress for the improvement of numerous other harbors, bays, inlets, and rivers of equal importance with those embraced by its provisions. Many millions would probably have been added to the necessary amount of the war debt, the annual interest on which must also have been borrowed, and finally a permanent national debt been fastened on the country and entailed on posterity.

The policy of embarking the Federal Government in a general system of internal improvements had its origin but little more than twenty years ago. In a very few years the applications to Congress for appropriations in furtherance of such objects exceeded two hundred millions of dollars. In this alarming crisis President Jackson refused to approve and sign the Maysville Road bill, the Wabash River bill, and other bills of similar character. His interposition put a check upon the new policy of throwing the cost of local improvements upon the National Treasury, pre-

served the revenues of the nation for their legitimate objects, by which he was enabled to extinguish the then existing public debt, and to present to an admiring world the unprecedented spectacle in modern times of a nation free from debt and advancing to greatness with unequalled strides under a Government which was content to act within its appropriate sphere in protecting the States and individuals in their own chosen career of improvement and of enterprise. Although the bill under consideration proposes no appropriation for a road or canal, it is not easy to perceive the difference in principle or mischievous tendency between appropriations for making roads and digging canals and appropriations to deepen rivers and improve harbors. All are alike within the limits and jurisdiction of the States, and rivers and harbors alone open an abyss of expenditure sufficient to swallow up the wealth of the nation and load it with a debt which may fetter its energies and tax its industries for ages to come.

The experience of several of the States, as well as that of the United States, during the period that Congress exercised the power of appropriating the public money for internal improvements, is full of eloquent warnings. It seems impossible, in the nature of the subject, as connected with local representation, that the several objects presented for improvement shall be weighed according to their respective merits, and appropriations confined to those whose importance would justify a tax on the whole community to effect their accomplishment.

In some of the States, systems of internal improvements have been projected, consisting of roads and canals, many of which, taken separately, were not of sufficient public importance to justify a tax on the entire population of the State to effect their construction; and yet, by a combination of local interests, operating on a majority of the legislature, the whole have been authorized, and the States plunged into heavy debts. To an extent so ruinous has this system of legislation been carried in some portions of the Union that the people have found it necessary to their own safety and prosperity to forbid their legislatures, by constitutional restrictions, to contract public debts for such purposes without their immediate consent.

If the abuse of power has been so fatal in the States where the systems of taxation are direct, and the representatives responsible at short periods to small masses of constituents, how much greater danger of abuse is to be apprehended in the General Government, whose revenues are raised by indirect taxation, and whose functionaries are responsible to the people in larger masses and for longer terms?

Regarding only objects of improvement of the nature of those embraced in this bill, how inexhaustible we shall find them. Let the imagination run along our coast from the river Saint Croix to the Rio Grande, and trace every river emptying into the Atlantic and Gulf of Mexico to its source; let it coast along our lakes, and ascend all their tributaries; let it pass to Oregon and explore all its bays, inlets, and

streams; and then let it raise the curtain of the future and contemplate the extent of this Republic, and the objects of improvement it will embrace as it advances to its high destiny, and the mind will be startled at the immensity and danger of the power which the principle of this bill involves.

Already our Confederacy consists of twenty-nine States. Other States may at no distant period be expected to be formed on the west of our present settlements. We own an extensive country in Oregon, stretching many hundreds of miles from east to west and seven degrees of latitude from south to north. By the admission of Texas into the Union we have recently added many hundreds of miles to our seacoast. In all this vast country, bordering on the Atlantic and Pacific, there are many thousands of bays, inlets, and rivers equally entitled to appropriations for their improvement with the objects embraced in this bill.

We have seen in our States that the interests of individuals or neighborhoods, combining against the general interest, have involved their governments in debts and bankruptcy; and when the system prevailed in the General Government, and was checked by President Jackson, it had begun to be considered the highest merit in a member of Congress to be able to procure appropriations of public money to be expended within his district or State, whatever might be the object. We should be blind to the experience of the past if we did not see abundant evidences that, if this system of expenditure is to be indulged in, combinations of individual and local interests will be found strong enough to control legislation, absorb the revenues of the country, and plunge the Government into a hopeless indebtedness.

What is denominated a harbor by this system does not necessarily mean a bay, inlet, or arm of the sea on the ocean or on our lake shores, on the margin of which may exist a commercial city or town engaged in foreign or domestic trade; but is made to embrace waters where there is not only no such city or town, but no commerce of any kind. By it a bay or sheet of shoal water is called a *harbor*, and appropriations demanded from Congress to deepen it, with a view to draw commerce to it, or to enable individuals to build up a town or city on its margin, upon speculation, and for their own private advantage.

What is denominated a river, which may be improved, in the system, is equally undefined in its meaning. It may be the Mississippi, or it may be the smallest and most obscure and unimportant stream bearing the name of river which is to be found in any State in the Union.

Such a system is subject, moreover, to be perverted to the accomplishment of the worst of political purposes. During the few years it was in full operation, and which immediately preceded the veto of President Jackson of the Maysville road bill, instances were numerous of public men seeking to gain popular favor by holding out to the people interested in particular localities the promise of large disbursements of public money. Numerous reconnoissances and surveys were made during

that period for roads and canals through many parts of the Union, and the people in the vicinity of each were led to believe that their property would be enhanced in value, and they themselves be enriched by the large expenditures which they were promised by the advocates of the system should be made from the Federal Treasury in their neighborhood. Whole sections of the country were thus sought to be influenced, and the system was fast becoming one not only of profuse and wasteful expenditure, but a potent political engine.

If the power to improve a harbor be admitted, it is not easy to perceive how the power to deepen every inlet on the ocean or the lakes, and make harbors where there are none, can be denied. If the power to clear out or deepen the channel of rivers near their mouths be admitted, it is not easy to perceive how the power to improve them to their fountain head, and make them navigable to their sources, can be denied. Where shall the exercise of the power, if it be assumed, stop? Has Congress the power, when an inlet is deep enough to admit a schooner, to deepen it still more so, that it will admit ships of heavy burden? and has it not the power, when an inlet will admit a boat, to make it deep enough to admit a schooner? May it improve rivers deep enough already to float ships and steamboats? and has it no power to improve those which are navigable only for flat boats and barges? May the General Government exercise power and jurisdiction over the soil of a State consisting of rocks and sand-bars in the beds of its rivers? and may it not excavate a canal around its waterfalls or across its lands for precisely the same object?

Giving to the subject the most serious and candid consideration of which my mind is capable, I cannot perceive any intermediate grounds. The power to improve harbors and rivers for purposes of navigation, by deepening or clearing out, by dams and sluices, by locking or canalizing, must be admitted without any other limitation than the discretion of Congress, or it must be denied altogether. If it be admitted, how broad and how susceptible of enormous abuses is the power thus vested in the General Government! There is not an inlet of the ocean or the lakes, not a river, creek, or streamlet within the States, which is not brought for this purpose within the power and jurisdiction of the General Government.

Speculation, disguised under the cloak of public good, will call on Congress to deepen shallow inlets, that it may build up new cities on their shores, or to make streams navigable which nature has closed by bars and rapids, that it may sell at a profit its lands upon their banks. To enrich neighborhoods by spending within it the moneys of the nation will be the aim and boast of those who prize their local interests above the good of the nation, and millions upon millions will be abstracted by tariffs and taxes from the earnings of the whole people to foster speculation and subserve the objects of private ambition.

Such a system could not be administered with any approach to equality among the several States and sections of the Union. There is no equality among them in the objects of expenditure, and, if the funds were distributed according to the merits of those objects, some would be enriched at the expense of their neighbors. But a greater practical evil would be found in the art and industry by which appropriations would be sought and obtained. The most artful and industrious would be the most successful; the true interests of the country would be lost sight of in an annual scramble for the contents of the Treasury; and the member of Congress who could procure the largest appropriations to be expended in his district would claim the reward of victory from his enriched constituents. The necessary consequence would be, sectional discontents and heart-burnings, increased taxation, and a national debt, never to be extinguished.

In view of these portentous consequences, I cannot but think that this course of legislation should be arrested, even were there nothing to forbid it in the fundamental laws of our Union. This conclusion is fortified by the fact, that the Constitution itself indicates a process by which harbors and rivers within the States may be improved—a process not susceptible of the abuses necessarily to flow from the assumption of the power to improve them by the General Government; just in its operation, and actually practiced upon, without complaint or interruption, during more than thirty years from the organization of the present Government.

The Constitution provides that “no State shall, without the consent of Congress, lay any duty of tonnage.” With the “consent” of Congress, such duties may be levied, collected, and expended by the States. We are not left in the dark as to the objects of this reservation of power to the States. The subject was fully considered by the convention that framed the Constitution. It appears, in Mr. Madison’s report of the proceeding of that body, that one object of the reservation was, that the States should not be restrained from laying duties of tonnage for the purpose of clearing harbors. Other objects were named in the debates, and among them the support of seamen. Mr. Madison, treating on this subject in the *Federalist*, declares that—

“The restraint on the power of the States over imports and exports is enforced by all the arguments which prove the necessity of submitting the regulation of trade to the Federal Councils. It is needless, therefore, to remark further on this head, than that the manner in which the restraint is qualified seems well calculated at once to secure to the States a reasonable discretion in providing for the conveniency of their imports and exports, and to the United States a reasonable check against the abuse of this discretion.”

The States may lay tonnage duties for clearing harbors, improving rivers or for other purposes; but are restrained from abusing the power, because, before such duties can take effect, the “consent” of Congress

must be obtained. Here is a safe provision for the improvement of harbors and rivers in the reserved powers of the States, and in the aid they may derive from duties of tonnage levied with the consent of Congress. Its safeguards are, that both the State legislatures and Congress have to concur in the act of raising the funds; that they are, in every instance, to be levied upon the commerce of those ports which are to profit by the proposed improvement; that no question of conflicting power or jurisdiction is involved; that the expenditure being in the hands of those who are to pay the money and be immediately benefited, will be more carefully managed and more productive of good than if the funds were drawn from the National Treasury and disbursed by the officers of the General Government; that such a system will carry with it no enlargement of Federal power and patronage, and leave the States to be the sole judges of their own wants and interests, with only a conservative negative in Congress upon any abuse of the power which the States may attempt.

Under this wise system the improvement of harbors and rivers was commenced, or rather continued, from the organization of the Government under the present Constitution. Many acts were passed by the several States levying duties of tonnage, and many were passed by Congress giving their consent to those acts. Such acts have been passed by Massachusetts, Rhode Island, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, and Georgia, and have been sanctioned by the consent of Congress. Without enumerating them all, it may be instructive to refer to some of them, as illustrative of the mode of improving harbors and rivers in the early periods of our Government, as to the constitutionality of which there can be no doubt:

In January, 1790, the State of Rhode Island passed a law levying a tonnage duty on vessels arriving in the port of Providence, "for the purpose of clearing and deepening the channel of Providence River, and making the same more navigable."

On the 2d of February, 1798, the State of Massachusetts passed a law levying a tonnage duty on all vessels, whether employed in the foreign or coasting trade, which might enter into the Kennebunk River, for the improvement of the same by "rendering the passage in and out of said river less difficult and dangerous."

On the 1st of April, 1805, the State of Pennsylvania passed a law levying a tonnage duty on vessels, "to remove the obstructions to the navigation of the river Delaware below the city of Philadelphia."

On the 23d of January, 1804, the State of Virginia passed a law levying a tonnage duty on vessels, "for improving the navigation of James River."

On the 22d of February, 1826, the State of Virginia passed a law levying a tonnage duty on vessels, "improving the navigation of James River from Warwick to Rockett's Landing."

On the 8th of December, 1824, the State of Virginia passed a law levying a tonnage duty on vessels, "improving the navigation of Appomattox River from Pocahontas bridge to Broadway."

In November, 1821, the State of North Carolina passed a law levying a tonnage duty on vessels, "for the purpose of opening an inlet at the lower end of Albemarle Sound, near a place called Nag's Head, and improving the navigation of said sound with its branches;" and in November, 1828, an amendatory law was passed.

On the 21st of December, 1804, the State of South Carolina passed a law levying a tonnage duty, for the purpose of "building a marine hospital in the vicinity of Charleston;" and on the 17th of December, 1816, another law was passed by the legislature of that State for the "maintenance of a marine hospital."

On the 10th of February, 1787, the State of Georgia passed a law levying a tonnage duty on all vessels entering into the port of Savannah, for the purpose of "clearing" the Savannah River of "wrecks and other obstructions" to the navigation.

On the 12th of December, 1804, the State of Georgia passed a law levying a tonnage duty on vessels, "to be applied to the payment of the fees of the harbor-master and health officer of the ports of Savannah and Saint Mary's."

In April, 1873, the State of Maryland passed a law levying a tonnage duty on vessels, for the improvement of the "basin" and "harbor" of Baltimore and the "river Patapsco."

On the 26th of December, 1791, the State of Maryland passed a law levying a tonnage duty on vessels, for the improvement of the "harbor and port of Baltimore."

On the 28th of December, 1793, the State of Maryland passed a law authorizing the appointment of a health officer for the port of Baltimore, and laying a tonnage duty on vessels to defray the expenses.

Congress have passed many acts giving its "consent" to these and other State laws, the first of which is dated in 1790 and the last in 1843. By the latter act the "consent" of Congress was given to the law of the legislature of the State of Maryland, laying a tonnage duty on vessels for the improvement of the harbor of Baltimore, and continuing it in force until the first day of June, 1850. I transmit herewith copies of such of the acts of the legislatures of the States on the subject, and also the acts of Congress giving its "consent" thereto, as have been collated.

That the power was constitutionally and rightfully exercised in these cases does not admit of a doubt.

The injustice and inequality resulting from conceding the power to both Governments is illustrated by several of the acts enumerated. Take that for the improvement of the harbor of Baltimore. That improvement is paid for exclusively by a tax on the commerce of that city; but if an appropriation be made from the National Treasury for

the improvement of the harbor of Boston it must be made in part out of taxes levied on the commerce of Baltimore. The result is that the commerce of Baltimore pays the full cost of the harbor improvements designed for its own benefit, and in addition contributes to the cost of all other harbor and river improvements in the Union. The facts need but be stated to prove the inequality and injustice which cannot but flow from the practice embodied in this bill. Either the subject should be left as it was during the first third of a century, or the practice of levying tonnage duties by the States should be abandoned altogether, and all harbor and river improvements made under the authority of the United States, and by means of direct appropriations. In view not only of the constitutional difficulty, but as a question of policy, I am clearly of opinion that the whole subject should be left to the States, aided by such tonnage duties on vessels navigating their waters as their respective legislatures may think proper to propose and Congress see fit to sanction. This "consent" of Congress would never be refused in any case where the duty proposed to be levied by the State was reasonable and where the object of improvement was one of importance. The funds required for the improvement of harbors and rivers may be raised in this mode, as was done in the earlier periods of the Government, and thus avoid a resort to a strained construction of the Constitution not warranted by its letter. If direct appropriations be made of the money in the Federal Treasury for such purposes the expenditures will be unequal and unjust. The money in the Federal Treasury is paid by a tax on the whole people of the United States, and if applied to the purposes of improving harbors and rivers it will be partially distributed and be expended for the advantage of particular States, sections, or localities at the expense of others.

By returning to the early and approved construction of the Constitution, and to the practice under it, this inequality and injustice will be avoided, and, at the same time, all the really important improvements be made, and, as our experience has proved, be better made, and at less cost, than they would be by the agency of officers of the United States. The interests benefited by these improvements, too, would bear the cost of making them, upon the same principle that the expenses of the Post-Office establishment have always been defrayed by those who derive benefits from it. The power of appropriating money from the Treasury for such improvements was not claimed or exercised for more than thirty years after the organization of the Government in 1789, when a more latitudinous construction was indicated, though it was not broadly asserted and exercised until 1825. Small appropriations were first made in 1820 and 1821 for surveys. An act was made on the 3d of March, 1823, authorizing the President to cause an "examination and survey to be made of the obstructions between the harbor of *Gloucester* and the harbor of *Squam*, in the State of Massachusetts," and of "the entrance of the harbor of the port of *Presque Isle*, in Pennsylvania,"

with a view to their removal, and a small appropriation was made to pay the necessary expenses. This appears to have been the commencement of harbor improvements by Congress, thirty-four years after the Government went into operation under the present Constitution. On the 30th of April, 1824, an act was passed making an appropriation of thirty thousand dollars, and directing "surveys and estimates to be made of the routes of such roads and canals" as the President "may deem of national importance, in a commercial or military point of view, or necessary for the transportation of the mails." This act evidently looked to the adoption of a general system of internal improvements, to embrace roads and canals as well as harbors and rivers. On the 26th May, 1824, an act was passed making appropriations for "deepening the channel leading into the harbor of Presque Isle, in the State of Pennsylvania," and to repair Plymouth Beach, in the State of Massachusetts, and thereby prevent the harbor at that place from being destroyed."

President Monroe yielded his approval to these measures, though he entertained, and had, in a message to the House of Representatives on the 4th of May, 1822, expressed the opinion that the Constitution had not conferred upon Congress the power to "adopt and execute a system of internal improvements." He placed his approval upon the ground, not that Congress possessed the power to "adopt and execute" such a system by virtue of any or all of the enumerated grants of power in the Constitution, but upon the assumption that the power to make appropriations of the public money was limited and restrained only by the discretion of Congress. In coming to this conclusion, he avowed that, "in the more early stage of the Government," he had entertained a different opinion. He avowed that his first opinion had been, that, "as the National Government is a Government of limited powers, it has no right to expend money except in the performance of acts authorized by the other specific grants, according to a strict construction of their powers;" and that the power to make appropriations gave to Congress no discretionary authority to apply the public money to any other purposes or objects except to "carry into effect the powers contained in the other grants." These sound views, which Mr. Monroe entertained "in the early stage of the Government," he gave up in 1822, and declared that—

"The right of appropriation is nothing more than a right to apply the public money to this or that purpose. It has no incidental power, nor does it draw after it any consequences of that kind. All that Congress could do under it, in the case of internal improvements, would be to appropriate the money necessary to make them. For any act requiring legislative sanction or support, the State authority must be relied on. The condemnation of the land, if the proprietors should refuse to sell it, the establishment of turnpikes and tolls, and the protection of the work when finished, must be done by the State. To these purposes the powers of the General Government are believed to be utterly incompetent."

But it is impossible to conceive on what principle the power of appropriating public money when in the Treasury can be construed to extend to objects for which the Constitution does not authorize Congress to levy taxes or imposts to raise money. The power of appropriation is but the consequence of the power to raise money ; and the true inquiry is, whether Congress has the right to levy taxes for the object over which power is claimed.

During the four succeeding years embraced by the administration of President Adams, the power not only to appropriate money, but to apply it, under the direction and authority of the General Government, as well to the construction of roads as to the improvement of harbors and rivers, was fully asserted and exercised.

Among other acts assuming the power, was one passed on the twentieth of May, 1826, entitled "An act for improving certain rivers and creeks, and for authorizing surveys to be made of certain bays, sounds, and rivers therein mentioned." By that act, large appropriations were made, which were to be "applied, under the direction of the President of the United States," to numerous improvements in ten of the States. This act, passed thirty-seven years after the organization of the present Government, contained the first appropriation ever made for the improvement of a navigable river, unless it be small appropriations for examinations and surveys in 1820. During the residue of that administration, many other appropriations of a similar character were made, embracing roads, rivers, harbors, and canals, and objects claiming the aid of Congress multiplied without number.

This was the first breach effected in the barrier which the universal opinion of the framers of the Constitution had for more than thirty years thrown in the way of the assumption of this power by Congress. The general mind of Congress and the country did not appreciate the distinction taken by President Monroe between the right to appropriate money for an object and the right to apply and expend it without the embarrassment and delay of applications to the State governments. Probably no instance occurred in which such an application was made, and the flood-gates being thus hoisted, the principle laid down by him was disregarded, and applications for aid from the Treasury, virtually to make harbors as well as improve them, clear out rivers, cut canals, and construct roads, poured into Congress in torrents, until arrested by the veto of President Jackson. His veto of the Maysville road bill was followed up by his refusal to sign the "Act making appropriations for building light-houses, light-boats, beacons, and monuments, placing buoys, improving harbors, and directing surveys ;" "An act authorizing subscription for stock in the Louisville and Portland Canal Company ;" "An act for the improvement of certain harbors and the navigation of certain rivers ;" and, finally, "An act to improve the navigation of the Wabash River." In his objections to the act last named he says :

"The desire to embark the Federal Government in works of internal improvement prevailed, in the highest degree, during the first session

of the first Congress that I had the honor to meet in my present situation. When the bill authorizing a subscription on the part of the United States for stock in the Maysville and Lexington Turnpike Company passed the two houses, there had been reported by the Committees on Internal Improvements bills containing appropriations for such objects, exclusive of those for the Cumberland road, and for harbors and light-houses, to the amount of about one hundred and six millions of dollars. In this amount was included authority to the Secretary of the Treasury to subscribe for the stock of different companies to a great extent, and the residue was principally for the direct construction of roads by this Government. In addition to these projects, which have been presented to the two houses under the sanction and recommendation of their respective Committees on Internal Improvements, there were then still pending before the committees, and in memorials to Congress, presented but not referred, different projects for works of a similar character, the expense of which cannot be estimated with certainty, but must have exceeded one hundred millions of dollars."

Thus, within the brief period of less than ten years after the commencement of internal improvements by the General Government, the sum asked for from the Treasury for various projects amounted to more than two hundred millions of dollars. President Jackson's powerful and disinterested appeals to his country appear to have put down forever the assumption of power to make roads and cut canals, and to have checked the prevalent disposition to bring all rivers in any degree navigable within the control of the General Government. But an immense field for expending the public money and increasing the power and patronage of this Government was left open in the concession of even a limited power of Congress to improve harbors and rivers—a field which millions will not fertilize to the satisfaction of those local and speculating interests by which these projects are in general gotten up. There cannot be a just and equal distribution of public burdens and benefits under such a system, nor can the States be relieved from the danger of fatal encroachment, nor the United States from the equal danger of consolidation, otherwise than by an arrest of the system, and a return to the doctrines and practices which prevailed during the first thirty years of the Government.

How forcibly does the history of this subject illustrate the tendency of power to concentration in the hands of the General Government. The power to improve their own harbors and rivers was clearly reserved to the States, who were to be aided by tonnage duties levied and collected by themselves, with the consent of Congress. For thirty-four years improvements were carried on under that system, and so careful was Congress not to interfere, under any implied power, with the soil or jurisdiction of the States, that they did not even assume the power to erect light-houses or build piers without first purchasing the ground, with the consent of the States, and obtaining jurisdiction over it. At length, after a lapse of thirty-three years, an act is passed providing for the examination of certain obstructions at the mouth of one or two harbors almost unknown. It is followed by acts making small appro-

priations for the removal of those obstructions. The obstacles interposed by President Monroe, after conceding the power to appropriate, were soon swept away. Congress virtually assumed jurisdiction of the soil and waters of the States, without their consent, for the purposes of internal improvements; and the eyes of eager millions were turned from the State governments to Congress as the fountain whose golden streams were to deepen their harbors and rivers, level their mountains, and fill their valleys with canals. To what consequences this assumption of power was rapidly leading, is shown by the veto messages of President Jackson; and to what end it is again tending, is witnessed by the provisions of this bill, and bills of similar character.

In the proceedings and debates of the General Convention which formed the Constitution, and of the State conventions which adopted it, nothing is found to countenance the idea that the one intended to propose, or the others to concede, such a grant of power to the General Government as the building up and maintaining of a system of internal improvements within the States necessarily implies. Whatever the General Government may constitutionally create, it may lawfully protect. If it may make a road upon the soil of the States, it may protect it from destruction and injury by penal laws. So of canals, rivers, and harbors. If it may put a dam in a river, it may protect that dam from removal or injury, in direct opposition to the laws, authorities, and people in the State in which it is situated. If it may deepen a harbor, it may, by its own laws, protect its agents and contractors from being driven from their work, even by the laws and authorities of the State. The power to make a road or canal, or to dig up the bottom of a harbor or river, implies a right in the soil of the State, and a jurisdiction over it, for which it would be impossible to find any warrant.

The States were particularly jealous of conceding to the General Government any right of jurisdiction over their soil, and in the Constitution restricted the exclusive legislation of Congress to such places as might be "purchased with the consent of the States in which the same shall be, for the erection of forts, magazines, dock-yards, and other needful buildings." That the United States should be prohibited from purchasing lands within the States, without their consent, even for the most essential purposes of national defense, while left at liberty to purchase or seize them for roads, canals, and other improvements of immeasurably less importance, is not to be conceived.

A proposition was made in the Convention to provide for the appointment of a "Secretary of Domestic Affairs," and make it his duty, among other things, "to attend to the opening of roads and navigation, and the facilitating communications through the United States." It was referred to a committee, and that appears to have been the last of it. On a subsequent occasion, a proposition was made to confer on Congress the power to "provide for the cutting of canals when deemed necessary," which was rejected by the strong majority of eight States to three.

Among the reasons given for the rejection of this proposition, it was urged that "the expense in such cases will fall on the United States, and the benefits accrue to the places where the canals may be cut."

During the consideration of this proposition, a motion was made to enlarge the proposed power "for cutting canals" into a power "to grant charters of incorporation, when the interest of the United States might require, and the legislative provisions of the individual States may be incompetent;" and the reason assigned by Mr. Madison for the proposed enlargement of the power was, that it would "secure an easy communication between the States which the free intercourse now to be opened seemed to call for. The political obstacles being removed, a removal of the natural ones, as far as possible, ought to follow."

The original proposition and all the amendments were rejected, after deliberate discussion, not on the ground, as so much of that discussion as has been preserved indicates, that no direct grant was necessary, but because it was deemed inexpedient to grant it at all. When it is considered that some of the members of the Convention, who afterwards participated in the organization and administration of the Government, advocated and practiced upon a very liberal construction of the Constitution, grasping at many high powers as implied in its various provisions, not one of them, it is believed, at that day claimed the power to make roads and canals, or improve rivers and harbors, or appropriate money for that purpose. Among our early statesmen of the strict construction class, the opinion was universal, when the subject was first broached, that Congress did not possess the power, although some of them thought it desirable.

President Jefferson, in his message to Congress in 1806, recommended an amendment of the Constitution, with a view to apply an anticipated surplus in the Treasury "to the great purposes of the public education, roads, rivers, canals, and such other objects of public improvements as it may be thought proper to add to the constitutional enumeration of the Federal powers," and he adds: "I suppose an amendment to the Constitution, by consent of the States, necessary, because the objects now recommended are not among those enumerated in the Constitution, and to which it permits the public moneys to be applied." In 1825, he repeated, in his published letters, the opinion that no such power has been conferred upon Congress.

President Madison, in a message to the House of Representatives of the 3d of March, 1817, assigning his objections to a bill entitled "An act to set apart and pledge certain funds for internal improvements," declares that "the power to regulate commerce among the several States cannot include a power to construct roads and canals, and to *improve the navigation of watercourses*, in order to facilitate, promote, and secure such commerce, without a latitude of construction departing from the ordinary import of the terms, strengthened by the known inconveniences which doubtless led to the grant of this remedial power to Congress."

President Monroe, in a message to the House of Representatives of the 4th of May, 1822, containing his objections to a bill entitled "An act for the preservation and repair of the Cumberland road," declares:

"Commerce between independent powers or communities is universally regulated by duties and imposts. It was so regulated by the States before the adoption of this Constitution, equally in respect to each other and to foreign powers. The goods and vessels employed in the trade are the only subjects of regulation. It can act on none other. A power, then, to impose such duties and imposts in regard to foreign nations, and to prevent any on the trade between the States, was the only power granted.

"If we recur to the causes which produced the adoption of this Constitution, we shall find that injuries resulting from the regulation of trade by the States respectively, and the advantages anticipated from the transfer of the power to Congress, were among those which had the most weight. Instead of acting as a nation in regard to foreign powers, the States individually, had commenced a system of restraint on each other, whereby the interests of foreign powers were promoted at their expense. If one State imposed high duties on the goods or vessels of a foreign power to countervail the regulations of such power, the next adjoining States imposed lighter duties to invite those articles into their ports, that they might be transferred thence into the other States, securing the duties to themselves. This contracted policy in some of the States was soon counteracted by others. Restraints were immediately laid on such commerce by the suffering States; and thus had grown up a state of affairs disorderly and unnatural, the tendency of which was to destroy the Union itself, and with it all hope of realizing those blessings which we had anticipated from the glorious revolution which had been so recently achieved. From this deplorable dilemma, or rather certain ruin, we were happily rescued by the adoption of the Constitution.

"Among the first and most important effects of this great revolution was the complete abolition of this pernicious policy. The States were brought together by the Constitution, as to commerce, into one community, equally in regard to foreign nations and each other. The regulations that were adopted regarded us in both respects as one people. The duties and imposts that were laid on the vessels and merchandise of foreign nations were all uniform throughout the United States, and in the intercourse between the States themselves, no duties of any kind were imposed other than between different ports and counties within the same State.

"This view is supported by a series of measures all of a marked character, preceding the adoption of the Constitution. As early as the year 1781, Congress recommended it to the States to vest in the United States a power to levy a duty of five per cent. on all goods imported from foreign countries into the United States for the term of fifteen years. In 1783, this recommendation, with alterations as to the kind of duties, and an extension of this term to twenty-five years, was repeated and more earnestly urged. In 1784, it was recommended to the States to authorize Congress to prohibit, under certain modifications, the importation of goods from foreign powers into the United States for fifteen years. In 1785, the consideration of the subject was resumed, and a proposition presented in a new form, with an address to the States, explaining fully the principles on which a grant of the power to regulate trade was deemed indispensable. In 1786, a meeting took place at Annapolis of delegates from several of the States on this subject, and on

their report the Convention was formed at Philadelphia the ensuing year, from all the States, to whose deliberations we are indebted for the present Constitution.

"In none of these measures was the subject of internal improvement mentioned or even glanced at. Those of 1784, 5, 6, and 7, leading step by step to the adoption of the Constitution, had in view only the obtaining of a power to enable Congress to regulate trade with foreign powers. It is manifest that the regulation of trade with the several States was altogether a secondary object, suggested by and adopted in connection with the other. If the power necessary to this system of improvement is included under either branch of this grant, I should suppose that it was the first rather than the second. The pretension to it, however, under that branch, has never been set up. In support of the claim under the second, no reason has been assigned which appears to have the least weight."

Such is a brief history of the origin, progress, and consequences of a system which for more than thirty years after the adoption of the Constitution was unknown. The greatest embarrassment upon the subject consists in the departure which has taken place from the early construction of the Constitution, and the precedents which are found in the legislation of Congress in later years. President Jackson, in his veto of the Wabash River bill, declares, "that to inherent embarrassments have been added others, from the course of our legislation concerning it." In his vetoes on the Maysville road bill, the Rockville road bill, the Wabash River bill, and other bills of like character, he reversed the precedents which existed prior to that time on the subject of internal improvements. When our experience, observation, and reflection have convinced us that a legislative precedent is either unwise or unconstitutional, it should not be followed.

No express grant of this power is found in the Constitution. Its advocates have differed among themselves as to the source from which it is derived as an incident. In the progress of the discussions upon this subject, the power to regulate commerce seems now to be chiefly relied upon, especially in reference to the improvement of harbors and rivers.

In relation to the regulation of commerce, the language of the grant in the Constitution is, "Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes." That to "regulate commerce" does not mean to make a road or dig a canal, or clear out a river, or deepen a harbor, would seem to be obvious to the common understanding. To "regulate" admits or affirms the pre-existence of the thing to be regulated. In this case it presupposes the existence of commerce, and of course the means by which and the channels through which commerce is carried on. It confers no creative power; it only assumes control over that which may have been brought into existence through other agencies, such as State legislation, and the industry and enterprise of individuals. If the definition of the word "regulate" is to include the provision of means to carry on commerce, then have Congress not only power to deepen har-

bors, clear out rivers, dig canals, and make roads, but also to build ships, railroad cars, and other vehicles, all of which are necessary to commerce. There is no middle ground. If the power to regulate can be legitimately construed into a power to create or facilitate, then not only the bays and harbors, but the roads and canals, and all the means of transporting merchandise among the several States, are put at the disposition of Congress. This power to regulate commerce was construed and exercised immediately after the adoption of the Constitution, and has been exercised to the present day, by prescribing general rules by which commerce should be conducted. With foreign nations it has been regulated by treaties, defining the rights of citizens and subjects, as well as by acts of Congress imposing duties and restrictions, embracing vessels, seamen, cargoes, and passengers. It has been regulated among the States by acts of Congress relating to the coasting trade and the vessels employed therein, and for the better security of passengers in vessels propelled by steam and by the removal of all restrictions upon internal trade. It has been regulated with the Indian tribes by our intercourse laws, prescribing the manner in which it shall be carried on. Thus each branch of this grant of power was exercised soon after the adoption of the Constitution, and has continued to be exercised to the present day. If a more extended construction be adopted it is impossible for the human mind to fix on a limit to the exercise of the power other than the will and discretion of Congress. It sweeps into the vortex of national power and jurisdiction not only harbors and inlets, rivers and little streams, but canals, turnpikes, and railroads—every species of improvement which can facilitate or create trade and intercourse “with foreign nations among the several States, and with the Indian tribes.”

Should any great object of improvement exist in our widely-extended country, which cannot be effected by means of tonnage duties levied by the States, with the concurrence of Congress, it is safer and wiser to apply to the States, in the mode prescribed by the Constitution, for an amendment of that instrument, whereby the powers of the General Government may be enlarged, with such limitations and restrictions as experience has shown to be proper, than to assume and exercise a power which has not been granted, or which may be regarded as doubtful in the opinion of a large portion of our constituents. This course has been recommended successively by Presidents Jefferson, Madison, Monroe, and Jackson, and I fully concur with them in opinion. If an enlargement of power should be deemed proper, it will unquestionably be granted by the States; if otherwise, it will be withheld; and in either case their decision should be final. In the mean time I deem it proper to add that the investigation of this subject has impressed me more strongly than ever with the solemn conviction that the usefulness and permanency of this Government, and the happiness of the millions over

whom it spreads its protection, will be best promoted by carefully abstaining from the exercise of all powers not clearly granted by the Constitution.

JAMES K. POLK.

The bill referred to in this veto message had been presented to the President on the last day of the preceding session of Congress and retained. It was not, therefore, in the power of Congress to pass it, the veto notwithstanding. There was, however, a discussion on it extending over two days.

FRANKLIN PIERCE.—I.

May 3, 1854.

To the Senate of the United States :

The bill entitled "An act making a grant of public lands to the several States for the benefit of indigent insane persons," which was presented to me on the 27th ultimo, has been maturely considered, and is returned to the Senate, the house in which it originated, with a statement of the objections which have required me to withhold from it my approval.

In the performance of this duty prescribed by the Constitution, I have been compelled to resist the deep sympathies of my own heart in favor of the humane purpose sought to be accomplished, and to overcome the reluctance with which I dissent from the conclusions of the two houses of Congress, and present my own opinions in opposition to the action of a co-ordinate branch of the Government, which possesses so fully my confidence and respect.

If, in presenting my objections to this bill, I should say more than strictly belongs to the measure or is required for the discharge of my official obligation, let it be attributed to a sincere desire to justify my act before those whose good opinion I so highly value, and to that earnestness which springs from my deliberate conviction that a strict adherence to the terms and purposes of the Federal compact offers the best, if not the only security, for the preservation of our blessed inheritance of representative liberty.

The bill provides in substance :

First. That ten millions of acres of land be granted to the several States, to be apportioned among them in the compound ratio of the geographical area and representation of said States in the House of Representatives.

Second. That wherever there are public lands in a State subject to sale at the regular price of private entry, the proportion of said ten millions of acres falling to such State shall be selected from such lands within it, and that to the States in which there are no such public lands, land scrip shall be issued to the amount of their distributive shares respectively,

said scrip not to be entered by said States, but to be sold by them, and subject to entry by their assignees, provided that none of it shall be sold at less than one dollar per acre, under penalty of forfeiture of the same to the United States.

Third. That the expenses of the management and superintendence of said lands, and of the moneys received therefrom, shall be paid by the States to which they may belong out of the treasury of said States.

Fourth. That the gross proceeds of the sales of such lands or land scrip so granted shall be invested by the several States in safe stocks, to constitute a perpetual fund, the principal of which shall remain forever undiminished, and the interest to be appropriated to the maintenance of the indigent insane within the several States.

Fifth. That annual returns of lands or scrip sold shall be made by the States to the Secretary of the Interior, and the whole grant be subject to certain conditions and limitations prescribed in the bill, to be assented to by legislative acts of said States.

This bill therefore proposes that the Federal Government shall make provision to the amount of the value of ten millions of acres of land for an eleemosynary object within the several States, to be administered by the political authority of the same; and it presents, at the threshold, the question whether any such act on the part of the Federal Government is warranted and sanctioned by the Constitution, the provisions and principles of which are to be protected and sustained as a first and paramount duty.

It cannot be questioned that if Congress have power to make provision for the indigent insane without the limits of this District, it has the same power to provide for the indigent who are not insane, and thus to transfer to the Federal Government the charge of all the poor in all the States. It has the same power to provide hospitals and other local establishments for the care and cure of every species of human infirmity, and thus to assume all that duty of either public philanthropy or public necessity to the dependent, the orphan, the sick, or the needy, which is now discharged by the States themselves, or by corporate institutions, or private endowments existing under the legislation of the States. The whole field of public beneficence is thrown open to the care and culture of the Federal Government. Generous impulses no longer encounter the limitations and control of our imperious fundamental law. For, however worthy may be the present object in itself, it is only one of a class. It is not exclusively worthy of benevolent regard. Whatever considerations dictate sympathy for this particular object apply in like manner, if not in the same degree, to idiocy, to physical disease, to extreme destitution. If Congress may and ought to provide for any one of these objects, it may and ought to provide for them all. And if it be done in this case, what answer shall be given when Congress shall be called upon, as it doubtless will be, to pursue a similar course of legislation in the others? It will, obviously, be vain to reply that the ob-

ject is worthy, but that the application has taken a wrong direction. The power will have been deliberately assumed, the general obligation will, by this act, have been acknowledged, and the question of means and expediency will alone be left for consideration. The decision upon the principle in any one case determines it for the whole class. The question presented, therefore, clearly is upon the constitutionality and propriety of the Federal Government assuming to enter into a novel and vast field of legislation, namely, that of providing for the care and support of all those among the people of the United States who, by any form of calamity, become fit objects of public philanthropy.

I readily, and I trust feelingly, acknowledge the duty incumbent on us all, as men and citizens, and as among the highest and holiest of our duties, to provide for those who, in the mysterious order of Providence, are subject to want and to disease of body or mind, but I cannot find any authority in the Constitution for making the Federal Government the great almoner of public charity throughout the United States. To do so, would, in my judgment, be contrary to the letter and spirit of the Constitution, and subversive of the whole theory upon which the Union of these States is founded. And if it were admissible to contemplate the exercise of this power, for any object whatever, I cannot avoid the belief that it would, in the end, be prejudicial rather than beneficial to the noble offices of charity to have the charge of them transferred from the States to the Federal Government. Are we not too prone to forget that the Federal Union is the creature of the States, not they of the Federal Union? We were the inhabitants of colonies distinct in local government one from the other, before the Revolution. By that Revolution the colonies each became an independent State. They achieved that independence and secured its recognition by the agency of a consulting body, which, from being an assembly of the ministers of distinct sovereignties, instructed to agree to no form of government which did not leave the domestic concerns of each State to itself, was appropriately denominated a Congress. When, having tried the experiment of the Confederation, they resolved to change that for the present Federal Union, and thus to confer on the Federal Government more ample authority, they scrupulously measured such of the functions of their cherished sovereignty as they chose to delegate to the General Government. With this aim and to this end the fathers of the Republic framed the Constitution, in and by which the independent and sovereign States united themselves, for certain specified objects and purposes, and for those only, leaving all powers not therein set forth as conferred on one or another of the three great departments, the legislative, the executive, and the judicial, indubitably with the States. And when the people of the several States, had in their State conventions, and thus alone, given effect and force to the Constitution, not content that any doubt should, in future, arise as to the scope and character of this act, they ingrafted thereon the explicit declaration

that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Can it be controverted that the great mass of the business of Government that involved, in the social relations, the internal arrangements of the body-politic; the mental and moral culture of men; the development of local resources of wealth; the punishment of crimes in general; the preservation of order; the relief of the needy, or otherwise unfortunate members of society, did, in practice remain with the States; that none of these objects of local concern are, by the Constitution, expressly or impliedly prohibited to the States, and that none of them are, by any express language of the Constitution, transferred to the United States? Can it be claimed that any of these functions of local administration and legislation are vested in the Federal Government by any implication? I have never found anything in the Constitution which is susceptible of such a construction. No one of the enumerated powers touches the subject, or has even a remote analogy to it. The powers conferred upon the United States have reference to Federal relations, or to the means of accomplishing or executing things of Federal relation. So, also, of the same character are the powers taken away from the States by enumeration. In either case the powers granted and the powers restricted were so granted or so restricted only where it was requisite for the maintenance of peace and harmony between the States, or for the purpose of protecting their common interests, and defending their common sovereignty, against aggression from abroad or insurrection at home.

I shall not discuss the question of power sometimes claimed for the General Government, under the clause of the eighth section of the Constitution, which gives Congress the power "to lay and collect taxes, duties, imposts, and excises, to pay debts, and provide for the common defense and general welfare of the United States," because if it has not already been settled upon sound reason and authority, it never will be. I take the received and just construction of that article, as if written to lay and collect taxes, duties, imposts, and excises, *in order* to pay the debts, and *in order* to provide for the common defense and general welfare. It is not a substantive general power to provide for the welfare of the United States, but is a limitation on the grant of power to raise money by taxes, duties, and imposts. If it were otherwise, all the rest of the Constitution, consisting of carefully enumerated, and cautiously guarded grants of specific powers, would have been useless, if not delusive. It would be impossible, in that view, to escape from the conclusion, that these were inserted only to mislead for the present, and instead of enlightening and defining the pathway of the future, to involve its action in the mazes of doubtful construction. Such a conclusion the character of the men who framed that sacred instrument will never permit us to form. Indeed, to suppose it susceptible of any other

construction would be to consign all the rights of the States, and of the people of the States, to the mere discretion of Congress, and thus to clothe the Federal Government with authority to control the sovereign States, by which the States would have been dwarfed into provinces or departments, and all sovereignty vested in an absolute consolidated central power, against which the spirit of liberty has so often, and in so many countries, struggled in vain. In my judgment you cannot, by tributes to humanity, make any adequate compensation for the wrong you would inflict by removing the sources of power and political action from those who are to be thereby affected. If the time shall ever arrive when, for an object appealing however strongly to our sympathies, the dignity of the States shall bow to the dictation of Congress, by conforming their legislation thereto, when the power, and majesty, and honor of those who created shall become subordinate to the thing of their creation, I but feebly utter my apprehensions when I express my firm conviction that we shall see "the beginning of the end."

Fortunately, we are not left in doubt as to the purpose of the Constitution, any more than as to its express language, for, although the history of its formation, as recorded in the Madison papers, shows that the Federal Government, in its present form, emerged from the conflict of opposing influences, which have continued to divide statesmen from that day to this, yet the rule of clearly defined powers, and of strict construction, presided over the actual conclusion and subsequent adoption of the Constitution.

President Madison, in the *Federalist*, says: "The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State governments, are numerous and indefinite. Its" (the General Government's) "jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects."

In the same spirit President Jefferson invokes "the support of the State governments in all their rights as the most competent administrations for our domestic concerns, and the surest bulwark against anti-republican tendencies"; and President Jackson said that our true strength and wisdom are not promoted by invasions of the rights and powers of the several States, but that, on the contrary, they consist "not in binding the States more closely to the center, but in leaving each more unobstructed in its proper orbit."

The framers of the Constitution, in refusing to confer on the Federal Government any jurisdiction over these purely local objects, in my judgment, manifested a wise forecast and broad comprehension of the true interests of these objects themselves. It is clear that public charities within the States can be efficiently administered only by their au-

thority. The bill before me concedes this, for it does not commit the funds it provides to the administration of any other authority.

I cannot but repeat what I have before expressed, that if the several States, many of which have already laid the foundation of munificent establishments of local beneficence, and nearly all of which are proceeding to establish them, shall be led to suppose, as they will be, should this bill become a law, that Congress is to make provision for such objects, the fountains of charity will be dried up at home, and the several States, instead of bestowing their own means on the social wants of their own people, may themselves, through the strong temptation, which appeals to States as to individuals, become humble suppliants for the bounty of the Federal Government, reversing their true relation to this Union.

Having stated my views of the limitation of the powers conferred by the eighth section of the first article of the Constitution, I deem it proper to call attention to the third section of the fourth article, and to the provisions of the sixth article, bearing directly upon the question under consideration; which, instead of aiding the claim to power exercised in this case, tend, it is believed, strongly to illustrate and explain positions which, even without such support, I cannot regard as questionable.

The third section of the fourth article of the Constitution, is in the following terms: "The Congress shall have power to *dispose of*, and make all needful rules and regulations respecting, the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claim of the United States or of any particular State." The sixth article is as follows, to wit: that "all debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation."

For a correct understanding of the terms used in the third section of the fourth article above quoted reference should be had to the history of the times in which the Constitution was formed and adopted. It was decided upon in convention on the 17th of September, 1787, and by it Congress was empowered to "dispose of," &c., "the territory or other property belonging to the United States." The only territory then belonging to the United States was that then recently ceded by the several States, to wit: by New York in 1781, by Virginia in 1784, by Massachusetts in 1785, and by South Carolina in August, 1787, only the month before the formation of the Constitution. The cession from Virginia contained the following provision:

"That all the lands within the territory so ceded to the United States and not reserved for or appropriated to any of the before-mentioned purposes or disposed of in bounties to the officers and soldiers of the American army shall be considered a common fund for the use and benefit of such of the United States as have become or shall become members of the Confederation or Federal Alliance of the said States, Vir-

ginia included, according to their usual respective proportions, in the general charge and expenditure, and shall be faithfully and bona fide *disposed of* for that purpose and for no other use or purpose whatsoever."

Here the object for which these lands are to be disposed of is clearly set forth, and the power to dispose of them granted by the third section of the fourth article of the Constitution clearly contemplates such disposition only. If such be the fact, and in my mind there can be no doubt of it, then you have again not only no implication in favor of the contemplated grant, but the strongest authority against it.

Furthermore, this bill is in violation of the faith of the Government pledged in the act of January 28, 1847. The nineteenth section of that act declares "that for the payment of the stock which may be created under the provisions of this act the sales of the public lands are hereby pledged, and it is hereby made the duty of the Secretary of the Treasury to use and apply all moneys which may be received into the Treasury for the sales of the public lands after the 1st day of January, 1848, first, to pay the interest on all stocks issued by virtue of this act, and, secondly, to use the balance of said receipts after paying the interest aforesaid in the purchase of said stocks at their market value," &c. The debts then contracted have not been liquidated, and the language of this section and the obligations of the United States under it are too plain to need comment.

I have been unable to discover any distinction on constitutional grounds or grounds of expediency between an appropriation of \$10,000,000 directly from the money in the Treasury for the object contemplated and the appropriation of lands presented for my sanction, and yet I cannot doubt that if the bill proposed \$10,000,000 from the Treasury of the United States for the support of indigent insane in the several States that the constitutional question involved in the act would have attracted forcibly the attention of Congress.

I respectfully submit that in a constitutional point of view it is wholly immaterial whether the appropriation be in money or in land.

The public domain is the common property of the Union just as much as the surplus proceeds of that and of duties on imports remaining unexpended in the Treasury. As such it has been pledged and is now pledged and may need to be so pledged again for public indebtedness.

As property it is distinguished from actual money chiefly in this respect: that its profitable management sometimes requires that portions of it be appropriated to local objects in the States wherein it may happen to lie, as would be done by any prudent proprietor to enhance the sale value of his private domain. All such grants of land are in fact a disposal of it for value received, but they afford no precedent or constitutional reason for giving away the public lands. Still less do they give sanction to appropriations for objects which have not been intrusted to the Federal Government and therefore belong exclusively to the States.

To assume that the public lands are applicable to ordinary State objects, whether of public structures, police, charity, or expenses of State administration, would be to disregard to the amount of the value of the public lands all the limitations of the Constitution and confound to that extent all distinctions between the rights and powers of the States and those of the United States, for if the public lands may be applied to the support of the poor, whether sane or insane, if the disposal of them and their proceeds be not subject to the ordinary limitations of the Constitution, then Congress possesses unqualified power to provide for expenditures in the States by means of the public lands, even to the degree of defraying the salaries of governors, judges, and all other expenses of the government and internal administration within the several States. The conclusion from the general survey of the whole subject is to my mind irresistible and closes the question both of right and of expediency so far as regards the principle of the appropriation proposed in this bill. Would not the admission of such a power in Congress to dispose of the public domain work the practical abrogation of some of the most important provisions of the Constitution? If the systematic reservation of a definite portion of the public lands (the sixteenth section) in the States for the purpose of education and occasional grants for similar purposes be cited as contradicting these conclusions the answer as it appears to me is obvious and satisfactory. Such reservations and grants, besides being a part of the conditions on which the proprietary right of the United States is maintained, along with the eminent domain of a particular State, and by which the public land remains free from taxation in the State in which it lies as long as it remains the property of the United States, are the acts of a mere landowner disposing of a small share of his property in a way to augment the value of the residue and in this mode to encourage the early occupation of it by the industrious and intelligent pioneer.

The great example of apparent donation of lands to the States likely to be relied upon as sustaining the principles of this bill is the relinquishment of swamp lands to the States in which they are situated, but this also, like other grants already referred to, was based expressly upon grounds clearly distinguishable in principle from any which can be assumed for the bill herewith returned, viz: upon the interest and duty of the proprietor. They were charged, and not without reason, to be a nuisance to the inhabitants of the surrounding country. The measure was predicated not only upon the ground of the disease inflicted upon the people of the United States which the people of the States could not justify as a just and honest proprietor, but also upon an express limitation of the application of the proceeds, in the first instance, to purposes of levees and drains, thus protecting the health of the inhabitants, and at the same time enhancing the value of the remaining lands belonging to the General Government. It is not to be denied that Congress while administering the public lands as a proprietor

within the principle distinctly announced in my annual message may sometimes have failed to distinguish accurately between objects which are and which are not within its constitutional powers.

After the most careful examination I find but two examples in the acts of Congress which furnish any precedent for the present bill, and those examples will in my opinion serve rather as a warning than as an inducement to tread in the same path.

The first is the act of March 3, 1819, granting a township of land to the Connecticut asylum for the education of the deaf and dumb.

The second that of April 5, 1826, making a similar grant of land to the Kentucky asylum for teaching the deaf and dumb.

The first more than thirty years after the adoption of the Constitution, and the second more than a quarter of a century ago.

These acts were unimportant as to the amount appropriated, and, so far as I can ascertain, were passed on two grounds: first, that the object was a charitable one, and secondly, that it was national. To say that it was a charitable object, is only to say that it was an object of expenditure proper for the competent authority; but it no more tended to show that it was a proper object of expenditure by the United States than is any other purely local object appealing to the best sympathies of the human heart in any of the States. And the suggestion that a school for the mental culture of the deaf and dumb in Connecticut, or Kentucky, is a national object, only shows how loosely this expression has been used when the purpose was to procure appropriations by Congress. It is not perceived how a school of this character is otherwise national than is any establishment of religious or moral instruction. All the pursuits of industry, everything which promotes the material or intellectual well-being of the race, every ear of corn or boll of cotton which grows, is national in the same sense; for each one of these things goes to swell the aggregate of national prosperity and happiness of the United States; but it confounds all meaning of language to say that these things are "national," as equivalent to "Federal," so as to come within any of the classes of appropriation for which Congress is authorized by the Constitution to legislate.

It is a marked point in the history of the Constitution, that when it was proposed to empower Congress to establish a university, the proposition was confined to the District intended for the future seat of Government of the United States, and that even that proposed clause was omitted in consideration of the exclusive powers conferred on Congress to legislate for that District. Could a more decisive indication of the true construction and the spirit of the Constitution in regard to all matters of this nature have been given? It proves that such objects were considered by the convention as appertaining to local legislation only, that they were not comprehended, either expressly or by implication, in the grant of general power to Congress, and that, consequently, they remained with the several States.

The general result at which I have arrived is the necessary consequence of those views of the relative rights, powers, and duties of the States and of the Federal Government which I have long entertained, and often expressed, and in reference to which my convictions do but increase in force with time and experience.

I have thus discharged the unwelcome duty of respectfully stating my objections to this bill, with which I cheerfully submit the whole subject to the wisdom of Congress.

FRANKLIN PIERCE.

The debate, which was commenced when the veto message was read, was continued at intervals until the 6th of July following, when the question was taken: "Shall the bill pass, the objections of the President notwithstanding?" and it was decided in the negative by a vote of 21 yeas against 26 nays. So the bill was not passed.

FRANKLIN PIERCE.—II.

August 4, 1854.

To the House of Representatives :

I have received the bill entitled "An act making appropriations for the repair, preservation and completion of certain public parks heretofore commenced under the authority of law." It reaches me in the expiring hours of the session, and time does not allow full opportunity for examining and considering its provisions, or of stating at length the reasons which forbid me to give it my signature. It belongs to that class of measures which are commonly known as internal improvements by the General Government, and which, from a very early period, have been deemed of doubtful constitutionality and expediency, and have thus failed to obtain the approbation of successive Chief Magistrates.

On such an examination of this bill as it has been in my power to make, I recognize in it certain provisions, national in their character, and which, if they stood alone, it would be compatible with my convictions of public duty to assent to; but, at the same time, it embraces others which are merely local, and not, in my judgment, warranted by any safe or true construction of the Constitution.

To make proper and sound discriminations between these different provisions, would require a deliberate discussion of general principles, as well as a careful scrutiny of details, for the purpose of rightfully applying those principles to each separate item of appropriation.

Public opinion with regard to the value and importance of internal improvements in the country is undivided. There is a disposition on all hands to have them prosecuted with energy, and to see the benefits sought to be attained by them fully realized. The prominent point of difference between those who have been regarded as the friends of a system of internal improvements by the General Government and those

adverse to such a system, has been one of constitutional power, though more or less connected with considerations of expediency. My own judgment, it is well known, has on both grounds been opposed to a "general system of internal improvements" by the Federal Government. I have entertained the most serious doubts from the inherent difficulties of its application, as well as from past unsatisfactory experience, whether the power could be so exercised by the General Government as to render its use advantageous either to the country at large, or effectual for the accomplishment of the object contemplated.

I shall consider it incumbent on me to present to Congress at its next session, a matured view of the whole subject, and to endeavor to define, approximately, at least, and according to my own convictions, what appropriations of this nature by the General Government the great interests of the United States require, and the Constitution will admit and sanction, in case no substitute should be devised capable of reconciling differences, both of constitutionality and expediency.

In the absence of the requisite means and time for duly considering the whole subject at present, and discussing such possible substitute, it becomes necessary to return this bill to the House of Representatives, in which it originated, and for the reasons thus briefly submitted to the consideration of Congress to withhold from it my approval.

FRANKLIN PIERCE.

The veto message was received during a night session, and as no quorum was present it was not read. Congress adjourned two days afterwards. On the first day of the following session the bill was called up, and on the 6th of December a vote was taken upon "the passage of the bill, the President's objections notwithstanding," and it was decided in the negative by a vote of 95 yeas against 80 nays. So the bill was lost.

FRANKLIN PIERCE.—III.

December 30, 1854.

To the Senate and House of Representatives :

In returning to the House of Representatives, in which it originated, a bill entitled "An act making appropriations for the repair, preservation, and completion of certain public works heretofore commenced under authority of law," it became necessary for me, owing to the late day at which the bill was passed, to state my objections to it very briefly, announcing at the same time a purpose to resume the subject for more deliberate discussion, at the present session of Congress; for, while by no means insensible of the arduousness of the task thus undertaken by me, I conceived that the two houses were entitled to an exposition of the considerations which had induced dissent, on my part, from their conclusions in this instance.

The great constitutional question of the power of the General Government in relation to internal improvements, has been the subject of earnest difference of opinion at every period of the history of the United States. Annual and special messages of successive Presidents have been occupied with it, sometimes in remarks on the general topic, and frequently in objection to particular bills. The conflicting sentiments of eminent statesmen, expressed in Congress, or in conventions called expressly to devise, if possible, some plan calculated to relieve the subject of the embarrassments with which it is environed, while they have directed public attention strongly to the magnitude of the interests involved, have yet left unsettled the limits, not merely of expediency, but of constitutional power, in relation to works of this class by the General Government.

What is intended by the phrase "internal improvements"? What does it embrace, and what exclude? No such language is found in the Constitution. Not only is it not an expression of ascertainable constitutional power, but it has no sufficient exactness of meaning to be of any value as the basis of a safe conclusion, either of constitutional law or of practical statesmanship.

President John Quincy Adams, in claiming, on one occasion, after his retirement from office, the authorship of the idea of introducing into the administration of the affairs of the General Government "a permanent and regular system" of internal improvements, speaks of it as a system by which "the whole Union would have been checkered over with railroads and canals," affording "high wages and constant employment to hundreds of thousands of laborers;" and he places it in express contrast with the construction of such works by the legislation of the States and by private enterprise.

It is quite obvious that, if there be any constitutional power which authorizes the construction of "railroads and canals" by Congress, the same power must comprehend turnpikes and ordinary carriage roads; nay, it must extend to the construction of bridges, to the draining of marshes, to the erection of levees, to the construction of canals of irrigation; in a word, to all the possible means of the material improvement of the earth, by developing its natural resources, anywhere and everywhere, even within the proper jurisdiction of the several States. But if there be any constitutional power thus comprehensive in its nature, must not the same power embrace within its scope other kinds of improvements of equal utility in themselves, and equally important to the welfare of the whole country? President Jefferson, while intimating the expediency of so amending the Constitution as to comprise objects of physical progress and well-being, does not fail to perceive that "other objects of public improvement," including "public education," by name, belong to the same class of powers. In fact, not only public instruction, but hospitals, establishments of science and art, libraries, and, indeed, everything appertaining to the internal welfare of the

country, are just as much objects of internal improvement, or, in other words, of internal utility, as canals and railways.

The admission of the power in either of its senses implies its existence in the other; and since, if it exists at all, it involves dangerous augmentation of the political functions, and of the patronage of the Federal Government, we ought to see clearly by what clause or clauses of the Constitution it is conferred.

I have had occasion more than once to express, and deem it proper now to repeat, that it is, in my judgment, to be taken for granted, as a fundamental proposition not requiring elucidation, that the Federal Government is the creature of the individual States, and of the people of the States severally; that the sovereign power was in them alone; that all the powers of the Federal Government are derivative ones, the enumeration and limitations of which are contained in the instrument which organized it; and by express terms: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Starting from this foundation of our constitutional faith, and proceeding to inquire in what part of the Constitution the power of making appropriations for internal improvement is found, it is necessary to reject all idea of there being any grant of power in the preamble. When that instrument says: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity," it only declares the inducements and the anticipated results of the things ordained and established by it. To assume that anything more can be designed by the language of the preamble, would be to convert all the body of the Constitution, with its carefully weighed enumerations and limitations, into mere surplusage. The same may be said of the phrase in the grant of the power to Congress, "to pay the debts and provide for the common defense and general welfare of the United States;" or, to construe the words more exactly, they are not significant of grant or concession, but of restriction of the specific grants, having the effect of saying that, in laying and collecting taxes for each of the precise objects of power granted to the General Government, Congress must exercise any such definite and undoubted power in strict subordination to the purpose of the common defense and general welfare of all the States.

There being no specific grant in the Constitution of a power to sanction appropriations for internal improvements, and no general provision broad enough to cover any such indefinite object, it becomes necessary to look for particular powers, to which one or another of the things included in the phrase "internal improvements" may be referred.

In the discussions of this question by the advocates of the organization of a "general system of internal improvements" under the auspices

of the Federal Government, reliance is had, for the justification of the measure, on several of the powers expressly granted to Congress: such as to establish post-offices and post-roads; to declare war; to provide and maintain a navy; to raise and support armies; to regulate commerce; and to dispose of the territory and other public property of the United States.

As to the last of these sources of power, that of disposing of the territory and other public property of the United States, it may be conceded that it authorizes Congress, in the management of the public property, to make improvements essential to the successful execution of the trust; but this trust must be the primary object of any such improvement, and it would be an abuse of the trust to sacrifice the interest of the property to incidental purposes.

As to the other assumed sources of a general power over internal improvements, they being specific powers, of which this is supposed to be the incident, if the framers of the Constitution, wise and thoughtful men as they were, intended to confer on Congress the power over a subject so wide as the whole field of internal improvements, it is remarkable that they did not use language clearly to express it; or, in other words, that they did not give it as a distinct and substantive power, instead of making it the implied incident of some other one. For such is the magnitude of the supposed incidental power and its capacity of expansion, than any system established under it would exceed each of the others in the amount of expenditure and number of the persons employed, which would thus be thrown upon the General Government.

This position may be illustrated by taking, as a single example, one of the many things comprehended clearly in the idea of "a general system of internal improvements, namely, roads. Let it be supposed that the power to construct roads over the whole Union, according to the suggestion of President J. Q. Adams, in 1807, whilst a member of the Senate of the United States, had been conceded. Congress would have begun, in pursuance of the state of knowledge at the time, by constructing turnpikes. Then, as knowledge advanced, it would have constructed canals, and at the present time it would have been embarked in an almost limitless scheme of railroads.

Now, there are in the United States, the results of State or private enterprise, upwards of seventeen thousand miles of railroad and five thousand miles of canals, in all twenty-two thousand miles, the total cost of which may be estimated at little short of six hundred millions of dollars; and if the same works had been constructed by the Federal Government, supposing the thing to have been practicable, the cost would have probably been not less than nine hundred millions of dollars. The number of persons employed in superintending, managing, and keeping up these canals and railroads may be stated at one hundred and twenty-six thousand or thereabouts, to which are to be added seventy or eighty thousand employed on the railroads in construction,

making a total of at least two hundred thousand persons, representing in families nearly a million of souls employed in or maintained by this class of public works in the United States.

In view of all this it is not easy to estimate the disastrous consequences which must have resulted from such extended local improvements being undertaken by the General Government. State legislation upon this subject would have been suspended and private enterprise paralyzed, while applications for appropriations would have perverted the legislation of Congress, exhausted the National Treasury, and left the people burdened with a heavy public debt beyond the capacity of generations to discharge.

It is conceivable that the framers of the Constitution intended that authority drawing after it such immense consequences should be inferred by implication as the incident of enumerated powers? I cannot think this, and the impossibility of supposing it would be still more glaring if similar calculations were carried out in regard to the numerous objects of material, moral, and political usefulness of which the idea of internal improvement admits. It may be safely inferred that if the framers of the Constitution had intended to confer the power to make appropriations for the objects indicated it would have been enumerated among the grants expressly made to Congress. When, therefore, any one of the powers actually enumerated is adduced or referred to as the ground of an assumption to warrant the incidental or implied power of "internal improvement" that hypothesis must be rejected, or at least can be no further admitted than as the particular act of internal improvement may happen to be necessary in the exercise of the granted power. Thus, when the object of a given road, the clearing of a particular channel or the construction of a particular harbor of refuge is manifestly required by the exigencies of the naval or military service of the country, then it seems to me undeniable that it may be constitutionally comprehended in the powers to declare war, to provide and maintain a navy, and to raise and support armies. At the same time it would be a misuse of these powers and a violation of the Constitution to undertake to build upon them a great system of internal improvements. And similar reasoning applies to the assumption of any such power as involved in that to establish post-roads and to regulate commerce. If the particular improvement, whether by land or sea, be necessary to the execution of the enumerated powers, then, but not otherwise, it falls within the jurisdiction of Congress. To this extent only can the power be claimed as the incident of any express grant to the Federal Government.

But there is one clause of the Constitution in which it has been suggested that express authority to construct works of internal improvement has been conferred on Congress, namely, that which empowers it "to exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular

States and the acceptance of Congress become the seat of the Government to the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and *other needful buildings.*" But any such supposition will be seen to be groundless when this provision is carefully examined and compared with other parts of the Constitution.

It is undoubtedly true that "like authority" refers back to "exclusive legislation in all cases whatever" as applied to the District of Columbia, and there is in the District no division of powers as between the General and the State governments.

In those places which the United States has purchased, or retains within any of the States—sites for dock-yards or forts, for example—legal process of the given State is still permitted to run for some purposes, and therefore the jurisdiction of the United States is not absolutely perfect. But let us assume for the argument's sake that the jurisdiction of the United States in a tract of land ceded it to it for the purpose of a dock-yard or fort by Virginia or Maryland is as complete as in that ceded by them for the seat of Government, and then proceed to analyze this clause of the Constitution.

It provides that Congress shall have certain legislative authority over all places purchased by the United States for certain purposes. It implies that Congress has otherwise the power to purchase. But where does Congress get the power to purchase? Manifestly it must be from some other clause of the Constitution, for it is not conferred by this one. Now, as it is a fundamental principle that the Constitution is one of limited powers, the authority to purchase must be conferred in one of the enumerations of legislative power. So that the power to purchase is, itself, not an unlimited one, but is limited by the objects in regard to which legislative authority is directly conferred.

The other expressions of the clause in question confirm this conclusion, since the jurisdiction is given as to places purchased for certain enumerated objects or purposes. Of these the first great division—forts, magazines, arsenals, and dock-yards—are obviously referable to recognized heads of specific constitutional power. There remains only the phrase, "and other *needful* buildings." Wherefore needful? Needful for any possible purpose within the whole range of the business of society and of Government? Clearly not; but only such "buildings" as are "needful" to the United States in the exercise of any of the powers conferred on Congress.

Thus, the United States need, in the exercise of admitted powers, not only forts, magazines, arsenals, and dock-yards, but also court-houses, prisons, custom-houses, and post-offices within the respective States. Places for the erection of such buildings the General Government may constitutionally purchase, and, having purchased them, the jurisdiction over them belongs to the United States. So, if the General Gov-

ernment has the power to build a light-house or a beacon, it may purchase a place for that object; and having purchased it, then this clause of the Constitution gives jurisdiction over it. Still the power to purchase for the purpose of erecting a light-house or beacon must depend on the existence of the power to erect, and if that power exists it must be sought after in some other clause of the Constitution.

From whatever point of view, therefore, the subject is regarded, whether as a question of express or implied power, the conclusion is the same, that Congress has no constitutional authority to carry on a system of internal improvements, and in this conviction the system has been steadily opposed by the soundest expositors of the functions of the Government.

It is not to be supposed that in no conceivable case shall there be a doubt as to whether a given object be or not a necessary incident of the military, naval, or any other power. As man is imperfect so are his methods of uttering his thoughts. Human language, save in expressions for the exact sciences, must always fail to preclude all possibility of controversy. Hence it is that in one branch of the subject—the question of the power of Congress to make appropriations in aid of navigation—there is less of positive conviction than in regard to the general subject, and it therefore seems proper in this respect to revert to the history of the practice of the Government.

Among the very earliest acts of the first session of Congress was that for the establishment and support of light-houses, approved by President Washington, on the 7th of August, 1789, which contains the following provisions:

“That all expenses which shall accrue, from and after the 15th day of August, 1789, in the necessary support, maintenance, and repairs of all light-houses, beacons, buoys, and public piers, erected, placed, or sunk, before the passing of this act, at the entrance of, or within any bay, inlet, harbor, or port of the United States, for rendering the navigation thereof easy and safe, shall be defrayed out of the Treasury of the United States: *Provided, nevertheless,* That none of the said expenses shall continue to be so defrayed, after the expiration of one year from the day aforesaid, unless such light-houses, beacons, buoys, and public piers shall, in the mean time, be ceded to, and vested in, the United States, by the State, or States, respectively, in which the same may be, together with the lands and tenements thereunto belonging, and together with the jurisdiction of the same.”

Acts containing appropriations for this class of public works were passed in 1791, 1792, 1793, and so on, from year to year, down to the present time; and the tenor of these acts, when examined with reference to other parts of the subject, is worthy of special consideration.

It is a remarkable fact that, for a period of more than thirty years after the adoption of the Constitution, all appropriations of this class were confined, with scarcely an apparent exception, to the construction of light-houses, beacons, buoys, and public piers, and the stakeage of channels; to render navigation “safe and easy,” it is true, but only by

indicating to the navigator obstacles in his way—not by removing those obstacles, nor in any other respect changing, artificially, the pre-existing natural condition of the earth and sea. It is obvious, however, that works of art for the removal of natural impediments to navigation, or to prevent their formation, or for supplying harbors where these do not exist, are also means of rendering navigation safe and easy, and may, in supposable cases, be the most efficient, as well as the most economical of such means. Nevertheless, it is not until the year 1824, that, in an act to improve the navigation of the rivers Ohio and Mississippi, and in another act making appropriations for deepening the channel leading into the harbor of Presque Isle, on Lake Erie, and for repairing Plymouth beach, in Massachusetts Bay, we have any example of an appropriation for the improvement of harbors, in the nature of those provided for in the bill returned by me to the House of Representatives.

It appears not probable that the abstinence of Congress in this respect is attributable altogether to considerations of economy, or to any failure to perceive that the removal of an obstacle to navigation might be not less useful than the indication of it for avoidance; and it may be well assumed that the course of legislation so long pursued was induced, in whole or in part, by solicitous consideration in regard to the constitutional power over such matters vested in Congress.

One other peculiarity in this course of legislation is not less remarkable. It is, that when the General Government first took charge of light-houses and beacons, it required the works themselves, and the lands on which they were situated, to be ceded to the United States. And, although for a time this precaution was neglected in the case of new works, in the sequel it was provided, by general laws, that no light-house should be constructed on any site previous to the jurisdiction over the same being ceded to the United States.

Constitutional authority for the construction and support of many of the public works of this nature, it is certain, may be found in the power of Congress to maintain a navy and provide for the general defense; but their number, and, in many instances, their location, preclude the idea of their being fully justified as necessary and proper incidents of that power. And they do not seem susceptible of being referred to any other of the specific powers vested in Congress by the Constitution, unless it be that to raise revenue, in so far as this relates to navigation. The practice under all my predecessors in office, the express admissions of some of them, and absence of denial by any, sufficiently manifest their belief that the power to erect light-houses, beacons, and piers is possessed by the General Government. In the acts of Congress, as we have already seen, the inducement and object of the appropriations are expressly declared: those appropriations being for "light-houses, beacons, buoys, and public piers," erected or placed "within any bay, inlet, harbor, or port of the United States for rendering the navigation thereof easy and safe."

If it be contended that this review of the history of appropriations of this class leads to the inference that, beyond the purposes of national defense and maintenance of a navy, there is authority in the Constitution to construct certain works in aid of navigation, it is, at the same time, to be remembered that the conclusions thus deduced from contemporaneous construction and long-continued acquiescence are themselves directly suggestive of limitations of constitutionality, as well as expediency regarding the nature and the description of those aids to navigation which Congress may provide as incident to the revenue power. For at this point controversy begins, not so much as to the principle as to its application.

In accordance with long-established legislative usage, Congress may construct light-houses and beacons, and provide, as it does, other means to prevent shipwrecks on the coasts of the United States. But the General Government cannot go beyond this, and make improvements of rivers and harbors, of the nature, and to the degree, of all the provisions of the bill of the last session of Congress.

To justify such extended power, it has been urged that, if it be constitutional to appropriate money for the purpose of pointing out, by the construction of light-houses or beacons, where an obstacle to navigation exists, it is equally so to remove such obstacle, or to avoid it by the creation of an artificial channel; that if the object be lawful, then the means adopted solely with reference to the end must be lawful, and that, therefore, it is not material, constitutionally speaking, whether a given obstruction to navigation be indicated for avoidance, or be actually avoided by excavating a new channel; that if it be a legitimate object of expenditure to preserve a ship from wreck, by means of a beacon or of revenue cutters, it must be not less so to provide places of safety by the improvement of harbors, or, where none exist, by their artificial construction; and thence the argument naturally passes to the propriety of improving rivers for the benefit of internal navigation; because all these objects are of more or less importance to the commercial as well as the naval interests of the United States.

The answer to all this is, that the question of opening speedy and easy communication to and through all parts of the country is substantially the same, whether done by land or water; that the uses of roads and canals in facilitating commercial intercourse, and uniting by community of interests the most remote quarters of the country by land communication, are the same in their nature as the uses of navigable waters; and that, therefore, the question of the facilities and aids to be provided to navigation, by whatsoever means, is but a subdivision of the great question of the constitutionality and expediency of internal improvements by the General Government. In confirmation of this, it is to be remarked, that one of the most important acts of appropriation of this class, that of the year 1833, under the administration of President Jackson, by including together and providing for, in one bill

as well as river and harbor works, as road works, impliedly recognizes the fact that they are alike branches of the same great subject of internal improvements.

As the population, territory, and wealth of the country increased, and settlements extended into remote regions, the necessity for additional means of communication impressed itself upon all minds with a force which had not been experienced at the date of the formation of the Constitution, and more and more embarrassed those who were most anxious to abstain scrupulously from any exercise of doubtful power. Hence the recognition, in the messages of Presidents Jefferson, Madison, and Monroe, of the eminent desirableness of such works, with the admission that some of them could lawfully and should be conducted by the General Government, but with obvious uncertainty of opinion as to the line between such as are constitutional and such as are not; such as ought to receive appropriations from Congress and such as ought to be consigned to private enterprise or the legislation of the several States.

This uncertainty has not been removed by the practical working of our institutions in later times; for, although the acquisition of additional territory and the application of steam to the propulsion of vessels have greatly magnified the importance of internal commerce, this fact has at the same time complicated the question of the power of the General Government over the present subject.

In fine, a careful review of the opinions of all my predecessors, and of the legislative history of the country, does not indicate any fixed rule by which to decide what, of the infinite variety of possible river and harbor improvements, are within the scope of the power delegated by the Constitution; and the question still remains unsettled. President Jackson conceded the constitutionality, under suitable circumstances, of the improvement of rivers and harbors through the agency of Congress; and President Polk admitted the propriety of the establishment and support, by appropriations from the Treasury, of light-houses, beacons, buoys, and other improvements within the bays, inlets, and harbors of the ocean and lake coasts immediately connected with foreign commerce.

But if the distinction thus made rests upon the differences between foreign and domestic commerce it cannot be restricted thereby to the bays, inlets, and harbors of the oceans and lakes, because foreign commerce has already penetrated thousands of miles into the interior of the continent by means of our great rivers, and will continue so to extend itself with the progress of settlement until it reaches the limit of navigability.

At the time of the adoption of the Constitution the vast valley of the Mississippi, now teeming with population and supplying almost boundless resources, was literally an unexplored wilderness. Our advancement has outstripped even the most sanguine anticipations of the

fathers of the Republic, and it illustrates the fact that no rule is admissible which undertakes to discriminate, so far as regards river and harbor improvements, between the Atlantic or Pacific coasts and the great lakes and rivers of the interior regions of North America. Indeed it is quite erroneous to suppose that any such discrimination has ever existed in the practice of the Government. To the contrary of which is the significant fact, before stated, that when, after abstaining from all such appropriations for more than thirty years, Congress entered upon the policy of improving the navigation of rivers and harbors, it commenced with the rivers Mississippi and Ohio.

The Congress of the Union, adopting, in this respect, one of the ideas of that of the Confederation, has taken heed to declare from time to time, as occasion required, either in acts for disposing of the public lands in the Territories or in acts for admitting new States, that all navigable rivers within the same "shall be deemed to be, and remain, public highways."

Out of this condition of things arose a question which, at successive periods of our public annals, has occupied the attention of the best minds in the Union. This question is, what waters are public navigable waters, so as not to be of State character and jurisdiction, but of Federal jurisdiction and character, in the intent of the Constitution and of Congress? A proximate, but imperfect, answer to this important question is furnished by the acts of Congress and the decisions of the Supreme Court of the United States, defining the constitutional limits of the maritime jurisdiction of the General Government. That jurisdiction is entirely independent of the revenue power. It is not derived from that, nor is it measured thereby.

In that act of Congress which, in the first year of the Government, organized our judicial system, and which, whether we look to the subject, the comprehensive wisdom with which it was treated, or the deference with which its provisions have come to be regarded, is only second to the Constitution itself, there is a section in which the statesmen who framed the Constitution have placed on record their construction of it in this matter. It enacts that the district courts of the United States "shall have exclusive recognizance of all civil cases of admiralty and maritime jurisdiction, including all seizures under the law of impost, navigation, or trade of the United States, when the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas." In this cotemporaneous exposition of the Constitution there is no trace or suggestion that nationality of jurisdiction is limited to the sea, or even to tide-waters. The law is marked by a sagacious apprehension of the fact that the great lakes and the Mississippi were navigable waters of the United States even then, before the acquisition of Louisiana had made wholly our own the territorial greatness of the West. It repudiates unequivocally the rule of the common law, accord-

ing to which the question of whether a water is public navigable water or not depends on whether it is salt or not, and, therefore, in a river, confines that quality to tide-water—a rule resulting from the geographical condition of England, and applicable to an island, with small and narrow streams, the only navigable portion of which, for ships, is in immediate contact with the ocean, but wholly inapplicable to the great inland fresh-water seas of America and its mighty rivers, with secondary branches exceeding in magnitude the largest rivers of Great Britain.

At a later period, it is true that, in disregard of the more comprehensive definition of navigability afforded by that act of Congress, it was for a time held by many that the rule established for England was to be received in the United States, the effect of which was to exclude from the jurisdiction of the General Government not only the waters of the Mississippi, but also those of the great lakes. To this construction it was, with truth, objected that, in so far as concerns the lakes, they are in fact seas, although of fresh water; that they are the natural marine communications between a series of populous States, and between them and the possessions of a foreign nation; that they are actually navigated by ships of commerce of the largest capacity; that they had once been, and might again be, the scene of foreign war; and that therefore it was doing violence to all reason to undertake, by means of an arbitrary doctrine of technical foreign law, to exclude such waters from the jurisdiction of the General Government. In regard to the river Mississippi, it was objected that, to draw a line across that river at the point of ebb and flow of tide, and say that the part below was public navigable water, and the part above not, while in the latter the water was at least equally deep and navigable, and its commerce as rich as in the former, with numerous ports of foreign entry and delivery, was to sanction a distinction artificial and unjust, because regardless of the real fact of navigability.

We may conceive that some such considerations led to the enactment, in the year 1845, of an act, in addition to that of 1789, declaring that “the district courts of the United States shall have, possess, and exercise the same jurisdiction in matters of contract and tort, arising in, upon, or concerning steamboats, and other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in business of commerce and navigation between ports and places in different States and Territories upon the lakes and navigable waters connecting said lakes, as is now possessed and exercised by the said courts in cases of the like steamboats and other vessels employed in navigation and commerce upon the high seas or tide-waters, within the admiralty and maritime jurisdiction of the United States.”

It is observable that the act of 1789 applies the jurisdiction of the United States to all “waters which are navigable from the sea” for ves-

sels of ten tons burden; and that of 1845 extends the jurisdiction to enrolled vessels of twenty tons burden, on the lakes and navigable waters connecting said lakes, though not waters navigable from the sea, provided such vessels be employed between places in different States and Territories.

Thus it appears that these provisions of law, in effect, prescribe conditions by which to determine whether any waters are public navigable waters, subject to the authority of the Federal Government. The conditions include all waters, whether salt or fresh, and whether of sea, lake, or river, provided they be capable of navigation by vessels of a certain tonnage, and for commerce, either between the United States and foreign countries, or between any two or more of the States or Territories of the Union. This excludes water wholly within any particular State, and not used as the means of commercial communication with any other State, and subject to be improved or obstructed, at will, by the State within which it may happen to be.

The constitutionality of these provisions of statute has been called in question. Their constitutionality has been maintained, however, by repeated decisions of the Supreme Court of the United States, and they are, therefore, the law of the land by the concurrent act of the legislative, the executive, and the judicial departments of the Government. Regarded as affording a criterion of what is navigable water, and as such subject to the maritime jurisdiction of the Supreme Court and of Congress, these acts are objectionable in this, that the rule of navigability is an arbitrary one; that Congress may repeal the present rule, and adopt a new one; and that thus a legislative definition will be able to restrict or enlarge the limits of constitutional power. Yet this variableness of standard seems inherent in the nature of things. At any rate, neither the First Congress, composed of the statesmen of the era when the Constitution was adopted, nor any subsequent Congress, has afforded us the means of attaining greater precision of construction as to this part of the Constitution.

This reflection may serve to relieve from undeserved reproach an idea of one of the greatest men of the Republic, President Jackson. He, seeking amid all the difficulties of the subject for some practical rule of action in regard to appropriations for the improvement of rivers and harbors, prescribed, for his own official conduct, the rule of confining such appropriations to "places below the ports of entry or delivery established by law." He saw clearly, as the authors of the above mentioned acts of 1789 and 1845 did, that there is no inflexible natural line of discrimination between what is national and what local, by means of which to determine absolutely and unerringly at what point on a river the jurisdiction of the United States shall end. He perceived, and of course admitted, that the Constitution, while conferring on the General Government some power of action to render navigation safe and easy, had, of necessity, left to Congress much of discretion in this matter.

He confided in the patriotism of Congress to exercise that discretion wisely, not permitting himself to suppose it possible that a port of entry or delivery would ever be established by law for the express and only purpose of evading the Constitution.

It remains, therefore, to consider the question of the measure of discretion in the exercise by Congress of the power to provide for the improvement of rivers and harbors, and also that of the legitimate responsibility of the Executive in the same relation.

In matters of legislation of the most unquestionable constitutionality, it is always material to consider what amount of public money shall be appropriated for any particular object. The same consideration applies with augmented force to a class of appropriations, which are in their nature peculiarly prone to run to excess, and which, being made in the exercise of incidental powers, have intrinsic tendency to overstep the bounds of constitutionality.

If an appropriation for improving the navigability of a river, or deepening or protecting a harbor, have reference to military or naval purposes, then its rightfulness, whether in amount, or in the objects to which it is applied, depends, manifestly, on the military or naval exigency; and the subject-matter affords its own measure of legislative discretion. But if the appropriation for such an object have no distinct relation to the military or naval wants of the country, and is wholly, or even mainly, intended to promote the revenue from commerce, then the very vagueness of the proposed purpose of the expenditure constitutes a perpetual admonition of reserve and caution. Through disregard of this, it is undeniable that, in many cases, appropriations of this nature have been made unwisely, without accomplishing beneficial results commensurate with the cost, and sometimes for evil, rather than good, independently of their dubious relation to the Constitution.

Among the radical changes of the course of legislation in these matters, which, in my judgment, the public interest demands, one is a return to the primitive idea of Congress, which required in this class of public works, as in all others, a conveyance of the soil, and a cession of the jurisdiction to the United States. I think this condition ought never to have been waived in the case of any harbor improvement of a permanent nature, as where piers, jetties, sea-walls, and other like works are to be constructed and maintained. It would powerfully tend to counteract endeavors to obtain appropriations of a local character, and chiefly calculated to promote individual interests. The want of such a provision is the occasion of abuses in regard to existing works, exposing them to private encroachment without sufficient means of redress by law. Indeed, the absence, in such cases, of a cession of jurisdiction, has constituted one of the constitutional objections to appropriations of this class. It is not easy to perceive any sufficient reason for requiring it in the case of arsenals, or forts, which does not equally apply to all other public works; if to be constructed and maintained by Congress

in the exercise of a constitutional power of appropriation, they should be brought within the jurisdiction of the United States.

There is another measure of precaution, in regard to such appropriations, which seems to me to be worthy of the consideration of Congress. It is, to make appropriation for every work in a separate bill, so that each one shall stand on its own independent merits, and, if it pass, shall do so under circumstances of legislative scrutiny, entitling it to be regarded as of general interest, and a proper subject of charge on the Treasury of the Union.

During the period of time in which the country had not come to look to Congress for appropriations of this nature, several of the States, whose productions or geographical position invited foreign commerce, had entered upon plans for the improvement of their harbors by themselves, and through means of support drawn directly from that commerce, in virtue of an express constitutional power, needing for its exercise only the permission of Congress. Harbor improvements thus constructed and maintained, the expenditures upon them being defrayed by the very facilities they afford, are a voluntary charge on those only who see fit to avail themselves of such facilities, and can be justly complained of by none. On the other hand, so long as these improvements are carried on by appropriations from the Treasury, the benefits will continue to inure to those alone who enjoy the facilities afforded, while the expenditure will be a burden upon the whole country, and the discrimination a double injury to places equally requiring improvement, but not equally favored by appropriations.

These considerations, added to the embarrassments of the whole question, amply suffice to suggest the policy of confining appropriations by the General Government to works necessary to the execution of its undoubted powers, and of leaving all others to individual enterprise, or to the separate States, to be provided for out of their own resources, or by recurrence to the provision of the Constitution which authorizes the States to lay duties of tonnage with the consent of Congress.

FRANKLIN PIERCE.

This message gave at length the President's reasons for having vetoed, at the close of the last session, "An act making appropriations for the repair, preservation, and completion of certain public works heretofore commenced under authority of law." It gave rise to debate, but no action on it was taken.

FRANKLIN PIERCE.—IV.

February 17, 1855.

To the House of Representatives:

I have received and carefully considered the bill entitled "An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first of July,

one thousand eight hundred and one," and, in the discharge of a duty imperatively enjoined on me by the Constitution, I return the same, with my objections, to the House of Representatives, in which it originated.

In the organization of the Government of the United States the legislative and executive functions were separated and placed in distinct hands. Although the President is required, from time to time, to recommend to the consideration of Congress such measures as he shall judge necessary and expedient, his participation in the formal business of legislation is limited to the single duty, in a certain contingency, of demanding for a bill a particular form of vote, prescribed by the Constitution, before it can become a law. He is not invested with power to defeat legislation by an absolute veto, but only to restrain it, and is charged with the duty, in case he disapproves a measure, of invoking a second, and a more deliberate and solemn consideration of it on the part of Congress. It is not incumbent on the President to sign a bill as a matter of course, and thus merely to authenticate the action of Congress, for he must exercise intelligent judgment, or be faithless to the trust reposed in him. If he approve a bill he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, for such further action as the Constitution demands, which is its enactment, if at all, not by a bare numerical majority as in the first instance, but by a constitutional majority of two-thirds of both houses.

While the Constitution thus confers on the legislative bodies the complete power of legislation in all cases, it proceeds, in the spirit of justice, to provide for the protection of the responsibility of the President. It does not compel him to affix the signature of approval to any bill unless it actually have his approbation; for, while it requires him to sign if he approve, it, in my judgment, imposes upon him the duty of withholding his signature if he do not approve. In the execution of his official duty in this respect, he is not to perform a mere mechanical part, but is to decide and act according to conscientious convictions of the rightfulness or the wrongfulness of the proposed law. In a matter as to which he is doubtful in his own mind, he may well defer to the majority of the two houses. Individual members of the respective houses, owing to the nature, variety, and amount of business pending, must necessarily rely, for their guidance in many, perhaps most cases, when the matters involved are not of popular interest, upon the investigation of appropriate committees, or, it may be, that of a single member, whose attention has been particularly directed to the subject. For similar reasons, but even to a greater extent, from the number and variety of subjects daily urged upon his attention, the President naturally relies much upon the investigation had, and the results arrived at, by the two houses; and hence those results, in large classes of cases, constitute the bases upon which his approval rests. The President's responsi-

bility is to the whole people of the United States; as that of a Senator is to the people of a particular State, that of a Representative to the people of a State or district; and it may be safely assumed that he will not resort to the clearly-defined and limited power of arresting legislation, and calling for reconsideration of any measure, except in obedience to requirements of duty. When, however, he entertains a decisive and fixed conclusion, not merely of the unconstitutionality, but of the impropriety, or injustice in other respects, of any measure, if he declare that he approves it he is false to his oath, and he deliberately disregards his constitutional obligations.

I cheerfully recognize the weight of authority which attaches to the action of a majority of the two houses. But in this case, as in some others, the framers of our Constitution, for wise considerations of public good, provided that nothing less than a two-thirds vote of one or both of the houses of Congress shall become effective to bind the co-ordinate departments of the Government, the people, and the several States. If there be anything of seeming invidiousness in the official right thus conferred on the President, it is in appearance only, for the same right of approving or disapproving a bill, according to each one's own judgment, is conferred on every member of the Senate and of the House of Representatives.

It is apparent, therefore, that the circumstances must be extraordinary which would induce the President to withhold approval from a bill involving no violation of the Constitution. The amount of the claims proposed to be discharged by the bill before me, the nature of the transactions in which those claims are alleged to have originated, the length of time during which they have occupied the attention of Congress and the country, present such an exigency. Their history renders it impossible that a President, who has participated to any considerable degree in public affairs, could have failed to form respecting them a decided opinion upon what he would deem satisfactory grounds. Nevertheless, instead of resting on former opinions, it has seemed to me proper to review and more carefully examine the whole subject, so as satisfactorily to determine the nature and extent of my obligations in the premises.

I feel called upon at the threshold to notice an assertion, often repeated, that the refusal of the United States to satisfy these claims, in the manner provided by the present bill, rests as a stain on the justice of our country. If it be so, the imputation on the public honor is aggravated by the consideration that the claims are coeval with the present century, and it has been a persistent wrong during that whole period of time. The allegation is that private property has been taken for public use without just compensation, in violation of express provision of the Constitution; and that reparation has been withheld, and justice denied, until the injured parties have for the most part descended to the grave. But it is not to be forgotten or overlooked that

those who represented the people, in different capacities, at the time when the alleged obligations were incurred, and to whom the charge of injustice attaches in the first instance, have also passed away, and borne with them the special information which controlled their decision, and, it may well be presumed, constituted the justification of their acts.

If, however, the charge in question be well founded, although its admission would inscribe on our history a page which we might desire most of all to obliterate, and although, if true, it must painfully disturb our confidence in the justice and the high sense of moral and political responsibility of those whose memories we have been taught to cherish with so much reverence and respect, still we have only one course of action left to us, and that is to make the most prompt and ample reparation in our power, and consign the wrong, as far as may be, to forgetfulness.

But no such heavy sentence of condemnation should be lightly passed upon the sagacious and patriotic men who participated in the transactions out of which these claims are supposed to have arisen, and who, from their ample means of knowledge of the general subject in its minute details, and from their official position, are peculiarly responsible for whatever there is of wrong or injustice in the decisions of the Government.

Their justification consists in that which constitutes the objection to the present bill, namely, the absence of any indebtedness on the part of the United States. The charge of a denial of justice in this case, and a consequent stain upon our national character, has not yet been indorsed by the American people. But, if it were otherwise, this bill, so far from relieving the past, would only stamp on the present a more deep and indelible stigma. It admits the justice of the claims, concedes that payment has been wrongfully withheld for fifty years, and then proposes not to pay them, but to compound with the public creditors by providing that, whether the claims shall be presented or not, whether the sum appropriated shall pay much or little of what shall be found due, the law itself shall constitute a perpetual bar to all future demands. This is not, in my judgment, the way to atone for wrongs, if they exist, nor to meet subsisting obligations.

If new facts, not known or not accessible during the administration of Mr. Jefferson, Mr. Madison, or Mr. Monroe, had since been brought to light, or new sources of information discovered, this would greatly relieve the subject of embarrassment. But nothing of this nature has occurred.

That those eminent statesmen had the best means of arriving at a correct conclusion, no one will deny. That they never recognized the alleged obligation on the part of the Government, is shown by the history of their respective administrations. Indeed, it stands not as a matter of controlling authority, but as a fact of history, that these

claims have never, since our existence as a nation, been deemed by any President worthy of recommendation to Congress.

Claims to payment can rest only on the plea of indebtedness on the part of the Government. This requires that it should be shown that the United States have incurred liability to the claimants, either by such acts as deprive them of their property, or by having actually taken it for public use, without making just compensation for it.

The first branch of the proposition—that on which an equitable claim to be indemnified by the United States for losses sustained might rest—requires at least a cursory examination of the history of the transactions on which the claims depend. The first link which in the chain of events arrests attention, is the treaties of alliance and of amity and commerce between the United States and France, negotiated in 1778. By those treaties, peculiar privileges were secured to armed vessels of each of the contracting parties in the ports of the other; the freedom of trade was greatly enlarged; and mutual obligations were incurred by each to guarantee to the other their territorial possessions in America.

In 1792-'93, when war broke out between France and Great Britain, the former claimed privileges in American ports which our Government did not admit as deducible from the treaties of 1778, and which, it was held, were in conflict with obligations to the other belligerent powers. The liberal principle of one of the treaties referred to—that free ships make free goods, and that subsistence and supplies were not contraband of war, unless destined to a blockaded port—was found, in a commercial view, to operate disadvantageously to France, as compared with her enemy, Great Britain, the latter asserting, under the law of nations, the right to capture, as contraband, supplies when bound for an enemy's port.

Induced mainly, it is believed, by these considerations, the Government of France decreed, on the 9th of May, 1793, the first year of the war, that "the French people are no longer permitted to fulfill toward the neutral powers in general the vows they have so often manifested, and which they constantly make for the full and entire liberty of commerce and navigation; and, as a counter measure to the course of Great Britain, authorized the seizure of neutral vessels bound to an enemy's port, in like manner as that was done by her great maritime rival. This decree was made to act retrospectively, and to continue until the enemies of France should desist from depredations on the neutral vessels bound to the ports of France. Then followed the embargo, by which our vessels were detained in Bordeaux; the seizure of British goods on board of our ships, and of the property of American citizens, under the pretence that it belonged to English subjects, and the imprisonment of American citizens captured on the high seas.

Against these infractions of existing treaties and violations of our rights as a neutral power, we complained and remonstrated. For the property of our injured citizens we demanded that due compensation

should be made, and from 1793 to 1797 used every means, ordinary and extraordinary, to obtain redress by negotiation. In the last mentioned year these efforts were met by a refusal to receive a minister sent by our Government with special instructions to represent the amicable disposition of the Government and people of the United States, and their desire to remove jealousies and to restore confidence by showing that the complaints against them were groundless. Failing in this, another attempt to adjust all differences between the two Republics was made in the form of an extraordinary mission, composed of three distinguished citizens, but the refusal to receive was offensively repeated; and thus terminated this last effort to preserve peace and restore kind relations with our early friend and ally, to whom a debt of gratitude was due which the American people have never been willing to depreciate or to forget. Years of negotiation had not only failed to secure indemnity for our citizens and exemption from further depredations, but these long-continued efforts had brought upon the Government the suspension of diplomatic intercourse with France, and such indignities as to induce President Adams, in his message of May 16, 1797, to Congress, convened in special session, to present it as the particular matter for their consideration, and to speak of it in terms of the highest indignation. Thenceforward the action of our Government assumed a character which clearly indicates that hope was no longer entertained from the amicable feeling or justice of the Government of France; and hence the subsequent measures were those of force.

On the 28th of May, 1798, an act was passed for the employment of the Navy of the United States against "armed vessels of the Republic of France," and authorized their capture, if "found hovering on the coast of the United States for the purpose of committing depredations on the vessels belonging to the citizens thereof." On the 18th of June, 1798, an act was passed prohibiting commercial intercourse with France, under the penalty of the forfeiture of the vessels so employed. On the 25th of June, the same year, an act to arm the merchant marine to oppose searches, capture aggressors, and recapture American vessels taken by the French. On the 28th of June, same year, an act for the condemnation and sale of French vessels captured by authority of the act of 28th of May preceding. On the 27th of July, same year, an act abrogating the treaties and the convention which had been concluded between the United States and France, and declaring "that the same shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States." On the 9th of the same month an act was passed which enlarged the limits of the hostilities then existing by authorizing our public vessels to capture armed vessels of France wherever found upon the high seas, and conferred power on the President to issue commissions to private armed vessels to engage in like service.

These acts, though short of a declaration of war, which would put all the citizens of each country in hostility with those of the other, were nevertheless, actual war, partial in its application, maritime in its character, but which required the expenditure of much of our public treasure, and much of the blood of our patriotic citizens, who, in vessels but little suited to the purposes of war, went forth to battle on the high seas for the rights and security of their fellow citizens, and to repel indignities offered to the national honor.

It is not then because of any failure to use all available means, diplomatic and military, to obtain reparation that liability for private claims can have been incurred by the United States, and if there is any pretense for such liability it must flow from the action, not from the neglect of the United States. The first complaint on the part of France was against the proclamation of President Washington, of April 22, 1793. At that early period in the war which involved Austria, Prussia, Sardinia, the United Netherlands, and Great Britain on the one part, and France on the other, the great and wise man who was the Chief Executive, as he was and had been the guardian of our then infant Republic, proclaimed that "the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial towards the belligerent powers." This attitude of neutrality, it was pretended, was in disregard of the obligations of alliance between the United States and France. And this, together with the often-renewed complaint that the stipulations of the treaties of 1778 had not been observed and executed by the United States, formed the pretext for the series of outrages upon our Government and its citizens, which finally drove us to seek redress and safety by an appeal to force. The treaties of 1778, so long the subject of French complaints, are now understood to be the foundation upon which are laid these claims of indemnity from the United States for spoliations committed by the French prior to 1800. The act of our Government which abrogated not only the treaties of 1778, but also the subsequent consular convention of 1788, has already been referred to, and it may be well here to inquire what the course of France was in relation thereto. By the decrees of 9th of May, 1793, 7th of July, 1796, and 2d of March, 1797, the stipulations which were then and subsequently most important to the United States were rendered wholly inoperative. The highly injurious effects which these decrees are known to have produced show how vital were the provisions of treaty which they violated, and make manifest the incontrovertible right of the United States to declare, as the consequence of these acts of the other contracting party, the treaties at an end.

The next step in this inquiry is, whether the act declaring the treaties null and void was ever repealed, or whether by any other means the treaties were revived so as to be either the subject or the source of national obligation? The war, which has been described, was termi-

nated by the treaty of Paris of 1800, and to that instrument it is necessary to turn to find how much of pre-existing obligations between the two Governments outlived the hostilities in which they had been engaged. By the 2d article of the treaty of 1800, it was declared that the ministers plenipotentiary of the two parties, not being able to agree respecting the treaties of alliance, amity, and commerce of 1778, and the convention of 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time, and until they shall have agreed upon these points the said treaties and convention shall have no operation.

When the treaty was submitted to the Senate of the United States, the second article was disagreed to, and the treaty amended by striking it out, and inserting a provision that the convention then made should continue in force eight years from the date of ratification, which convention thus amended was accepted by the First Consul of France, with the addition of a note explanatory of his construction of the convention, to the effect that by the retrenchment of the second article, the two States renounce the respective pretensions which were the object of the said article.

It will be perceived by the language of the second article, as originally framed by the negotiators, that they had found themselves unable to adjust the controversies on which years of diplomacy and of hostilities had been expended; and that they were at last compelled to postpone the discussion of those questions to that most indefinite period, a "convenient time." All, then, of these subjects, which was revived by the convention, was the right to renew, when it should be convenient to the parties, a discussion, which had already exhausted negotiation, involved the two countries in a maritime war, and on which the parties had approached no nearer to concurrence than they were when the controversy began.

The obligations of the treaties of 1778, and the convention of 1788, were mutual, and estimated to be equal. But, however onerous they may have been to the United States, they had been abrogated, and were not revived by the convention of 1800, but expressly spoken of as suspended until an event which could only occur by the pleasure of the United States. It seems clear, then, that the United States were relieved of no obligation to France by the retrenchment of the second article of the convention; and if thereby France was relieved of any valid claims against her, the United States received no consideration in return; and that if private property was taken by the United States from their own citizens, it was not for public use. But it is here proper to inquire whether the United States did relieve France from valid claims against her on the part of citizens of the United States, and did thus deprive them of their property.

The complaints and counter-complaints of the two Governments had been, that treaties were violated, and that both public and individual

rights and interests had been sacrificed. The correspondence of our ministers engaged in negotiations, both before and after the convention of 1800, sufficiently proves how hopeless was the effort to obtain full indemnity from France for injuries inflicted on our commerce from 1793 to 1800, unless it should be by an account in which the rival pretensions of the two Governments should each be acknowledged, and the balance struck between them.

It is supposable, and may be inferred from the contemporaneous history as probable, that had the United States agreed in 1800 to revive the treaties of 1778 and 1788 with the construction which France had placed upon them, that the latter Government would, on the other hand, have agreed to make indemnity for those spoliations which were committed under the pretext that the United States were faithless to the obligations of the alliance between the two countries.

Hence the conclusion, that the United States did not sacrifice private rights or property to get rid of public obligations, but only refused to reassume public obligations for the purpose of obtaining the recognition of the claims of American citizens on the part of France.

All those claims which the French Government was willing to admit were carefully provided for elsewhere in the convention, and the declaration of the First Consul, which was appended in his additional note, had no other application than to the claims which had been mutually made by the Governments, but on which they had never approximated to an adjustment. In confirmation of the fact that our Government did not intend to cease from the prosecution of the just claims of our citizens against France, reference is here made to the annual message of President Jefferson of December 8, 1801, which opens with expressions of his gratification at the restoration of peace among sister nations; and, after speaking of the assurances received from all nations with whom we had principal relations, and of the confidence thus inspired, that our peace with them would not have been disturbed if they had continued at war with each other, he proceeds to say :

“But a cessation of irregularities which had afflicted the commerce of neutral nations, and of the irritations and injuries produced by them, cannot but add to this confidence, and strengthen, at the same time, the hope that wrongs committed on unoffending friends, under a pressure of circumstances, will now be reviewed with candor, and will be considered as founding just claims of retribution for the past and new assurances for the future.”

The zeal and diligence with which the claims of our citizens against France were prosecuted appear in the diplomatic correspondence of the three years next succeeding the convention of 1800, and the effect of these efforts is made manifest in the convention of 1803, in which provision was made for payment of a class of cases, the consideration of which France had at all previous periods refused to entertain, and which are of that very class which it has been often assumed were released by striking out the second article of the convention of 1800. This is shown

by reference to the preamble, and to the fourth and fifth articles of the convention of 1803, by which were admitted among the debts due by France to citizens of the United States the amounts chargeable for "prizes made at sea in which the appeal has been properly lodged within the time mentioned in the said convention of the 30th of September, 1800;" and this class was further defined to be only "captures of which the council of prizes shall have ordered restitution, it being well understood that the claimants cannot have recourse to the United States, otherwise than he might have had to the French Republic, and only in case of the insufficiency of the captors."

If, as was affirmed on all hands, the convention of 1803 was intended to close all questions between the Governments of France and the United States, and twenty millions of francs were set apart as a sum which might exceed, but could not fall short of, the debts due by France to the citizens of the United States, how are we to reconcile the claim now presented with the estimates made by those who were of the time and immediately connected with the events, and whose intelligence and integrity have, in no small degree, contributed to the character and prosperity of the country in which we live? Is it rational to assume that the claimants, who now present themselves for indemnity by the United States, represent debts which would have been admitted and paid by France but for the intervention of the United States? And is it possible to escape from the effect of the voluminous evidence tending to establish the fact that France resisted all these claims; that it was only after long and skillful negotiation that the agents of the United States obtained the recognition of such of the claims as were provided for in the conventions of 1800 and 1803? And is not this conclusive against any pretensions of possible success on the part of the claimants, if left unaided to make their applications to France, that the only debts due to American citizens, which have been paid by France, are those which were assumed by the United States as part of the consideration in the purchase of Louisiana?

There is little which is creditable either to the judgment or patriotism of those of our fellow-citizens who at this day arraign the justice, the fidelity, or love of country of the men who founded the Republic, in representing them as having bartered away the property of individuals to escape from public obligations, and then to have withheld from them just compensation. It has been gratifying to me, in tracing the history of these claims, to find that ample evidence exists to refute an accusation which would impeach the purity, the justice, and the magnanimity of the illustrious men who guided and controlled the early destinies of the Republic.

I pass from this review of the history of the subject, and, omitting many substantial objections to these claims, proceed to examine somewhat more closely the only grounds upon which they can by possibility be maintained.

Before entering on this, it may be proper to state distinctly certain propositions which, it is admitted on all hands, are essential to prove the obligations of the Government.

First. That at the date of the treaty of September 30, 1800, these claims were valid and subsisting as against France.

Second. That they were released or extinguished by the United States in that treaty, and by the manner of its ratification.

Third. That they were so released or extinguished for a consideration valuable to the Government, but in which the claimants had no more interest than any other citizens.

The convention between the French Republic and the United States of America, signed at Paris on the 30th day of September, 1800, purports in the preamble to be founded on the equal desire of the First Consul (Napoleon Bonaparte) and the President of the United States to terminate the differences which have arisen between the two States. It declares, in the first place, that there shall be firm, inviolable, and universal peace, and a true and sincere friendship, between the French Republic and the United States. Next it proceeds, in the second, third, fourth, and fifth articles, to make provision in sundry respects, having reference to past differences, and the transition from the state of war between the two countries to that of general and permanent peace. Finally, in the residue of the twenty-seventh article, it stipulates anew the conditions of amity and intercourse, commercial and political, thereafter to exist, and, of course, to be substituted in place of the previous conditions of the treaties of alliance and of commerce, and the consular convention, which are thus tacitly, but unequivocally, recognized as no longer in force, but in effect abrogated, either by the state of war, or by the political action of the two Republics.

Except in so far as the whole convention goes to establish the fact that the previous treaties were admitted on both sides to be at an end, none of the articles are directly material to the present question, save the following :

"ART. II. The ministers plenipotentiary of the two parties not being able to agree at present respecting the treaty of alliance of 6th February, 1778, the treaty of amity and commerce of the same date, and the convention of the 14th November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows :

"ART. V. The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations."

On this convention being submitted to the Senate of the United States, they consented and advised to its ratification, with the following proviso :

“ Provided That the second article be expunged, and that the following article be added or inserted: It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of ratifications.”

The spirit and purpose of this change are apparent and unmistakable. The convention, as signed by the respective plenipotentiaries, did not adjust all the points of controversy. Both nations, however, desired the restoration of peace. Accordingly, as to those matters in the relations of the two countries concerning which they could agree, they did agree for the time being ; and as to the rest, concerning which they could not agree, they suspended and postponed further negotiation.

They abandoned no pretensions, they relinquished no right on either side, but simply adjourned the question until “a convenient time.” Meanwhile, and until the arrival of such convenient time, the relations of the two countries were to be regulated by the stipulations of the convention.

Of course, the convention was, on its face, a temporary and provisional one, but in the worst possible form of prospective termination. It was to cease at a convenient time. But how should that convenient time be ascertained? It is plain that such a stipulation, while professedly not disposing of the present controversy, had within itself the germ of a fresh one; for the two Governments might at any moment fall into dispute on the question whether that convenient time had or had not arrived. The Senate of the United States anticipated and prevented this question by the only possible expedient—that is, the designation of a precise date. This being done, the remaining parts of the second article became superfluous and useless; for, as all the provisions of the convention would expire in eight years, it would necessarily follow that negotiations must be renewed within that period; more especially, as the operation of the amendment which covered the whole convention was that even the stipulation of peace in the first article became temporary, and expired in eight years, whereas that article, and that article alone, was permanent, according to the original tenor of the convention.

The convention thus amended being submitted to the First Consul, was ratified by him, accompanying his act of acceptance by the following declaratory note:

“The Government of the United States having added in its ratification that the convention should be in force for the space of eight years, and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in

force for the space of eight years, and with the retrenchment of the second article: *Provided* That by this retrenchment the two States renounce the respective pretensions which are the object of the said articles."

The convention, as thus ratified by the First Consul, having been again submitted to the Senate of the United States, that body resolved that "they considered the convention as fully ratified," and returned the same to the President for promulgation, and it was accordingly promulgated in the usual form by President Jefferson.

Now, it is clear, that in simply resolving that "they considered the convention as fully ratified," the Senate did, in fact, abstain from any express declaration of dissent or assent to the construction put by the First Consul on the retrenchment of the second article. If any inference beyond this can be drawn from their resolution, it is, that they regarded the proviso annexed by the First Consul to his declaration of acceptance as foreign to the subject, as nugatory, or as without consequence or effect. Notwithstanding this proviso, they considered the ratification as full. If the new proviso made any change in the previous import of the convention, then it was not full. And in considering it a full ratification, they, in substance, deny that the proviso did, in any respect, change the tenor of the convention.

By the second article, as it originally stood, neither Republic had relinquished its existing rights or pretensions either as to other previous treaties, or the indemnities mutually due or claimed, but only deferred the consideration of them to a convenient time. By the amendment of the Senate of the United States that convenient time, instead of being left indefinite, was fixed at eight years; but no right or pretension of either party was surrendered or abandoned.

If the Senate erred in assuming that the proviso added by the First Consul did not affect the question, then the transaction would amount to nothing more than to have raised a new question to be disposed of on resuming the negotiations, namely, the question whether the proviso of the First Consul did, or not, modify or impair the effect of the convention as it had been ratified by the Senate.

That such, and such only, was the true meaning and effect of the transaction; that it was not, and was not intended to be, a relinquishment by the United States of any existing claim on France, and especially that it was not an abandonment of any claims of individual citizens, nor the set-off of these against any conceded national obligations to France, is shown by the fact that President Jefferson did at once resume and prosecute to successful conclusion negotiations to obtain from France indemnification for the claims of citizens of the United States existing at the date of that convention; for, on the 30th of April, 1803, three treaties were concluded at Paris between the United States of America and the French Republic, one of which embraced the cession of Louisiana; another stipulated for the payment of sixty millions of

francs by the United States to France; and a third provided that, for the satisfaction of sums due by France to citizens of the United States at the conclusion of the convention of September 30, 1800, and in express compliance with the second and fifth articles thereof, a further sum of twenty millions of francs should be appropriated and paid by the United States. In the preamble to the first of these treaties, which ceded Louisiana, it is set forth that—

“The President of the United States of America and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendémiaire, an 9 (30th September, 1800), relative to the rights claimed by the United States in virtue of the treaty concluded at Madrid the 27th of October, 1795, between his Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention, was happily re-established between the two nations, have respectively named their plenipotentiaries,” who “have agreed to the following articles.”

Here is the most distinct and categorical declaration of the two Governments, that the matters of claim in the second article of the convention of 1800 had not been ceded away, relinquished, or set off, but they were still subsisting subjects of demand against France. The same declaration appears in equally emphatic language in the third of these treaties, bearing the same date, the preamble of which recites that—

“The President of the United States of America and the First Consul of the French Republic, in the name of the French people, having by a treaty of this date terminated all difficulties relative to Louisiana, and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendémiaire, ninth year of the French Republic (September 30, 1800), to secure the payment of the sums due by France to the citizens of the United States,” and “have appointed plenipotentiaries,” who agreed to the following among other articles:

“ART. I. The debts due by France to citizens of the United States, contracted before the 8th of Vendémiaire, ninth year of the French Republic (30th September, 1800), shall be paid according to the following regulations, with interest at six per centum, to commence from the periods when the accounts and vouchers were presented to the French Government.

“ART. II. The debts provided for by the preceding article are those whose result is comprised in the conjectural note (a) annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note which fall within the exceptions of the following articles shall not be admitted to the benefit of this provision.”

“ART. IV. It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States, who have been and are yet creditors of France for supplies, for embargoes, and prizes made at sea, in which the appeal has been

properly lodged within the time mentioned in the said convention, 8th Vendémaire, ninth year (30th September, 1800).

"ART. V. The preceding articles shall apply only—1st, to captures of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the Government of the French Republic, and only in case of insufficiency of the captors; 2d, the debts mentioned in the said fifth article of the convention, contracted before the 8th Vendémaire, an 9 (30th September, 1800), the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States; the said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed. It is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who by that reason, on the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention, saving, however, to such persons their claims in like manner as if this treaty had not been made."

"ART. XII. In case of claims for debts contracted by the Government of France with citizens of the United States since the 8th Vendémaire, ninth year (30th September, 1800), not being comprised in this convention, may be pursued, and the payment demanded in the same manner as if it had not been made."

Other articles of the treaty provide for the appointment of agents to liquidate the claims intended to be secured, and for the payment of them, as allowed, at the Treasury of the United States. The following is the concluding clause of the tenth article:

"The rejection of any claim shall have no other effect than to exempt the United States from the payment of it, the French Government reserving to itself the right to decide definitely on such claim so far as it concerns itself."

Now, from the provisions of the treaties thus collated, the following deductions undeniably follow, namely:

First. Neither the second article of the convention of 1800, as it originally stood, nor the retrenchment of that article, nor the proviso in the ratification by the First Consul, nor the action of the Senate of the United States thereon, was regarded by either France or the United States as the renouncement of any claims of American citizens against France.

Second. On the contrary, in the treaties of 1803 the two Governments took up the question precisely where it was left on the day of the signature of that of 1800, without suggestion on the part of France, that the claims of our citizens were excluded by the retrenchment of the second article, or the note of the First Consul, and proceeded to make ample provision for such as France could be induced to admit

were justly due, and they were accordingly discharged in full, with interest, by the United States in the stead and behalf of France.

Third. The United States, not having admitted in the convention of 1800 that they were under any obligations to France, by reason of the abrogation of the treaties of 1778 and 1788, persevered in this view of the question by the tenor of the treaties of 1803, and, therefore, had no such national obligation to discharge, and did not, either in purpose or in fact, at any time, undertake to discharge themselves from any such obligation at the expense and with the property of individual citizens of the United States.

Fourth. By the treaties of 1803, the United States obtained from France the acknowledgment and payment, as part of the indemnity for the cession of Louisiana, of claims of citizens of the United States for spoliations, so far as France would admit her liability in the premises; but even then the United States did not relinquish any claim of American citizens not provided for by those treaties; so far from it, to the honor of France be it remembered, she expressly reserved to herself the right to reconsider any rejected claims of citizens of the United States.

Fifth. As to claims of citizens of the United States against France, which had been the subject of controversy between the two countries prior to the signature of the convention of 1800, and the further consideration of which was reserved for a more convenient time by the second article of that convention: for these claims, and these only, provision was made in the treaties of 1803—all other claims being expressly excluded by them from their scope and purview.

It is not to be overlooked, though not necessary to the conclusion, that by the convention between France and the United States of the 4th of July, 1831, complete provision was made for the liquidation, discharge, and payment, on both sides, of all claims of citizens of either against the other for unlawful seizures, captures, sequestrations, or destructions of the vessels, cargoes, or other property, without any limitation of time, so as in terms to run back to the date of the last preceding settlement, at least to that of 1803, if not to the commencement of our national relations with France.

This review of the successive treaties between France and the United States has brought my mind to the undoubting conviction that while the United States have, in the most ample and the completest manner, discharged their duty towards such of their citizens as may have been at any time aggrieved by acts of the French Government, so, also, France has honorably discharged herself of all obligations in the premises towards the United States. To concede what this bill assumes, would be to impute undeserved reproach both to France and to the United States.

I am, of course, aware that the bill proposes only to provide indemnification for such valid claims of citizens of the United States against

France as shall not have been stipulated for and embraced in any of the treaties enumerated. But in excluding all such claims, it excludes all, in fact, for which, during the negotiations, France could be persuaded to agree that she was in any wise liable to the United States, or our citizens. What remains? And for what is five millions appropriated? In view of what has been said, there would seem to be no ground on which to raise a liability of the United States, unless it be the assumption that the United States are to be considered the insurer and the guarantor of all claims, of whatever nature, which any individual citizen may have against a foreign nation.

FRANKLIN PIERCE.

The veto message was considered in the House immediately after its reception, and on the following day. The question was then taken on "the passage of the bill, the President's objections to the contrary notwithstanding," and it was disagreed to by a vote of 113 yeas against 86 nays. So two-thirds not voting in the affirmative, the House refused to pass the bill over the President's veto.

FRANKLIN PIERCE.—V.

March 3, 1855.

To the House of Representatives :

I return herewith to the House of Representatives, in which it originated, the bill entitled "An act making appropriations for the transportation of the United States mail, by ocean steamers and otherwise, during the fiscal years ending the 30th of June, 1855, and the 30th of June, 1856," with a brief statement of the reasons which prevent its receiving my approval.

The bill provides, among other things, that—

"The following sums be, and the same are hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the year ending the 30th of June, 1856 :

"For transportation of the mails from New York to Liverpool and back, \$858,000; and that the proviso contained in the first section of the act entitled 'An act to supply deficiencies in the appropriations for the service of the fiscal year ending the 30th of June, 1852,' approved the 21st of July, 1852, be, and the same is hereby, repealed : *Provided*, That Edward K. Collins and his associates shall proceed, with all due diligence, to build another steamship, in accordance with the terms of their contract, and have the same ready for the mail service in two years from and after the passage of this act. And if the said steamship is not ready within the time above mentioned, by reason of any neglect or want of diligence on their part, then the said Edward K. Collins and his associates shall carry the United States mails between New York and Liverpool from the expiration of the said two years, every fortnight, free of any charge to the Government, until the new steamship shall have commenced the said mail service."

The original contract was predicated upon the proposition of E. K. Collins of March 6, 1846, made with abundant means of knowledge as to the advantages and disadvantages of the terms which he then submitted for the acceptance of the Government. The proposition was in the following terms:

"E. K. Collins and his associates propose to carry the United States mail between New York and Liverpool twice each month during eight months of the year, and once a month during the other four months, for the sum of three hundred and eighty-five thousand dollars (\$385,000) per annum, payable quarterly. For this purpose they will agree to build five steamships, of not less than two thousand tons measurement, and of one thousand horse-power each, which vessels shall be built for great speed, and sufficiently strong for war purposes.

"Four of said vessels to be ready for service in eighteen months from the signing of the contract. The fifth vessel to be built as early as possibly practicable, and, when not employed in the mail service, to be subject to the orders of the Government for carrying dispatches, for which service a fair compensation is to be paid. Contract to be for the term of ten years. It is also proposed to secure to the United States the privilege of purchasing said steamships whenever they may be required for public purposes, at a fair valuation, to be ascertained by appraisers appointed by the United States and by the owners.

"(Signed,)

EDWARD K. COLLINS.

"WASHINGTON, *March 6, 1846.*"

The act of March 3, 1847, provides: "That from and immediately after the passage of this act, it shall be the duty of the Secretary of the Navy to accept, on the part of the Government of the United States, the proposals of E. K. Collins and his associates, of the city of New York, submitted to the Postmaster-General, and dated at Washington, March 6, 1846, for the transportation of the United States mail between New York and Liverpool, and to contract with the said E. K. Collins and his associates for the faithful fulfillment of the stipulations therein contained, and in accordance with the provisions of this act;" and under this proposition and enactment the original contract was made.

According to the terms of that contract, the parties were to receive from the United States, for twenty round trips each year, the sum of \$19,250 the trip, or \$385,000 per annum; and they were to construct and provide five ships, of a stipulated size and quality, for the performance of this or other service for the Government.

Of the ships contracted for, only four have been furnished, the Atlantic, Pacific, Arctic, and Baltic, and the present bill proposes to dispense entirely with the original condition of a fifth ship, by only requiring the construction of one, which would but supply the place of the Arctic, recently lost by peril of the sea. Certain minor conditions, involving expense to the contractors, among which was one for the accommodation and subsistence of a certain number of passed midshipmen on each vessel, had previously been dispensed with on the part of the United States.

By act of Congress of July 21, 1852, the amount of compensation to the contractors was increased from \$19,250 to \$33,000 a trip, and the number of trips from twenty to twenty-six each year—making the whole compensation \$858,000 per annum. During the period of time from the commencement of the service of these contractors on the 27th of April, 1850, to the end of the last fiscal year, June 30, 1854, the sum paid to them by the United States amounted to \$2,620,906, without reckoning public money advanced on loan to aid them in the construction of the ships; while the whole amount of postages derived to the Department has been only \$734,056, showing an excess of expenditures above receipts of \$1,886,440 to the charge of the Government. In the meantime, in addition to the payments from the Treasury, the parties have been in the enjoyment of large receipts from the transportation of passengers and merchandise, the profits of which are in addition to the amount allowed by the United States.

It does not appear that the liberal conditions heretofore enjoyed by the parties were less than a proper compensation for the service to be performed, including whatever there may have been of hazard in a new undertaking; nor that any hardship can be justly alleged calling for relief on the part of the Government.

On the other hand, the construction of five ships of great speed, and sufficiently strong for war purposes, and the services of passed midshipmen on board of them, so as thus to augment the contingent force and the actual efficiency of the Navy, were among the inducements of the Government to enter into the contract.

The act of July 21, 1852, provides "that it shall be in the power of Congress at any time after the 31st day of December, 1854, to terminate the arrangement for the additional allowance herein provided for upon giving six months' notice," and it will be seen that with the exception of the six additional trips required by the act of July 21, 1852, there has been no departure from the original engagement but to relieve the contractors from obligation; and yet, by the act last named the compensation was increased from \$385,000 to \$858,000, with no other protection to the public interests provided than the right which Congress reserved to itself to terminate the contract, so far as this increased compensation was concerned, after six months' notice. This last provision, certainly a primary consideration for the more generous action of the Government, the present bill proposes to repeal, so as to leave Congress no power to terminate the new arrangement.

To this repeal the objections are, in my mind, insuperable, because, in terms, it deprives the United States of all future discretion as to the increased service and compensation, whatever changes may occur in the art of navigation, its expenses, or the policy and political condition of the country. The gravity of this objection is enhanced by other considerations. While the contractors are to be paid a compensation nearly double the rate of the original contract, they are exempted from sev-

eral of its conditions, which has the effect of adding still more to that rate; while the further advantage is conceded to them, of placing their new privileges beyond the control even of Congress.

It will be regarded as a less serious objection than that already stated, but one which should not be overlooked, that the privileges bestowed upon the contractors are without corresponding advantages to the Government, which receives no sufficient pecuniary or other return for the immense outlay involved; which could obtain the same service of other parties at less cost; and which, if the bill becomes a law, will pay them a large amount of public money without adequate consideration—that is, will in effect confer a gratuity, whilst nominally making provision for the transportation of the mails of the United States.

To provide for making a donation of such magnitude, and to give to the arrangement the character of permanence which this bill proposes, would be to deprive commercial enterprise of the benefits of free competition, and to establish a monopoly, in violation of the soundest principles of public policy, and of doubtful compatibility with the Constitution.

I am, of course, not unmindful of the fact that the bill comprises various other appropriations which are more or less important to the public interests; for which reason my objections to it are communicated at the first meeting of the House following its presentation to me, in the hope that by amendment to bills now pending, or otherwise, suitable provision for all the objects in question may be made before the adjournment of Congress.

FRANKLIN PIERCE.

After a brief debate, the question, "Shall the bill pass, the objections of the President to the contrary notwithstanding?" it was passed in the negative by a vote of 79 yeas against 99 nays. So the bill was rejected.

FRANKLIN PIERCE.—VI.

May 19, 1856.

To the Senate of the United States :

I return herewith to the Senate, in which it originated, the bill entitled "An act to remove obstructions to navigation in the mouth of the Mississippi River at the Southwest Pass and Pass à l'Outre," which proposes to appropriate a sum of money to be expended under the superintendence of the Secretary of War, "for the opening and keeping open ship channels of sufficient capacity to accommodate the wants of commerce through the Southwest Pass and Pass à l'Outre, leading from the Mississippi River to the Gulf of Mexico."

In a communication addressed by me to the two houses of Congress on the 30th of December, 1854, my views were exhibited in full on the

subject of the relation of the General Government to internal improvements. I set forth on that occasion the constitutional impediments which, in my mind, are insuperable to the prosecution of a system of internal improvements, by means of appropriations from the Treasury of the United States; more especially the consideration that the Constitution does not confer on the General Government any express power to make such appropriations; that they are not a necessary and proper incident of any of the express powers; and that the assumption of authority on the part of the Federal Government to commence and carry on a general system of internal improvements, while exceptionable for the want of constitutional power, is, in other respects, prejudicial to the several interests, and inconsistent with the true relation to one another, of the Union and of the individual States.

These objections apply to the whole system of internal improvements, whether such improvements consist of works on land, or in navigable waters, either of the sea coast, or of the interior lakes or rivers.

I have not been able, after the most careful reflection, to regard the bill before me in any other light than as part of a general system of internal improvements, and therefore feel constrained to submit it, with these objections, to the reconsideration of Congress.

FRANKLIN PIERCE.

The veto message was read, and ordered to be printed. On the 7th of July following, after debate, the question "Shall the bill pass, the objection of the President to the contrary notwithstanding?" was taken, and it was decided in the affirmative by a vote of 31 yeas against 12 nays. The President *pro tempore* announced that the bill had passed. Mr. Mason raised the question whether it did not require the affirmative vote of two-thirds of the members composing the Senate to pass the bill. The President *pro tempore* decided that it required only an affirmative vote of two-thirds of the Senators present. From this decision Mr. Mason appealed, and after debate, the question "Shall the decision of the Chair stand as the judgment of the Senate?" was determined in the affirmative by a vote of 34 yeas against 7 nays. The yeas and nays being desired by one-fifth of the Senators present, were taken—34 yeas against 7 nays. Two-thirds of the Senators present having voted in the affirmative, it was resolved that the bill pass, and two-thirds of the House of Representatives agreed to pass the same.

FRANKLIN PIERCE.—VII.

May 19, 1856.

To the Senate of the United States :

I return herewith to the Senate, in which it originated, a bill entitled "An act making an appropriation for deepening the channel over the Saint Clair flats, in the State of Michigan," and submit it for reconsideration, because it is, in my judgment, liable to the objections to the prosecution of internal improvements by the General Government, which have already been presented by me in previous communications to Congress.

In considering this bill under the restriction that the power of Congress to construct a work of internal improvement is limited to cases in which the work is manifestly needful and proper for the execution of some one or more of the powers expressly delegated to the General Government, I have not been able to find for the proposed expenditure any such relation, unless it be to the power to provide for the common defense and to maintain an army and navy. But a careful examination of the subject, with the aid of information officially received since my last annual message was communicated to Congress, has convinced me that the expenditure of the sum proposed would serve no valuable purpose as contributing to the common defense, because all which could be effected by it would be to afford a channel of 12 feet depth, and of so temporary a character, that unless the work was done immediately before the necessity for its use should arise, it could not be relied on for the vessels of even the small draught, the passage of which it would permit.

Under existing circumstances, therefore, it cannot be considered as a necessary means for the common defense, and is subject to those objections which apply to other works designed to facilitate commerce and contribute to the convenience and local prosperity of those more immediately concerned—an object not to be constitutionally and justly attained by the taxation of the people of the whole country.

FRANKLIN PIERCE.

The veto message was ordered to be printed, and on the 7th of July, the question. "Shall the bill pass?" was determined in the affirmative by a vote of 28 yeas against 8 nays. Two-thirds of the Senators present having voted in the affirmative, the bill was passed; and two-thirds of the House of Representatives agreed to pass the same,

FRANKLIN PIERCE.—VIII.

May 22, 1856.

To the Senate of the United States :

Having considered the bill, which originated in the Senate, entitled "An act making an appropriation for deepening the channel over the flats of the Saint Mary's River, in the State of Michigan," it is herewith returned without my approval.

The appropriation proposed by this bill is not, in my judgment, a necessary means for the execution of any of the expressly granted powers of the Federal Government. The work contemplated belongs to a general class of improvements, embracing roads, rivers, and canals, designed to afford additional facilities for intercourse, and for the transit of commerce, and no reason has been suggested to my mind for excepting it from the objections which apply to appropriations by the General Government for deepening the channels of rivers wherever shoals or other obstacles impede their navigation, and thus obstruct

communication and impose restraints upon commerce within the States, or between the States or Territories of the Union. I therefore submit it to the reconsideration of Congress, on account of the same objections which have been presented in my previous communications on the subject of internal improvements.

FRANKLIN PIERCE.

The veto message was printed, and on the 7th of July, 1856, the Senate determined in the affirmative the question "Shall the bill pass, notwithstanding the objections of the President?" by a vote of 27 yeas against 10 nays. Two-thirds of the Senators present having voted in the affirmative, the bill was passed, and the House of Representatives, by a two-thirds vote, agreed to pass the same.

FRANKLIN PIERCE.—IX.

August 11, 1856.

To the House of Representatives:

I return, herewith, to the House of Representatives, in which it originated, a bill entitled "An act for continuing the improvement of the Des Moines Rapids, in the Mississippi River," and submit it for reconsideration, because it is, in my judgment, liable to the objections to the prosecution of internal improvements by the General Government set forth at length in a communication addressed by me to the two houses of Congress, on the thirtieth day of December, 1854, and in other subsequent messages upon the same subject, to which, on this occasion, I respectfully refer.

FRANKLIN PIERCE.

The veto message, having been read, was immediately considered by the House of Representatives, and the main question was put, namely, "Will the House, on reconsideration, agree to pass the said bill?" which was decided in the affirmative by a vote of 130 yeas against 54 nays. So the House passed the bill, but the Senate refused to pass it by a vote of 32 yeas against 17 nays, two-thirds of the Senators present not agreeing. On the 15th of August it was moved that the vote on the question of the passage of the bill be reconsidered, which motion was carried on the 16th of August, and on the question, "Shall this bill pass, the objections of the President to the contrary, notwithstanding?" it was determined in the affirmative by a vote of 30 yeas against 14 nays. So the Senate agreed with the House in passing the bill.

FRANKLIN PIERCE.—X.

August 14, 1856.

To the Senate of the United States:

I return herewith to the Senate, in which it originated, a bill entitled "An act for the improvement of the navigation of the Patapsco River, and to render the port of Baltimore accessible to the war steamers of the United States," and submit it for reconsideration, because it

is, in my judgment, liable to the objections to the prosecution of internal improvements by the General Government, set forth at length in a communication addressed by me to the two houses of Congress on the 30th day of December, 1854, and other subsequent messages upon the same subject, to which, on this occasion, I respectfully refer.

FRANKLIN PIERCE.

The veto message was considered by the Senate immediately after its reception, and the question, "Shall the bill pass?" was determined in the negative by a vote of 27 yeas against 19 nays. The House of Representatives was informed of this rejection of the bill, and on the 16th of August its return was requested. When it had been returned, it was moved that the vote on it be reconsidered. A question was raised whether this motion was in order. The President *pro tempore* decided that it was in order, and on an appeal from the decision of the Chair, was sustained by a vote of 32 yeas against 9 nays. The vote on the passage of the bill was then reconsidered, and on the question, "Shall this bill pass, the objections of the President to the contrary notwithstanding?" it was determined in the affirmative by a vote of 31 yeas against 14 nays. The House of Representatives agreed to the same, and the bill was passed.

JAMES BUCHANAN.—J.

January 7, 1859.

To the House of Representatives :

On the last day of the last session of Congress, as appears by the Journal of the House of Representatives, "a joint resolution in regard to the carrying of the United States mails from Saint Joseph, Missouri, to Placerville, California," was presented to me for my approval. This resolution authorized and directed the Postmaster-General "to order an increase of speed upon said route, requiring the mails to be carried through in thirty days, instead of thirty-eight days, according to the existing contract: *Provided*, The same can be done upon a *pro rata* increase of compensation to the contractors."

I did not approve this joint resolution: First, because it was presented to me at solate a period that I had not the time necessary, on the day of the adjournment of the last session, for an investigation of the subject. Besides, no injury could result to the public, as the Postmaster-General already possessed the discretionary power, under existing laws, to increase the speed upon this as well as all other mail routes.

Second. Because the Postmaster-General, at the moment in the Capitol, informed me that the contractors themselves had offered to increase the speed on this route to thirty instead of thirty-eight days, at a less cost than that authorized by the joint resolution. Upon subsequent examination, it has been ascertained at the Post-Office Department that their bid, which is still pending, proposes to perform this service for a sum less by \$49,000 than that authorized by the resolution.

JAMES BUCHANAN.

The Senate ordered the message to be laid on the table and printed.

JAMES BUCHANAN.—II.

*February 24, 1859.**To the House of Representatives of the United States:*

I return, with my objections, to the House of Representatives, in which it originated, the bill entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," presented to me on the 18th instant.

This bill makes a donation to the several States of twenty thousand acres of the public lands for each Senator and Representative in the present Congress, and also an additional donation of twenty thousand acres for each additional Representative to which any State may be entitled under the census of 1860.

According to a report from the Interior Department, based upon the present number of Senators and Representatives, the lands given to the States amount to six million and sixty thousand acres, and their value, at the minimum Government price of \$1.25 per acre, to \$7,575,000.

The object of this gift, as stated by the bill, is "the endowment, support, and maintenance of at least one college [in each State] where the leading object shall be, without excluding other scientific or classical studies, to teach such branches of learning as are related to agriculture and the mechanic arts, as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

As there does not appear from the bill to be any beneficiaries in existence to which this endowment can be applied, each State is required "to provide, within five years at least, not less than one college, or the grant to said State shall cease." In that event the "said State shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the State shall be valid."

The grant in land itself is confined to such States as have public lands within their limits worth \$1.25 per acre, in the opinion of the governor. For the remaining States the Secretary of the Interior is directed to issue "land scrip to the amount of their distributive shares in acres under the provisions of this act, said scrip to be sold by said States, and the proceeds thereof applied to the uses and purposes prescribed in this act, and for no other use or purpose whatsoever." The lands are granted and the scrip is to be issued "in sections or subdivisions of sections of not less than one-quarter of a section."

According to an estimate from the Interior Department, the number of acres which will probably be accepted by States having public lands within their own limits will not exceed five hundred and eighty thousand acres, and it may be much less, leaving a balance of five million four

hundred and eighty thousand acres to be provided for by scrip. These grants of land and land scrip to each of the thirty-three States are made upon certain conditions, the principal of which is that if the fund shall be lost or diminished on account of unfortunate investments, or otherwise, the deficiency shall be replaced and made good by the respective States.

I shall now proceed to state my objections to this bill. I deem it to be both inexpedient and unconstitutional.

1. This bill has been passed at a period when we can with great difficulty raise sufficient revenue to sustain the expenses of the Government. Should it become a law the Treasury will be deprived of the whole, or nearly the whole, of our income from the sale of public lands, which, for the next fiscal year, has been estimated at \$5,000,000.

A bare statement of the case will make this evident. The minimum price at which we dispose of our lands is \$1.25 per acre. At the present moment, however, the price has been reduced to those who purchase the bounty-land warrants of the old soldiers to eighty-five cents per acre, and of these warrants there are still outstanding and unlocated, as appears by a report (February 12, 1859) from the General Land Office, the amount of eleven million nine hundred and ninety thousand three hundred and ninety-one acres. This has already greatly reduced the current sales by the Government and diminished the revenue from this source. If, in addition, thirty-three States shall enter the market with their land scrip, the price must be greatly reduced below even eighty-five cents per acre, as much to the prejudice of the old soldiers who have not already parted with their land warrants as to Government. It is easy to perceive that with this glut of the market Government can sell little or no lands at \$1.25 per acre, when the price of bounty-land warrants and scrip shall be reduced to half this sum. This source of revenue will be almost entirely dried up. Under the bill the States may sell their land scrip at any price it may bring. There is no limitation whatever in this respect. Indeed, they must sell for what the scrip will bring, for without this fund they cannot proceed to establish their colleges within the five years to which they are limited. It is manifest, therefore, that to the extent to which this bill will prevent the sale of public lands at \$1.25 per acre, to that amount it will have precisely the same effect upon the Treasury as if we should impose a tax to create a loan to endow these State colleges.

Surely the present is the most unpropitious moment which could have been selected for the passage of this bill.

2. Waiving for the present the question of constitutional power, what effect will this bill have on the relations established between the Federal and State governments? The Constitution is a grant to Congress of a few enumerated but most important powers, relating chiefly to war, peace, foreign and domestic commerce, negotiation, and other subjects which can be best or alone exercised beneficially by the com-

mon Government. All other powers are reserved to the States and to the people. For the efficient and harmonious working of both, it is necessary that their several spheres of action should be kept distinct from each other. This alone can prevent conflict and mutual injury. Should the time ever arrive when the State governments shall look to the Federal Treasury for the means of supporting themselves and maintaining their systems of education and internal policy, the character of both governments will be greatly deteriorated. The representatives of the States and of the people, feeling a more immediate interest in obtaining money to lighten the burdens of their constituents than for the promotion of the more distant objects intrusted to the Federal Government, will naturally incline to obtain means from the Federal Government for State purposes. If a question shall arise between an appropriation of land or money, to carry into effect the objects of the Federal Government and those of the States, their feelings will be enlisted in favor of the latter. This is human nature; and hence the necessity of keeping the two governments entirely distinct. The preponderance of this home feeling has been manifested by the passage of the present bill. The establishment of these colleges has prevailed over the pressing wants of the common treasury. No nation ever had such an inheritance as we possess in the public lands. These ought to be managed with the utmost care, but, at the same time, with a liberal spirit toward actual settlers.

In the first year of a war with a powerful naval nation the revenue from customs must, in a great degree, cease. A resort to loans will then become necessary, and these can always be obtained, as our fathers obtained them, on advantageous terms, by pledging the public lands as security. In this view of the subject, it would be wiser to grant money to the States for domestic purposes than to squander away the public lands, and transfer them in large bodies into the hands of speculators.

A successful struggle on the part of the State governments with the General Government for the public lands would deprive the latter of the means of performing its high duties, especially at critical and dangerous periods. Besides, it would operate with equal detriment to the best interests of the States. It would remove the most wholesome of all restraints on legislative bodies—that of being obliged to raise money by taxation from their constituents—and would lead to extravagance, if not to corruption. What is obtained easily and without responsibility will be lavishly expended.

3. This bill, should it become a law, will operate greatly to the injury of the new States. The progress of settlements and the increase of an industrious population, owning an interest in the soil they cultivate, are the causes which will build them up into great and flourishing commonwealths. Nothing could be more prejudicial to their interests than for wealthy individuals to acquire large tracts of the public land and hold them for speculative purposes. The low price to which this land

scrip will probably be reduced will tempt speculators to buy it in large amounts, and locate it on the best lands belonging to the Government. The eventual consequence must be, that the men who desire to cultivate the soil will be compelled to purchase these very lands at rates much higher than the price at which they could be obtained from the Government.

4. It is extremely doubtful, to say the least, whether this bill would contribute to the advancement of agriculture and the mechanic arts—objects the dignity and value of which cannot be too highly appreciated.

The Federal Government which makes the donation has confessedly no constitutional power to follow it into the States and enforce the application of the fund to the intended objects. As donors, we shall possess no control over our own gift after it shall have passed from our hands. It is true that the State legislatures are required to stipulate that they will faithfully execute the trust in the manner prescribed by the bill. But should they fail to do this, what would be the consequence? The Federal Government has no power, and ought to have no power, to compel the execution of the trust. It would be in as helpless a condition as if even in this, the time of great need, we were to demand any portion of the many millions of surplus revenue deposited with the States for safe-keeping under the act of 1836.

5. This bill will injuriously interfere with existing colleges in the different States, in many of which agriculture is taught as a science, and in all of which it ought to be so taught. These institutions of learning have grown up with the growth of the country under the fostering care of the States and the munificence of individuals to meet the advancing demands for education. They have proved great blessings to the people. Many, indeed most of them, are poor, and sustain themselves with difficulty. What the effect will be on these institutions of creating an indefinite number of rival colleges, sustained by the endowment of the Federal Government, it is not difficult to determine.

Under this bill it is provided that scientific and classical studies shall not be excluded from them. Indeed, it would be almost impossible to sustain them without such a provision, for no father would incur the expense of sending a son to one of these institutions for the sole purpose of making him a scientific farmer or mechanic. The bill itself negatives this idea, and declares that their object is "to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life." This certainly ought to be the case. In this view of the subject it would be far better, if such an appropriation of lands must be made to institutions of learning in the several States, to apply it directly to the establishment of professorships of agriculture and the mechanic arts in existing colleges without the intervention of the State legislatures. It would be difficult to foresee how these legislatures will manage this fund. Each Representative in Congress for whose district

the proportion of twenty thousand acres has been granted will probably insist that the proceeds shall be expended within its limits. There will undoubtedly be a struggle between different localities in each State concerning the division of the gift, which may end in disappointing the hopes of true friends of agriculture. For this state of things we are without remedy. Not so in regard to State colleges. We might grant land to these corporations to establish agricultural and mechanical professorships; and, should they fail to comply with the conditions on which they accepted the grant, we might enforce specific performance of these before the ordinary courts of justice.

6. But does Congress possess the power, under the Constitution, to make a donation of public lands to the different States of the Union, to provide colleges for the purpose of educating their own people?

I presume the general proposition is undeniable, that Congress does not possess the power to appropriate money in the Treasury, raised by taxes on the people of the United States, for the purpose of educating the people of the respective States. It will not be pretended that any such power is to be found among the specific powers granted to Congress, nor that "it is necessary and proper for carrying into execution" any one of these powers. Should Congress exercise such a power, this would be to break down the barriers which have been so carefully constructed in the Constitution to separate Federal from State authority. We should then not only "lay and collect taxes, duties, imposts, and excises," for Federal purposes, but for every State purpose which Congress might deem expedient or useful. This would be an actual consolidation of the Federal and State governments, so far as the great taxing and money power is concerned, and constitute a sort of partnership between the two in the Treasury of the United States, equally ruinous to both.

But it is contended that the public lands are placed upon a different footing from money raised by taxation, and that the proceeds arising from their sale are not subject to the limitations of the Constitution, but may be appropriated or given away by Congress, at its own discretion, to States, corporations, or individuals, for any purpose they may deem expedient.

The advocates of this bill attempt to sustain their position upon the language of the second clause of the third section of the fourth article of the Constitution, which declares that "the Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory, or other property belonging to the United States." They contend that by a fair interpretation of the words "disposed of" in this clause, Congress possesses the power to make this gift of public lands to the States for purposes of education.

It would require clear and strong evidence to induce the belief that the framers of the Constitution, after having limited the powers of Congress to certain, precise, and specific objects intended by employing the

words "dispose of," to give that body unlimited power over the vast public domain. It would be a strange anomaly, indeed, to have created two funds—the one by taxation, confined to the execution of the enumerated powers delegated to Congress, and the other from the public lands, applicable to all subjects, foreign and domestic, which Congress might designate. That this fund should be "disposed of," not to pay the debts of the United States, nor "to raise and support armies," nor "to provide and maintain a navy," nor to accomplish any one of the other great objects enumerated in the Constitution; but be diverted from them to pay the debts of the States, to educate their people, and to carry into effect any other measure of their domestic policy. This would be to confer upon Congress a vast and irresponsible authority, utterly at war with the well known jealousy of Federal power which prevailed at the formation of the Constitution. The natural intendment would be, that as the Constitution confined Congress to well-defined specific powers, the funds placed at their command, whether in land or money, should be appropriated to the performance of the duties corresponding with these powers. If not, a Government has been created with all its other powers carefully limited, but without any limitation in respect to the public lands.

But I cannot so read the words "dispose of" as to make them embrace the idea of "giving away." The true meaning of words is always to be ascertained by the subject to which they are applied, and the known general intent of the law-giver. Congress is a trustee under the Constitution for the people of the United States to "dispose of" their public lands, and I think I may venture to assert with confidence, that no case can be found in which a trustee in the position of Congress has been authorized to "dispose of" property by its owner, where it has been held that these words authorized such trustee to give away the fund intrusted to his care. No trustee, when called upon to account for the disposition of the property placed under his management before any judicial tribunal, would venture to present such a plea in his defense. The true meaning of these words is clearly stated by Chief Justice Taney, in delivering the opinion of the court (19 Howard, page 436). He says, in reference to this clause of the Constitution, "it begins its enumeration of powers by that of disposing; in other words, making sale of the lands, or raising money from them, which, as we have already said, was the main object of the cession (from the States), and which is the first thing provided for in the article." It is unnecessary to refer to the history of the times to establish the known fact that this statement of the Chief Justice is perfectly well founded. That it never was intended by the framers of the Constitution that these lands should be given away by Congress is manifest from the concluding portion of the same clause. By it Congress has power not only "to dispose of" the territory, but of the "other property of the United States." In the language of the Chief Justice (page 437): "And the same power of making needful

rules respecting the territory is in precisely the same language applied to the other property of the United States, associating the power over the territory in this respect with the power over movable or personal property; that is, the ships, arms, or munitions of war which then belonged in common to the State sovereignties."

The question is still clearer in regard to the public lands in the States and Territories within the Louisiana and Florida purchases. These lands were paid for out of the public Treasury, from money raised by taxation. Now, if Congress had no power to appropriate the money with which these lands were purchased, is it not clear that the power over the lands is equally limited? The mere conversion of this money into land could not confer upon Congress new power over the disposition of land which they had not possessed over money. If it could, then a trustee, by changing the character of the fund intrusted to his care for social objects, from money into land, might give the land away, or devote it to any purpose he thought proper, however foreign from the trust. The inference is irresistible, that this land partakes of the very same character with the money paid for it, and can be devoted to no objects different from those to which the money could have been devoted. If this were not the case, then, by the purchase of a new territory from a foreign Government, out of the public Treasury, Congress should enlarge their own powers and appropriate the proceeds of the sales of the land thus purchased, at their own discretion, to other and far different objects from what they could have applied the purchase money which had been raised by taxation.

It has been asserted truly that Congress, in numerous instances, have granted lands for the purposes of education. These grants have been chiefly, if not exclusively, made to the new States as they successively entered the Union, and consisted at the first of one section, and afterwards of two sections of the public land in each township for the use of schools, as well as of additional sections for a State university. Such grants are not, in my opinion, a violation of the Constitution. The United States is a great landed proprietor, and from the very nature of this relation it is both the right and the duty of Congress, as their trustee, to manage these lands as any other prudent proprietor would manage them for his own best advantage. Now, no consideration could be presented of a stronger character to induce the American people to brave the difficulties and hardships of frontier life, and to settle upon these lands, and to purchase them at a fair price, than to give to them and to their children an assurance of the means of education. If any prudent individual had held these lands he could not have adopted a wiser course to bring them into market and enhance their value than to give a portion of them for purposes of education. As a mere speculation, he would pursue this course. No person will contend that donations of land to all the States of the Union for the erection of colleges within the limits of each can be embraced by this principle. It cannot

be pretended that an agricultural college in New York or Virginia would aid the settlement or facilitate the sale of public lands in Minnesota or California. This cannot possibly be embraced within the authority which a prudent proprietor of land would exercise over his own possessions. I purposely avoid any attempt to define what portions of land may be granted, and for what purposes, to improve the value and promote the settlement and sale of the remainder without violating the Constitution. In this case I adopt the rule that "sufficient unto the day is the evil thereof."

JAMES BUCHANAN.

The veto message was considered by the House immediately after its reception. After debate, the question "Will the House, on reconsideration, pass the said bill?" was decided in the negative by 105 yeas against 96 nays. So the House refused to pass the bill.

JAMES BUCHANAN.—III.

February 1, 1860.

To the Senate of the United States:

On the last day of the last Congress, a bill, which had passed both houses, entitled "An act making an appropriation for deepening the channel over the Saint Clair flats, in the State of Michigan," was presented to me for approval.

It is scarcely necessary to observe, that during the closing hours of a session it is impossible for the President, on the instant, to examine into the merits or demerits of an important bill, involving, as this does, grave questions, both of expediency and of constitutional power, with that care and deliberation demanded by his public duty, as well as by the best interests of the country. For this reason the Constitution has, in all cases, allowed him ten days for deliberation; because, if a bill be presented to him within the last ten days of the session, he is not required to return it, either with an approval or a veto, but may retain it, "in which case it shall not be a law." Whilst an occasion can rarely occur when so long a period as ten days would be required to enable the President to decide whether he should approve or veto a bill, yet, to deny him even two days on important questions before the adjournment of each session for this purpose, as recommended by a former annual message, would not only be unjust to him, but a violation of the spirit of the Constitution. To require him to approve a bill when it is impossible he could examine into its merits, would be to deprive him of the exercise of his constitutional discretion, and convert him into a mere register of the decrees of Congress. I therefore deem it a sufficient reason for having retained the bill in question that it was not presented to me until the last day of the session.

Since the termination of the last Congress, I have made a thorough examination of the questions involved in the bill to deepen the channel over the Saint Clair flats, and now proceed to express the opinions which I have formed upon the subject:

And 1. Even if this had been a mere question of expediency, it was, to say the least, extremely doubtful whether the bill ought to have been approved; because the object which Congress intended to accomplish by the appropriation which it contains of \$55,000 had been already substantially accomplished. I do not mean to allege that the work had been completed in the best manner, but it was sufficient for all practical purposes.

The Saint Clair flats are formed by the Saint Clair River, which empties into the lake of that name by several mouths, and which forms a bar or shoal on which, in its natural state, there is not more than six or seven feet water. This shoal is interposed between the mouth of the river and the deep water of the lake, a distance of six thousand feet, and in its natural condition was a serious obstruction to navigation. The obvious remedy for this was to deepen a channel through these flats by dredging, so as to enable vessels which could navigate the lake and the river to pass through this intermediate channel. This object had been already accomplished by previous appropriations, but without my knowledge, when the bill was presented to me. Captain Whipple, of the Topographical Engineers, to whom the expenditure of the last appropriation of \$45,000 for this purpose in 1856 was intrusted, in his annual report, of the 1st October, 1858, stated that the dredging was discontinued on the 26th August, 1858, when a channel had been cut averaging two hundred and seventy-five feet wide, with a depth varying from twelve to fifteen and a half feet. He says, "so long as the lake retains its present height we may assume that the depth in the channel will be at least thirteen and a half feet." With this result, highly creditable to Captain Whipple, he observes, that if he has been correctly informed, "all the lake navigators are gratified." Besides, afterwards, and during the autumn of 1858, the Canadian Government expended \$20,000 in deepening and widening the inner end of the channel excavated by the United States. No complaint had been made, previous to the passage of the bill, of obstructions to the commerce and navigation across the Saint Clair flats. What, then, was the object of the appropriation proposed by the bill?

It appears that the surface of the water in Lake Saint Clair has been gradually rising, until, in 1858, it had attained an elevation of four feet above what had been its level in 1841. It is inferred, whether correctly or not it is not for me to say, that the surface of the water may gradually sink to the level of 1841; and, in that event, the water which was, when the bill passed, thirteen and a half feet deep in the channel, might sink to nine and a half feet, and thus obstruct the passage.

To provide for this contingency, Captain Whipple suggested "the propriety of placing the subject before Congress, with an estimate for excavating a cut, through the center of the new channel, one hundred and fifty feet in width and four and a half feet deep, so as to obtain from the river to the lake a depth of eighteen feet during seasons of extreme high water, and twelve feet at periods of extreme low water. It was not alleged that any present necessity existed for this narrower cut in the bottom of the present channel, but it is inferred that for the reason stated it may hereafter become necessary. Captain Whipple's estimate amounted to \$50,000, but Congress, by the bill, have granted \$55,000. Now, if no other objection existed against this measure, it would not seem necessary that the appropriation should have been made for the purpose indicated. The channel was sufficiently deep for all practical purposes; but from natural causes constantly operating in the lake, which I need not explain, this channel is peculiarly liable to fill up. What is really required is, that it should at intervals be dredged out so as to preserve its present depth; and surely the comparatively trifling expense necessary for this purpose ought not to be borne by the United States. After an improvement has been once constructed by appropriations from the Treasury it is not too much to expect that it should be kept in repair by that portion of the commercial and navigating interests which enjoys its peculiar benefits.

The last report made by Captain Whipple, dated on the 13th September last, has been submitted to Congress by the Secretary of War, and to this I would refer for information, which is, upon the whole, favorable in relation to the present condition of the channel through the Saint Clair flats.

2. But the far more important question is, does Congress possess the power under the Constitution to deepen the channels of rivers and to create and improve harbors for purposes of commerce?

The question of the constitutional power of Congress to construct internal improvements within the States has been so frequently and so elaborately discussed that it would seem useless on this occasion to repeat or to refute at length arguments which have been so often advanced. For my own opinions on this subject I might refer to President Polk's carefully considered message of the 15th December, 1847, addressed to the House of Representatives whilst I was a member of his Cabinet.

The power to pass the bill in question, if it exist at all, must be derived from the power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

The power "to regulate:" Does this ever embrace the power to create or to construct? To say that it does is to confound the meaning of words of well-known signification. The word "regulate" has several shades of meaning, according to its application to different subjects,

but never does it approach the signification of creative power. The regulating power necessarily presupposes the existence of something to be regulated. As applied to commerce, it signifies, according to the lexicographers, "to subject to rules or restrictions, as to regulate trade," &c. The Constitution itself is its own best expounder of the meaning of words employed by its framers. Thus, Congress have the power "to coin money." This is the creative power. Then immediately follows the power "to regulate the value thereof"—that is, of the coined money thus brought into existence. The words "regulate," "regulation," and "regulations" occur several times in the Constitution, but always with this subordinate meaning. Thus, after the creative power "to raise and support armies" and "to provide and maintain the navy" had been conferred upon Congress, then follows the power "to make rules for the government and regulation of the land and naval forces" thus called into being. So the Constitution, acting upon the self-evident fact that "commerce with foreign nations and among the several States and with the Indian tribes" already existed, conferred upon Congress the power "to regulate" this commerce. Thus, according to Chief Justice Marshall, the power to regulate commerce "is the power to prescribe the rule by which commerce is to be governed." And Mr. Madison, in his veto message of the 3d March, 1817, declares that "the power to regulate commerce among the several States cannot include a power to construct roads and canals, and to improve the navigation of water-courses, in order to facilitate, promote, and secure such commerce without a latitude of construction departing from the ordinary import of the terms, strengthened by the known inconvenience which doubtless led to the grant of this remedial power of Congress." We know from the history of the Constitution what these inconveniences were. Different States admitted foreign imports at different rates of duty. Those which had prescribed a higher rate of duty for the purpose of increasing their revenue were defeated in this object by the legislation of neighboring States admitting the same foreign articles at lower rates. Hence, jealousies and dangerous rivalries had sprung up between the different States. It was chiefly in the desire to provide a remedy for these evils that the Federal Convention originated. The Constitution, for this purpose, conferred upon Congress the power to regulate commerce in such a manner that duties should be uniform in all the States composing the Confederacy; and, moreover, expressly provided that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." If the construction of a harbor or deepening the channel of a river be a regulation of commerce, as the advocates of this power contend, this would give the ports of the State within which these improvements were made a preference over the ports of other States, and thus be a violation of the Constitution.

It is not too much to assert that no human being in existence, when the Constitution was framed, entertained the idea or the apprehension that, by conferring upon Congress the power to regulate commerce, its framers intended to embrace the power of constructing roads and canals, and of creating and improving harbors, and deepening the channels of rivers throughout our extensive Confederacy. Indeed, one important branch of this very power had been denied to Congress in express terms by the Convention. A proposition was made in the Convention to confer on Congress the power "to provide for the cutting of canals when deemed necessary." This was rejected by the strong majority of eight States to three. Among the reasons given for this rejection was, that "the expense in such cases will fall on the United States, and the benefits accrue to the places where the canals may be cut."

To say that the simple power of regulating commerce embraces within itself that of constructing harbors, of deepening the channels of rivers, in short, of creating a system of internal improvements for the purpose of facilitating the operations of commerce, would be to adopt a latitude of construction under which all political power might be usurped by the Federal Government. Such a construction would be in conflict with the well-known jealousy against Federal power which actuated the framers of the Constitution. It is certain that the power in question is not enumerated among the express grants to Congress contained in the instrument. In construing the Constitution, we must then next inquire, is its exercise "necessary and proper?"—not whether it may be convenient or useful "for carrying into execution" the power to regulate commerce among the States. But the jealous patriots of that day were not content even with this strict rule of construction. Apprehending that a dangerous latitude of interpretation might be applied in future times to the enumerated grants of power, they procured an amendment to be made to the original instrument, which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The distinctive spirit and character which pervades the Constitution is, that the powers of the General Government are confined chiefly to our intercourse with foreign nations, to questions of peace and war, and to subjects of common interest to all the States, carefully leaving the internal and domestic concerns of each individual State to be controlled by its own people and legislature. Without specifically enumerating these powers, it must be admitted that this well-marked distinction runs through the whole instrument. In nothing does the wisdom of its framers appear more conspicuously than in the care with which they sought to avoid the danger to our institutions which must necessarily result from the interference of the Federal Government with the local concerns of the States. The jarring and collision which would occur from the exercise by two separate governments of jurisdiction over the

same subjects could not fail to produce disastrous consequences. Besides, the corrupting and seducing money influence exerted by the General Government in carrying into effect a system of internal improvements might be perverted to increase and consolidate its own power to the detriment of the rights of the States.

If the power existed in Congress to pass the present bill, then taxes must be imposed, and money borrowed to an unlimited extent to carry such a system into execution. Equality among the States is equity. This equality is the very essence of the Constitution. No preference can justly be given to one of the sovereign States over another. According to the best estimate, our immense coast on the Atlantic, the Gulf of Mexico, the Pacific, and the lakes, embraces more than 9,500 miles, and, measuring by its indentations and to the head of tide-water on the rivers, the distance is believed to be more than 33,000 miles. This, everywhere throughout its vast extent, contains numerous rivers and harbors; all of which may become the objects of congressional appropriation. You cannot deny to one State what you have granted to another. Such injustice would produce strife, jealousy, and alarming dissensions among them. Even within the same State improvements may be made in one river or harbor which would essentially injure the commerce and industry of another river or harbor. The truth is that most of these improvements are in a great degree local in their character, and for the especial benefit of corporations or individuals in their vicinity, though they may have an odor of nationality, on the principle that whatever benefits any part indirectly benefits the whole.

From our past history, we may have a small foretaste of the cost of reviving the system of internal improvements.

For more than thirty years after the adoption of the Federal Constitution the power to appropriate money for the construction of internal improvements was neither claimed nor exercised by Congress. After its commencements, in 1820 and 1821, by very small and modest appropriations for surveys, it advanced with such rapid strides that, within the brief period of ten years, according to President Polk, "the sum asked for from the Treasury, for various projects, amounted to more than \$200,000,000." The vetoes of General Jackson and several of his successors have impeded the progress of the system and limited its extent, but have not altogether destroyed it. The time has now arrived for a final decision of the question. If the power exists, a general system should be adopted which would make some approach to justice among all the States, if this be possible.

What a vast field would the exercise of this power open for jobbing and corruption! Members of Congress, from an honest desire to promote the interests of their constituents, would struggle for improvements within their own districts, and the body itself must necessarily be converted into an arena where each would endeavor to obtain from the Treasury as much money as possible for his own locality. The tempta-

tion would prove irresistible. A system of "*log-rolling*" (I know no word so expressive) would be inaugurated, under which the Treasury would be exhausted, and the Federal Government be deprived of the means necessary to execute those great powers clearly confided to it by the Constitution for the purpose of promoting the interests and vindicating the honor of the country.

Whilst the power over internal improvements, it is believed, was "reserved to the States, respectively," the framers of the Constitution were not unmindful that it might be proper for the State legislatures to possess the power to impose tonnage duties for the improvement of rivers and harbors within their limits. The self-interest of the different localities would prevent this from being done to such an extent as to injure their trade. The Constitution, therefore, which had, in a previous clause, provided that all duties should be uniform throughout the United States, subsequently modified the general rule so far as to declare that "no State shall, without the consent of Congress, levy any duty of tonnage." The inference is, therefore, irresistible that, with the consent of Congress, such a duty may be imposed by the States. Thus, those directly interested in the improvement may lay a tonnage duty for its construction, without imposing a tax for this purpose upon all the people of the United States.

To this provision several of the States resorted until the period when they began to look to the Federal Treasury instead of depending upon their own exertions. Massachusetts, Rhode Island, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, and Georgia, with the consent of Congress, imposed small tonnage duties on vessels, at different periods, for clearing and deepening the channels of rivers and improving harbors where such vessels entered. The last of these legislative acts believed to exist is that of Virginia, passed on the 22d February, 1826, levying a tonnage duty on vessels for "improving the navigation of James River from Warwick to Rockett's Landing." The latest act of Congress on this subject was passed on the 24th of February, 1843, giving its consent to the law of the legislature of Maryland laying a tonnage duty on vessels for the improvement of the harbor of Baltimore, and continuing it in force until 1st June, 1850.

Thus a clear constitutional mode exists by which the legislature of Michigan may, in its discretion, raise money to preserve the channel of the Saint Clair River at its present depth, or to render it deeper. A very insignificant tonnage duty on American vessels using this channel would be sufficient for the purpose. And as the Saint Clair River is the boundary line between the United States and the province of Upper Canada, the provincial British authorities would doubtless be willing to impose a similar tonnage duty on British vessels to aid in the accomplishment of this object. Indeed, the legislature of that province have already evinced their interest on this subject by having but recently expended \$20,000 on the improvement of the Saint Clair flats. Even

if the Constitution of the United States had conferred upon Congress the power of deepening the channel of the Saint Clair River, it would be unjust to impose upon the people of the United States the entire burden, which ought to be borne jointly by the two parties having an equal interest in the work. Whenever the State of Michigan shall cease to depend on the Treasury of the United States, I doubt not that she, in conjunction with Upper Canada, will provide the necessary means for keeping this work in repair in the least expensive and most effective manner, and without being burdensome to any interest.

It has been contended, in favor of the existence of the power to construct internal improvements, that Congress have, from the beginning, made appropriations for light-houses, and that, upon the same principle of construction, they possess the power of improving harbors and deepening the channels of rivers. As an original question, the authority to erect light-houses under the commercial power might be considered doubtful; but even were it more doubtful than it is, I should regard it as settled after an uninterrupted exercise of the power for seventy years. Such a long and uniform practical construction of the Constitution is entitled to the highest respect, and has finally determined the question.

Among the first acts which passed Congress after the Federal Government went into effect, was that of August 7, 1789, providing "for the establishment and support of light-houses, beacons, buoys, and public piers." Under this act, the expenses for the maintenance of all such erections then in existence were to be paid by the Federal Government; and provision was made for the cession of jurisdiction over them by the respective States to the United States. In every case since, before a light-house could be built, a previous cession of jurisdiction has been required. This practice doubtless originated from that clause of the Constitution authorizing Congress "to exercise exclusive legislation" * * * "over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other *needful buildings*." Among these "*needful buildings*," light-houses must in fact have been included.

The bare statement of these facts is sufficient to prove that no analogy exists between the power to erect a light-house as a "needful building" and that to deepen the channel of a river.

In what I have said I do not mean to intimate a doubt of the power of Congress to construct such internal improvements as may be essentially necessary for defense and protection against the invasion of a foreign enemy. The power to declare war and the obligation to protect each State against invasion clearly cover such cases. It will scarcely be claimed, however, that the improvement of the Saint Clair River is within this category. This river is the boundary line between the United States and the British province of Upper Canada. Any improvement of its navigation, therefore, which we could make for purposes of war would equally enure to the benefit of Great Britain, the

only enemy which could possibly confront us in that quarter. War would be a sad calamity for both nations; but should it ever unhappily exist, the battles will not be fought on the Saint Clair River or on the lakes with which it communicates.

JAMES BUCHANAN.

The message was read and ordered to be printed and lie on the table.

JAMES BUCHANAN.—IV.

February 6, 1860.

To the Senate of the United States:

On the last day of the last session of Congress, a resolution, which had passed both houses, "in relation to removal of obstructions to navigation in the mouth of the Mississippi River," was presented to me for approval. I have retained this resolution, because it was presented to me at a period when it was impossible to give the subject that examination to which it appeared to be entitled. I need not repeat the views on this point presented in the introductory portion of my message to the Senate of the 2d instant.

In addition, I would merely observe that, although at different periods, sums, amounting in the aggregate to six hundred and ninety thousand dollars, have been appropriated by Congress for the purpose of removing the bar and obstructions at the mouth of the Mississippi, yet it is now acknowledged that this money has been expended with but little, if any, practical benefit to its navigation.

JAMES BUCHANAN.

It was ordered that the message lie on the table and be printed.

JAMES BUCHANAN.—V.

March 28, 1860.

To the House of Representatives:

After a day which has afforded me ample time for reflection, and after much and careful deliberation, I find myself constrained by an imperious sense of duty, as a co-ordinate branch of the Federal Government, to protest against the first two clauses of the first resolution adopted by the House of Representatives on the 5th instant, and published in the Congressional Globe on the succeeding day. These clauses are in the following words: "*Resolved*, That a committee of five members be appointed by the Speaker, for the purpose, 1st, of investigating whether the President of the United States, or any other officer of the Government, has, by money, patronage, or other improper

means, sought to influence the action of Congress, or any committee thereof, for or against the passage of any law appertaining to the rights of any State or Territory; and 2d, 'also to inquire into and investigate whether any officer or officers of the Government have, by combination or otherwise, prevented or defeated, or attempted to prevent or defeat, the execution of any law or laws now upon the statute-book; and whether the President has failed or refused to compel the execution of any law thereof.'"

I confine myself exclusively to these two branches of the resolution, because the portions of it which follow relate to alleged abuses in post-offices, navy-yards, public buildings, and other public works of the United States. In such cases inquiries are highly proper in themselves, and belong equally to the Senate and the House as incident to their legislative duties, and being necessary to enable them to discover and to provide the appropriate legislative remedies for any abuses which may be ascertained. Although the terms of the latter portion of the resolution are extremely vague and general, yet my sole purpose in adverting to them at present is to mark the broad line of distinction between the accusatory and the remedial clauses of this resolution. The House of Representatives possess no power under the Constitution over the first or accusatory portion of the resolution, except as an impeaching body; whilst over the last, in common with the Senate, their authority as a legislative body is fully and cheerfully admitted.

It is solely in reference to the first or impeaching power that I propose to make a few observations. Except in this single case, the Constitution has invested the House of Representatives with no power, no jurisdiction, no supremacy whatever over the President. In all other respects he is quite as independent of them as they are of him. As a coordinate branch of the Government he is their equal. Indeed, he is the only direct representative on earth of the people of all and each of the sovereign States. To them, and to them alone, is he responsible whilst acting within the sphere of his constitutional duty, and not in any manner to the House of Representatives. The people have thought proper to invest him with the most honorable, responsible, and dignified office in the world; and the individual, however unworthy, now holding this exalted position, will take care, so far as in him lies, that their rights and prerogatives shall never be violated in his person, but shall pass to his successors unimpaired by the adoption of a dangerous precedent. He will defend them to the last extremity against any unconstitutional attempt, come from what quarter it may, to abridge the constitutional rights of the Executive, and render him subservient to any human power except themselves.

The people have not confined the President to the exercise of executive duties. They have also conferred upon him a large measure of legislative discretion. No bill can become a law without his approval, as

representing the people of the United States, unless it shall pass after his veto by a majority of two-thirds of both houses. In his legislative capacity, he might, in common with the Senate and the House, institute an inquiry to ascertain any facts which ought to influence his judgment in approving or vetoing any bill.

This participation in the performance of legislative duties between the co-ordinate branches of the Government ought to inspire the conduct of all of them, in their relations towards each other, with mutual forbearance and respect. At least each has a right to demand justice from the other. The cause of complaint is, that the constitutional rights and immunities of the Executive have been violated in the person of the President.

The trial of an impeachment of the President before the Senate on charges preferred and prosecuted against him by the House of Representatives would be an imposing spectacle for the world. In the result, not only his removal from the presidential office would be involved, but, what is of infinitely greater importance to himself, his character, both in the eyes of the present and of future generations, might possibly be tarnished. The disgrace cast upon him would in some degree be reflected upon the character of the American people who elected him. Hence the precautions adopted by the Constitution to secure a fair trial. On such a trial it declares that "the Chief Justice shall preside." This was doubtless because the framers of the Constitution believed it to be possible that the Vice-President might be biased by the fact that, "in case of the removal of the President from office," "the same shall devolve on the Vice-President."

The preliminary proceedings in the House in the case of charges which may involve impeachment have been well and wisely settled by long practice upon principles of equal justice both to the accused and to the people. The precedent established in the case of Judge Peck, of Missouri, in 1831, after a careful review of all former precedents, will, I venture to predict, stand the test of time.

In that case, Luke Edward Lawless, the accuser, presented a petition to the House, in which he set forth minutely and specifically his causes of complaint. He prayed "that the conduct and proceeding in this behalf of said Judge Peck may be inquired into by your honorable body, and such decision made thereon as to your wisdom and justice shall seem proper." This petition was referred to the Judiciary Committee; such has ever been deemed the appropriate committee to make similar investigations. It is a standing committee supposed to be appointed without reference to any special case, and at all times is presumed to be composed of the most eminent lawyers in the House from different portions of the Union, whose acquaintance with judicial proceedings and whose habits of investigation qualify them peculiarly for the task. No tribunal, from their position and character, could in the nature of things be more impartial. In the case of Judge Peck the witnesses

were selected by the committee itself, with a view to ascertain the truth of the charge. They were cross-examined by him, and everything was conducted in such manner as afford him no reasonable cause of complaint. In view of this precedent, and, what is of far greater importance, in view of the Constitution and the principles of eternal justice, in what manner has the President of the United States been treated by the House of Representatives? Mr. John Covode, a Representative from Pennsylvania, is the accuser of the President. Instead of following the wise precedents of former times, and especially that in the case of Judge Peck, and referring the accusation to the Committee on the Judiciary, the House have made my accuser one of my judges.

To make the accuser the judge is a violation of the principles of universal justice, and is condemned by the practice of all civilized nations. Every freeman must revolt at such a spectacle. I am to appear before Mr. Covode, either personally or by a substitute, to cross-examine the witnesses which he may produce before himself to sustain his own accusations against me; and perhaps even this poor boon may be denied to the President.

And what is the nature of the investigation which his resolution proposes to institute? It is as vague and general as the English language affords words in which to make it. The committee is to inquire, not into any specific charge or charges, but whether the President has, by "money, patronage, or other improper means, sought to influence," not the action of any individual member or members of Congress, but "the action" of the entire body "of Congress" itself, "or any committee thereof." The President might have had some glimmering of the nature of the offense to be investigated, had his accuser pointed to the act or acts of Congress which he sought to pass or to defeat by the employment of "money, patronage, or other improper means." But the accusation is bounded by no such limits. It extends to the whole circle of legislation; to interference "for or against the passage of any law appertaining to the rights of any State or Territory." And what law does not appertain to the rights of some State or Territory? And what law or laws has the President failed to execute? These might easily have been pointed out had any such existed.

Had Mr. Lawless asked an inquiry to be made by the House, whether Judge Peck, in general terms, had not violated his judicial duties, without the specification of any particular act, I do not believe there would have been a single vote in that body in favor of the inquiry.

Since the time of the Star Chamber and of general warrants there has been no such proceeding in England.

The House of Representatives, the high impeaching power of the country, without consenting to hear a word of explanation, have indorsed this accusation against the President, and made it their own act. They even refused to permit a member to inquire of the President's

accuser what were the specific charges against him. Thus, in this preliminary accusation of "high crimes and misdemeanors" against a co-ordinate branch of the Government, under the impeaching power, the House refused to hear a single suggestion even in regard to the correct mode of proceeding, but, without a moment's delay, passed the accusatory resolutions under the pressure of the previous question.

In the institution of a prosecution for any offense against the most humble citizen—and I claim for myself no greater rights than he enjoys—the Constitution of the United States, and of the several States, require that he shall be informed in the very beginning of the nature and cause of the accusation against him, in order to enable him to prepare for his defense. There are other principles which I might enumerate, not less sacred, presenting an impenetrable shield to protect every citizen falsely charged with a criminal offense. These have been violated in the prosecution instituted by the House of Representatives against the executive branch of the Government. Shall the President alone be deprived of the protection of these great principles which prevail in every land where a ray of liberty penetrates the gloom of despotism? Shall the Executive alone be deprived of rights which all his fellow-citizens enjoy? The whole proceeding against him justifies the fears of those wise and great men who, before the Constitution was adopted by the States, apprehended that the tendency of the Government was to the aggrandizement of the legislative at the expense of the executive and judicial departments.

I again declare emphatically that I make this protest for no reason personal to myself, and I do it with perfect respect for the House of Representatives, in which I had the honor of serving as a member for five successive terms. I have lived long in this goodly land, and have enjoyed all the offices and honors which my country could bestow. Amid all the political storms through which I have passed, the present is the first attempt which has ever been made, to my knowledge, to assail my personal or official integrity; and this as the time is approaching when I shall voluntarily retire from the service of my country. I feel proudly conscious that there is no public act of my life which will not bear the strictest scrutiny. I defy all investigation. Nothing but the basest perjury can sully my good name. I do not fear even this, because I cherish an humble confidence that the Gracious Being who has hitherto defended and protected me against the shafts of falsehood and malice will not desert me now, when I have become "old and gray-headed." I can declare before God and my country that no human being (with an exception scarcely worthy of notice) has, at any period of my life, dared to approach me with a corrupt or dishonorable proposition; and, until recent developments, it had never entered into my imagination that any person, even in the storm of exasperated political excitement, would charge me, in the most remote degree, with having

made such a proposition to any human being. I may now, however, exclaim in the language of complaint employed by my first and greatest predecessor, that I have been abused "in such exaggerated and indecent terms as could scarcely be applied to a Nero, to a notorious defaulter, or even to a common pickpocket."

I do, therefore, for the reasons stated, and in the name of the people of the several States, solemnly protest against these proceedings of the House of Representatives, because they are in violation of the rights of the co-ordinate executive branch of the Government, and subversive of its constitutional independence; because they are calculated to foster a band of interested parasites and informers, ever ready, for their own advantage, to swear before *ex parte* committees to pretended private conversations between the President and themselves, incapable from their nature of being disproved, thus furnishing material for harassing him, degrading him in the eyes of the country, and eventually, should he be a weak or a timid man, rendering him subservient to improper influences, in order to avoid such persecutions and annoyances, because they tend to destroy that harmonious action for the common good which ought to be maintained, and which I sincerely desire to cherish between co-ordinate branches of the Government; and, finally, because, if unre-sisted, they would establish a precedent dangerous and embarrassing to all my successors, to whatever political party they might be attached.

JAMES BUCHANAN.

The House, after a protracted debate, passed, on the 8th day of June, by a vote of 87 yeas against 40 yeas, the following resolutions:

"*Resolved*, That the House dissents from the doctrines of the special message of the President of the United States of March 28, 1860;

"That the extent of power contemplated in the adoption of the resolutions of inquiry of March 5, 1860, is necessary to the proper discharge of the constitutional duties devolved upon Congress;

"That judicial determinations, the opinions of former Presidents, and uniform usage sanction its exercise; and

"That to abandon it would leave the executive department of the Government without supervision or responsibility, and would be likely to lead a concentration of power in the hands of the President, dangerous to the rights of a free people."

JAMES BUCHANAN.—VI.

. April 17, 1860.

To the Senate of the United States :

I return, with my objections, to the Senate, for their reconsideration, the bill entitled "An act for the relief of Arthur Edwards and his associates," presented to me on the 10th instant.

This bill directs the Postmaster-General "to audit and settle the accounts of Arthur Edwards and his associates, for transporting the United

States through mail on their steamers during the years 1849 and 1853 and intervening years," between Cleveland and Detroit, between Sandusky and Detroit, and between Toledo and Detroit, and "to allow and pay them not less than \$28.60 for each and every passage of said steamers between said places during the aforementioned time, when the mails were on board."

I have caused a statement to be made at the Post-Office Department of the least sum which can be paid to Mr. Edwards and his associates under the bill should it become a law, and from this it appears the amount will be \$80,450.23.

Mr. Edwards and his associates, in 1854, a short time after the alleged services had been rendered, presented a claim to the Postmaster-General for \$25,180 as compensation for these services. This claim consists of nine items, setting forth specifically all the services embraced by the present bill. It is fair to presume that the parties best knew the value of their own service, and that they would not, by an underestimate, do themselves injustice. The whole claim of \$25,180 was rejected by the Postmaster-General, for reasons which it is no part of my present purpose to discuss.

The claimants next presented a petition to the Court of Claims in June, 1855, "for a reasonable compensation" for these services, and "pray the judgment of your honorable court for the actual value of the service rendered by them, and received by the United States, which amounts to the sum of \$50,000." Thus, the estimate which they placed upon their services had nearly doubled between 1854 and 1855; had risen from \$25,180 to \$50,000. On the ———, after a full hearing, the court decided against the claim, and delivered an opinion in support of this decision which cannot, I think, be contested on legal principles. But they state, in conclusion of the opinion, that "for any compensation for their services beyond what they have received, they must depend upon the discretion of Congress."

This decision of the Court of Claims was reported to Congress on the 1st of April, 1858, and from it the present bill has originated. The amount granted by it is more by upwards of \$55,000 than the parties themselves demanded from the Postmaster-General in 1854, and is more, by upwards of \$30,000, than they demanded when before the Court of Claims. The enormous difference in their favor between their own original demand and the amount granted by the present bill constitutes my chief objection to it. In presenting this objection, I do not propose to enter into the question whether the claimants are entitled in equity to any compensation for their services beyond that which it is alleged they have already received; or, if so, what would be "a reasonable and fair compensation." My sole purpose is to afford Congress an opportunity of reconsidering this case on account of its peculiar circumstances. I transmit to the Senate the reports of Horatio King, Acting

Postmaster-General, and of A. N. Zevely, Third Assistant Postmaster-General, both dated on the 14th of April, 1860, on the subject of this claim.

JAMES BUCHANAN.

The veto message was read and its immediate consideration postponed, from time to time, until the 7th of June, when a vote was taken on the question "Shall the bill pass, notwithstanding the objection of the President?" which was determined in the negative by a vote of 22 yeas against 30 nays. So the bill was not passed.

JAMES BUCHANAN.—VII.

June 22, 1860.

To the Senate of the United States :

I return, with my objections, to the Senate, in which it originated, the bill entitled "An act to secure homesteads to actual settlers on the public domain, and for other purposes," presented to me on the 20th instant.

This bill gives to every citizen of the United States, "who is the head of a family," and to every person of foreign birth residing in the country, who has declared his intention to become a citizen, though he may not be the head of a family, the privilege of appropriating to himself one hundred and sixty acres of Government land, of settling and residing upon it for five years; and should his residence continue until the end of this period, he shall then receive a patent on the payment of twenty-five cents per acre, or one-fifth of the present Government price. During this period, the land is protected from all the debts of the settler.

This bill also contains a cession to the States of all the public lands within their respective limits "which have been subject to sale at private entry, and which remain unsold after the lapse of thirty years." This provision embraces a present donation to the States of twelve million two hundred and twenty-nine thousand seven hundred and thirty-one acres, and will, from time to time, transfer to them large bodies of such lands which, from peculiar circumstances, may not be absorbed by private purchase and settlement.

To the actual settler, this bill does not make an absolute donation; but the price is so small that it can scarcely be called a sale. It is nominally twenty-five cents per acre; but, considering this is not to be paid until the end of five years, it is, in fact, reduced to about eighteen cents per acre, or one seventh of the present minimum price of the public lands. In regard to the States, it is an absolute and unqualified gift.

1. This state of the facts raises the question whether Congress, under the Constitution, has the power to give away the public lands either to States or individuals. On this question, I expressed a decided opinion

in my message to the House of Representatives, of the 24th February, 1859, returning the agricultural college bill. This opinion remains unchanged. The argument then used applies, as a constitutional objection, with greater force to the present bill. There it had the plea of consideration, growing out of a specific beneficial purpose; here, it is an absolute gratuity to the States without the pretext of consideration. I am compelled, for want of time, in these the last hours of the session to quote largely from this message.

I presume the general proposition will be admitted that Congress does not possess the power to make donations of money already in the Treasury, raised by taxes on the people, either to States or individuals.

But it is contended that the public lands are placed upon a different footing from money raised by taxation, and that the proceeds arising from their sale are not subject to the limitations of the Constitution, but may be appropriated or given away by Congress, at its own discretion, to States, corporations, or individuals, for any purpose they may deem expedient.

The advocates of this bill attempt to sustain their position upon the language of the second clause of the third section of the fourth article of the Constitution, which declares that "the Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States." They contend that, by a fair interpretation of the words "dispose of" in this clause, Congress possesses the power to make this gift of public lands to the States for purposes of education.

It would require clear and strong evidence to induce the belief that the framers of the Constitution, after having limited the powers of Congress to certain, precise, and specific objects, intended by employing the words "dispose of," to give that body unlimited power over the vast public domain. It would be a strange anomaly, indeed, to have created two funds, the one by taxation, confined to the execution of the enumerated powers delegated to Congress, and the other from the public lands, applicable to all subjects, foreign and domestic, which Congress might designate. That this fund should be "disposed of," not to pay the debts of the United States, nor "to raise and support armies," nor "to provide and maintain a navy," nor to accomplish any one of the other great objects enumerated in the Constitution; but be diverted from them to pay the debts of the States, to educate their people, and to carry into effect any other measure of their domestic policy. This would be to confer upon Congress a vast and irresponsible authority, utterly at war with the well-known jealousy of Federal power which prevailed at the formation of the Constitution. The natural intendment would be that, as the Constitution confined Congress to well-defined specific powers, the funds placed at their command, whether in land or money, should be appropriated to the performance of the duties corresponding with these powers. If not, a government has been created with all its other powers carefully limited, but without any limitation in respect to the public lands.

But I cannot so read the words "dispose of" as to make them embrace the idea of "giving away." The true meaning of words is always to be ascertained by the subject to which they are applied, and the known general intent of the lawgiver. Congress is a trustee under the Constitution for the people of the United States to "dispose of" their public

lands; and I think I may venture to assert with confidence, that no case can be found in which a trustee in the position of Congress has been authorized to "*dispose of*" property by its owner, where it has ever been held that these words authorized such trustee to give away the fund intrusted to his care. No trustee, when called upon to account for the disposition of the property placed under his management before any judicial tribunal, would venture to present such a plea in his defense. The true meaning of these words is clearly stated by Chief Justice Taney in delivering the opinion of the court (19 Howard, p. 436). He says, in reference to this clause of the Constitution: "It begins its enumeration of powers by that of disposing, in other words, making sale of, the lands, or raising money from them, which, as we have already said, was the main object of the cession (from the States), and which is the first thing provided for in the article." It is unnecessary to refer to the history of the times to establish the known fact that this statement of the Chief Justice is perfectly well-founded. That it never was intended by the framers of the Constitution that these lands should be given away by Congress is manifest from the concluding portion of the same clause. By it, Congress has power not only "to dispose of" the territory, but of the "other property of the United States." In the language of the Chief Justice (p. 437): "And the same power of making needful rules respecting the territory is in precisely the same language applied to the other property of the United States, associating the power over the territory, in this respect, with the power over movable or personal property—that is, the ships, arms, or munitions of war which then belonged in common to the State sovereignties."

The question is still clearer in regard to the public lands in the States and territories within the Louisiana and Florida purchases. These lands were paid for out of the public Treasury from money raised by taxation. Now, if Congress had no power to appropriate the money with which these lands were purchased, is it not clear that the power over the lands is equally limited? The mere conversion of this money into land could not confer upon Congress new power over the disposition of land which they had not possessed over money. If it could, then a trustee, by changing the character of the fund intrusted to his care for special objects from money paid into land, might give the land away, or devote it to any purpose he thought proper, however foreign from the trust. The inference is irresistible that this land partakes of the very same character with the money paid for it, and can be devoted to no objects different from those to which the money could have been devoted. If this were not the case, then, by the purchase of a new territory from a foreign Government out of the public Treasury, Congress could enlarge their own powers, and appropriate the proceeds of the sales of the land thus purchased, at their own discretion, to other and far different objects from what they could have applied the purchase money which had been raised by taxation.

2. It will prove unequal and unjust in its operation among the actual settlers themselves.

The first settlers of a new country are a most meritorious class. They brave the dangers of savage warfare, suffer the privations of a frontier life, and with the hand of toil bring the wilderness into cultivation. The "old settlers," as they are everywhere called, are public benefactors. This class have all paid for their lands the Government price, or \$1.25 per acre. They have constructed roads, established

schools, and laid the foundation of prosperous commonwealths. Is it just, is it equal, that, after they have accomplished all this by their labor, new settlers should come in among them and receive their farms at the price of twenty-five or eighteen cents per acre? Surely the old settlers, as a class, are entitled to at least equal benefits with the new. If you give the new settlers their land for a comparatively nominal price, upon every principle of equality and justice you will be obliged to refund out of the common treasury the difference which the old have paid above the new settlers for their land.

3. This bill will do great injustice to the old soldiers who have received land warrants for their services in fighting the battles of their country. It will greatly reduce the market value of these warrants. Already their value has sunk, for one hundred and sixty acre warrants, to sixty-seven cents per acre, under an apprehension that such a measure as this might become a law. What price would they command, when any head of a family may take possession of a quarter section of land and not pay for it until the end of five years, and then at the rate of only twenty-five cents per acre? The magnitude of the interest to be effected will appear in the fact that there are outstanding unsatisfied land warrants reaching back to the last war with Great Britain, and even Revolutionary times, amounting, in round numbers, to seven and a half millions of acres.

4. This bill will prove unequal and unjust in its operation, because, from its nature, it is confined to one class of our people. It is a boon exclusively conferred upon the cultivators of the soil. Whilst it is cheerfully admitted that these are the most numerous and useful class of our fellow-citizens, and eminently deserve all the advantages which our laws have already extended to them, yet there should be no new legislation which would operate to the injury or embarrassment of the large body of respectable artisans and laborers. The mechanic who emigrates to the West and pursues his calling must labor long before he can purchase a quarter section of land, whilst the tiller of the soil who accompanies him obtains a farm at once by the bounty of the Government. The numerous body of mechanics in our large cities cannot, even by emigrating to the West, take advantage of the provisions of this bill without entering upon a new occupation, for which their habits of life have rendered them unfit.

5. This bill is unjust to the old States of the Union in many respects; and amongst these States, so far as the public lands are concerned, we may enumerate every State east of the Mississippi, with the exception of Wisconsin and a portion of Minnesota.

It is a common belief, within our limits, that the older States of the Confederacy do not derive their proportionate benefit from the public lands. This is not a just opinion. It is doubtful whether they could be rendered more beneficial to these States under any other system

than that which at present exists. Their proceeds go into the common treasury to accomplish the objects of the Government, and in this manner all the States are benefited in just proportion. But to give this common inheritance away would deprive the old States of their just proportion of this revenue without holding out any, the least, corresponding advantage. Whilst it is our common glory that the new States have become so prosperous and populous, there is no good reason why the old States should offer premiums to their own citizens to emigrate from them to the West. That land of promise presents in itself sufficient allurements to our young and enterprising citizens, without any adventitious aid. The offer of free farms would probably have a powerful effect in encouraging emigration, especially from States like Illinois, Tennessee, and Kentucky, to the west of the Mississippi, and could not fail to reduce the price of property within their limits. An individual in States thus situated would not pay its fair value for land when, by crossing the Mississippi, he could go upon the public lands and obtain a farm almost without money and without price.

6. This bill will open one vast field for speculation. Men will not pay \$1.25 for lands when they can purchase them for one-fifth of that price. Large numbers of actual settlers will be carried out by capitalists upon agreements to give them half of the land for the improvement of the other half. This cannot be avoided. Secret agreements of this kind will be numerous. In the entry of graduated lands the experience of the Land Office justifies this objection.

7. We ought ever to maintain the most perfect equality between native and naturalized citizens. They are equal, and ought always to remain equal before the laws. Our laws welcome foreigners to our shores, and their rights will ever be respected. Whilst these are the sentiments on which I have acted through life, it is not, in my opinion, expedient to proclaim to all the nations of the earth that whoever shall arrive in this country from a foreign shore and declare his intention to become a citizen shall receive a farm of one hundred and sixty acres at a cost of twenty-five or twenty cents per acre, if he will only reside on it and cultivate it. The invitation extends to all; and if this bill becomes a law we may have numerous actual settlers from China and other eastern nations enjoying its benefits on the great Pacific slope. The bill makes a distinction in favor of such persons over native and naturalized citizens. When applied to such citizens, it is confined to such as are the heads of families, but when applicable to persons of foreign birth recently arrived on our shores, there is no such restriction. Such persons need not be the heads of families, provided they have filed a declaration of intention to become citizens. Perhaps this distinction was an inadvertence, but it is, nevertheless, a part of the bill.

8. The bill creates an unjust distinction between persons claiming the benefit of the pre-emption laws. Whilst it reduces the price of the

land to existing pre-emptors to sixty-two and a half cents per acre, and gives them a credit on this sum for two years from the present date, no matter how long they may have hitherto enjoyed the land, future pre-emptors will be compelled to pay double this price per acre. There is no reason or justice in this discrimination.

9. The effect of this bill on the public revenue must be apparent to all. Should it become a law, the reduction of the price of land to actual settlers to twenty-five cents per acre, with a credit of five years, and the reduction of its price to existing pre-emptors to sixty-two and a half cents per acre, with a credit of two years, will so diminish the sale of other public lands as to render the expectation of future revenue from that source, beyond the expenses of survey and management, illusory. The Secretary of the Interior estimated the revenue from the public lands for the next fiscal year at \$4,000,000, on the presumption that the present land system would remain unchanged. Should this bill become a law, he does not believe that \$1,000,000 will be derived from this source.

10. This bill lays the axe at the root of our present admirable land system. The public land is an inheritance of vast value to us and to our descendants. It is a resource to which we can resort in the hour of difficulty and danger. It has been managed heretofore with the greatest wisdom under existing laws. In this management the rights of actual settlers have been conciliated with the interests of the Government. The price to all has been reduced from \$2 per acre to \$1.25 for fresh lands, and the claims of actual settlers have been secured by our pre-emption laws. Any man can now acquire a title in fee-simple to a homestead of eighty acres, at the minimum price of \$1.25 per acre, for \$100. Should the present system remain, we shall derive a revenue from the public lands of \$10,000,000 per annum, when the bounty-land warrants are satisfied, without oppression to any human being. In time of war, when all other sources of revenue are seriously impaired, this will remain intact. It may become the best security for public loans hereafter, in times of difficulty and danger, as it has been heretofore. Why should we impair or destroy the system at the present moment? What necessity exists for it?

The people of the United States have advanced with steady but rapid strides to their present condition of power and prosperity. They have been guided in their progress by the fixed principle of protecting the equal rights of all, whether they be rich or poor. No agrarian sentiment has ever prevailed among them. The honest poor man, by frugality and industry, can, in any part of our country, acquire a competence for himself and his family, and in doing this he feels that he eats the bread of independence. He desires no charity, either from the Government or from his neighbors. This bill, which proposes to give him land at an almost nominal price, out of the property of the Government,

will go far to demoralize the people, and repress this noble spirit of independence. It may introduce among us those pernicious social theories which have proved so disastrous in other countries.

JAMES BUCHANAN.

The veto message was considered by the Senate at once. A motion was made that the further consideration of the bill be postponed until the first Monday in the following December, which was lost by a vote of 19 yeas against 26 nays. The question was then taken upon "the passage of the bill, the President's objections notwithstanding," and it was determined in the negative by a vote of 28 yeas against 18 nays. So the bill was not passed.

JAMES BUCHANAN.—VIII.

January 25, 1861.

To the House of Representatives of the United States :

I return, with my objections, to the house in which it originated, the bill entitled "An act for the relief of Hockaday & Leggit," presented to me on the 15th instant.

This bill appropriates \$59,576 "to Hockaday & Leggit, in full payment for damages sustained by them in reduction of pay for carrying the mails on route No. 8911, and that said amount be paid to William Leggit for and on account of Hockaday & Leggit, and for their benefit."

A bill containing the same language, with the single exception that the sum appropriated therein was \$40,000 instead of \$59,576, passed both houses of Congress at their last session; but it was presented to me at so late a period of the session that I could not examine its merits before the time fixed for the adjournment, and it therefore, under the Constitution, failed to become a law. The increase of the sum appropriated, in the present bill, over that in the bill of the last session, being within a fraction of twenty thousand dollars, has induced me to examine the question with some attention; and I find that the bill involves an important principle which, if established by Congress, may take large sums out of the Treasury.

It appears that, on the 1st day of April, 1858, John M. Hockaday entered into a contract with the Postmaster-General for transporting the mail on route No. 8911, from Saint Joseph, Missouri, by Fort Kearney, Nebraska Territory, and Fort Leavenworth, to Salt Lake City, for the sum of \$190,000 per annum for a weekly service. The service was to commence on the 1st day of May, 1858, and to terminate on the 30th November, 1860. By this contract the Postmaster-General reserved to himself the right "to reduce the service to semi-monthly whenever the necessities of the public and the condition of affairs in the Territory of Utah may not require it more frequently." And again, "that the Postmaster-General may discontinue or curtail the service, in whole or in part, in order to place on the route a greater degree of service, or when-

ever the public interests require such discontinuance for any other cause, he allowing one month's extra pay on the amount of service dispensed with."

On the 11th April, 1859, the Postmaster-General curtailed the service, which he had a clear right to do under the contract, to semi-monthly, with an annual deduction of \$65,000, leaving the compensation \$125,000 for twenty-four trips per year, instead of \$190,000 for fifty-two trips. This curtailment was not to take effect till the 1st of July, 1859.

At the time the contract was made, it was expected that the Army in Utah might be engaged in active operations; and hence the necessity of frequent communications between the War Department and that Territory. The reservation of the power to curtail the service to semi-monthly trips itself proves that the parties had in view the contingency of such curtailment "whenever the necessities of the public and the condition of affairs in the Territory of Utah may not require it more frequently."

Before the Postmaster-General ordered this curtailment, he had an interview with the Secretary of War upon the subject, in the course of which the Secretary agreed that a weekly mail to Saint Joseph and Salt Lake City was no longer needed for the purposes of the Government. This, evidently, because the trouble in Utah had ended.

Mr. Hockaday faithfully complied with his contract, and the full compensation was paid, at the rate of \$190,000 per annum, up to the 1st July, 1859, and "one month's extra pay on the amount of service dispensed with," according to the contract.

Previous to that date, as has been already stated, on the 14th of April, 1859, the Postmaster-General curtailed the service to twice per month; and on the 11th May, 1859, Messrs. Hockaday & Co. assigned the contract to Jones, Russell & Co. for a bonus of \$50,000. Their property connected with the route was to be appraised, which was effected, and they received on this account about ninety-four thousand dollars—making the whole amount about one hundred and forty-four thousand dollars.

There is no doubt that the contractors have sustained considerable loss in the whole transaction. The amount I shall not pretend to decide, whether \$40,000 or \$59,576, or any other sum.

It will be for Congress to consider whether the precedent established by this bill will not, in effect, annul all restrictions contained in the mail contracts enabling the Postmaster-General to reduce or curtail the postal service according to the public exigencies as they may arise. I have no other solicitude upon the subject. I am informed that there are many cases in the Post-Office Department depending upon the same principle.

JAMES BUCHANAN.

The veto message having been read, the House proceeded to the reconsideration of the bill, the objections of the President to the contrary, and it was decided in the negative by a vote of 81 yeas against 67 nays. So the bill was lost.

ABRAHAM LINCOLN.—I.

*January 5, 1865.**To the House of Representatives of the United States :*

I herewith return to your honorable body, in which it originated, a "Joint resolution to correct certain clerical errors in the internal-revenue act," without my approval.

My reason for so doing is, that I am informed that this joint resolution was prepared during the last moments of the last session of Congress for the purpose of correcting certain errors of reference in the internal-revenue act, which were discovered on an examination of an official copy procured from the State Department a few hours only before the adjournment. It passed the House and went to the Senate, where a vote was taken upon it, but by some accident it was not presented to the President of the Senate for his signature.

Since the adjournment of the last session of Congress, other errors of a kind similar to those which this resolution was designed to correct have been discovered in the law, and it is now thought most expedient to include all the necessary corrections in one act or resolution.

The attention of the proper committee of the House has, I am informed, been already directed to the preparation of a bill for this purpose.

ABRAHAM LINCOLN.

The veto message having been read, the Speaker stated the question to be "Will the House, on reconsideration, pass the said joint resolution?" but on motion, the message and resolution were referred to the Committee of Ways and Means, which took no action thereupon.

ANDREW JOHNSON.—I.

*February 19, 1866.**To the Senate of the United States :*

I have examined with care the bill which originated in the Senate, and has been passed by the two houses of Congress, to amend an act entitled "An act to establish a Bureau for the relief of Freedmen and Refugees," and for other purposes. Having, with much regret, come to the conclusion that it would not be consistent with the public welfare to give my approval to the measure, I return the bill to the Senate with my objections to its becoming a law.

I might call to mind, in advance of these objections, that there is no immediate necessity for the proposed measure. The act to establish a Bureau for the relief of Freedmen and Refugees, which was approved in the month of March last, has not yet expired. It was thought stringent and extensive enough for the purpose in view in time of war. Be-

fore it ceases to have effect, further experience may assist to guide us to a wise conclusion as to the policy to be adopted in time of peace.

I share with Congress the strongest desire to secure to the freedmen the full enjoyment of their freedom and property, and their entire independence and equality in making contracts for their labor; but the bill before me contains provisions which, in my opinion, are not warranted by the Constitution, and are not well suited to accomplish the end in view.

The bill proposes to establish, by authority of Congress, military jurisdiction over all parts of the United States containing refugees and freedmen. It would, by its very nature, apply with most force to those parts of the United States in which the freedmen most abound; and it expressly extends the existing temporary jurisdiction of the Freedmen's Bureau, with greatly enlarged powers, over those States "in which the ordinary course of judicial proceedings has been interrupted by the rebellion." The source from which this military jurisdiction is to emanate is none other than the President of the United States, acting through the War Department and the Commissioner of the Freedmen's Bureau. The agents to carry out this military jurisdiction are to be selected either from the Army or from civil life; the country is to be divided into districts and sub-districts, and the number of salaried agents to be employed may be equal to the number of counties or parishes in all the United States where freedmen and refugees are to be found.

The subjects over which this military jurisdiction is to extend in every part of the United States include protection to "all employes, agents, and officers of this Bureau in the exercise of the duties imposed" upon them by the bill. In eleven States it is further to extend over all cases affecting freedmen and refugees discriminated against "by local law, custom, or prejudice." In those eleven States, the bill subjects any white person who may be charged with depriving a freedman of "any civil rights or immunities belonging to white persons" to imprisonment or fine, or both, without, however, defining the "civil rights and immunities" which are thus to be secured to the freedmen by military law. This military jurisdiction also extends to all questions that may arise respecting contracts. The agent who is thus to exercise the office of a military judge may be a stranger, entirely ignorant of the laws of the place, and exposed to the errors of judgment to which all men are liable. The exercise of power, over which there is no legal supervision, by so vast a number of agents as is contemplated by the bill, must, by the very nature of man, be attended by acts of caprice, injustice, and passion.

The trials, having their origin under this bill, are to take place without the intervention of a jury, and without any fixed rules of law or evidence. The rules on which offenses are to be "heard and determined" by the numerous agents are such rules and regulations as the President, through the War Department, shall prescribe. No previous present-

ment is required, nor any indictment charging the commission of a crime against the laws; but the trial must proceed on charges and specifications. The punishment will be—not what the law declares, but such as a court-martial may think proper; and from these arbitrary tribunals there lies no appeal, no writ of error to any of the courts in which the Constitution of the United States vests exclusively the judicial power of the country.

While the territory and the classes of actions and offenses that are made subject to this measure are so extensive, the bill itself, should it become a law, will have no limitation in point of time, but will form a part of the permanent legislation of the country. I cannot reconcile a system of military jurisdiction of this kind with the words of the Constitution, which declare that “no person shall be held to answer for a capital or otherwise infamous crime unless upon a presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger”; and that, “in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed.” The safeguards which the experience and wisdom of ages taught our fathers to establish as securities for the protection of the innocent, the punishment of the guilty, and the equal administration of justice, are to be set aside, and, for the sake of a more vigorous interposition in behalf of justice, we are to take the risks of the many acts of injustice that would necessarily follow from an almost countless number of agents, established in every parish or county, in nearly a third of the States of the Union, over whose decisions there is to be no supervision or control by the Federal courts. The power that would be thus placed in the hands of the President is such as in time of peace certainly ought never to be intrusted to any one man.

If it be asked whether the creation of such a tribunal within a State is warranted as a measure of war, the question immediately presents itself whether we are still engaged in war. Let us not unnecessarily disturb the commerce, and credit, and industry of the country, by declaring to the American people and to the world that the United States are still in a condition of civil war. At present there is no part of our country in which the authority of the United States is disputed. Offenses that may be committed by individuals should not work a forfeiture of the rights of whole communities. The country has returned, or is returning, to a state of peace and industry, and the rebellion is, in fact, at an end. The measure, therefore, seems to be as inconsistent with the actual condition of the country as it is at variance with the Constitution of the United States.

If, passing from general considerations, we examine the bill in detail, it is open to weighty objections.

In time of war it was eminently proper that we should provide for those who were passing suddenly from a condition of bondage to a state of freedom. But this bill proposes to make the Freedmen's Bureau, established by the act of 1865, as one of many great and extraordinary military measures to suppress a formidable rebellion, a permanent branch of the public administration, with its powers greatly enlarged. I have no reason to suppose, and I do not understand it to be alleged, that the act of March, 1865, has proved deficient for the purpose for which it was passed, although at that time, and for a considerable period thereafter, the Government of the United States remained unacknowledged in most of the States whose inhabitants had been involved in the rebellion. The institution of slavery, for the military destruction of which the Freedmen's Bureau was called into existence as an auxiliary, has been already effectually and finally abrogated throughout the whole country by an amendment of the Constitution of the United States, and practically its eradication has received the assent and concurrence of most of those States in which it at any time had an existence. I am not therefore able to discern, in the condition of the country, anything to justify an apprehension that the powers and agencies of the Freedmen's Bureau, which were effective for the protection of freedmen and refugees during the actual continuance of hostilities and of African servitude, will now, in time of peace, and after the abolition of slavery, prove inadequate to the same proper ends. If I am correct in these views there can be no necessity for the enlargement of the powers of the Bureau for which provision is made in the bill.

The third section of the bill authorizes a general and unlimited grant of support to the destitute and suffering refugees and freedmen, their wives and children. Succeeding sections make provision for the rent or purchase of landed estates for freedmen, and for the erection, for their benefit, of suitable buildings for asylums and schools—the expenses to be defrayed from the Treasury of the whole people. The Congress of the United States has never heretofore thought itself empowered to establish asylums beyond the limits of the District of Columbia, except for the benefit of our disabled soldiers and sailors. It has never founded schools for any class of our own people, not even for the orphans of those who have fallen in the defense of the Union, but has left the care of education to the much more competent and efficient control of the States, of communities, of private associations, and of individuals. It has never deemed itself authorized to expend the public money for the rent or purchase of homes for the thousands, not to say millions, of the white race, who are honestly toiling from day to day for their subsistence. A system for the support of indigent persons in the United States was never contemplated by the authors of the Constitution; nor can any good reason be advanced why, as a permanent establishment, it should be founded for one class or color of

our people more than another. Pending the war many refugees and freedmen received support from the Government, but it was never intended that they should thenceforth be fed, clothed, educated, and sheltered by the United States. The idea on which the slaves were assisted to freedom was that, on becoming free, they would become a self-sustaining population. Any legislation that shall imply that they are not expected to attain a self-sustaining condition must have a tendency injurious alike to their character and their prospects.

The appointment of an agent for every county and parish will create an immense patronage; and the expense of the numerous officers and their clerks, to be appointed by the President, will be great in the beginning, with a tendency steadily to increase. The appropriations asked by the Freedmen's Bureau as now established, for the year 1866, amount to \$11,745,000. It may be safely estimated that the cost to be incurred under the pending bill will require double that amount—more than the entire sum expended in any one year under the administration of the second Adams. If the presence of agents in every parish and county is to be considered as a war measure, opposition, or even resistance might be provoked; so that to give effect to their jurisdiction troops would have to be stationed within reach of every one of them, and thus a large standing force be rendered necessary. Large appropriations would therefore be required to sustain and enforce military jurisdiction in every county or parish from the Potomac to the Rio Grande. The condition of our fiscal affairs is encouraging; but, in order to sustain the present measure of public confidence, it is necessary that we practice, not merely customary economy, but, as far as possible, severe retrenchment.

In addition to the objections already stated, the fifth section of the bill proposes to take away land from its former owners without any legal proceedings being first had, contrary to that provision of the Constitution which declares that no person shall "be deprived of life, liberty, or property without due process of law." It does not appear that a part of the lands to which this section refers may not be owned by minors, or persons of unsound mind, or by those who have been faithful to all their obligations as citizens of the United States. If any portion of the land is held by such persons, it is not competent for any authority to deprive them of it. If, on the other hand, it be found that the property is liable to confiscation, even then it cannot be appropriated to public purposes until, by due process of law, it shall have been declared forfeited to the Government.

There is still further objection to the bill on grounds seriously affecting the class of persons to whom it is designed to bring relief. It will tend to keep the mind of the freedman in a state of uncertain expectation and restlessness, while to those among whom he lives it will be a source of constant and vague apprehension.

Undoubtedly the freedman should be protected, but he should be protected by the civil authorities, especially by the exercise of all the constitutional powers of the courts of the United States and of the States. His condition is not so exposed as may at first be imagined. He is in a portion of the country where his labor cannot well be spared. Competition for his services from planters, from those who are constructing or repairing railroads, and from capitalists in his vicinage or from other States, will enable him to command almost his own terms. He also possesses a perfect right to change his place of abode, and if, therefore, he does not find in one community or State a mode of life suited to his desires, or proper remuneration for his labor, he can move to another where that labor is more esteemed and better rewarded. In truth, however, each State, induced by its own wants and interests, will do what is necessary and proper to retain within its borders all the labor that is needed for the development of its resources. The laws that regulate supply and demand will maintain their force, and the wages of the laborer will be regulated thereby. There is no danger that the exceedingly great demand for labor will not operate in favor of the laborer.

Neither is sufficient consideration given to the ability of the freedmen to protect and take care of themselves. It is no more than justice to them to believe that as they have received their freedom with moderation and forbearance, so they will distinguish themselves by their industry and thrift, and soon show the world that in a condition of freedom they are self-sustaining, capable of selecting their own employment and their own places of abode, of insisting for themselves on a proper remuneration, and of establishing and maintaining their own asylums and schools. It is earnestly hoped that, instead of wasting away, they will, by their own efforts, establish for themselves a condition of respectability and prosperity. It is certain that they can attain to that condition only through their own merits and exertions.

In this connection the query presents itself whether the system proposed by the bill will not, when put into complete operation, practically transfer the entire care, support, and control of four millions of emancipated slaves to agents, overseers, or task-masters, who, appointed at Washington, are to be located in every county and parish throughout the United States containing freedmen and refugees. Such a system would inevitably tend to a concentration of power in the Executive, which would enable him, if so disposed, to control the action of this numerous class, and use them for the attainment of his own political ends.

I cannot but add another very grave objection to this bill. The Constitution imperatively declares, in connection with taxation, that each State SHALL have at least one Representative, and fixes the rule for the number to which, in future times, each State shall be entitled. It also provides that the Senate of the United States SHALL be composed of

two Senators from each State; and adds, with peculiar force, "that no State, without its consent, shall be deprived of its equal suffrage in the Senate." The original act was necessarily passed in the absence of the States chiefly to be affected, because their people were then contumaciously engaged in the rebellion. Now the case is changed, and some, at least, of those States are attending Congress by loyal representatives, soliciting the allowance of the constitutional right for representation. At the time, however, of the consideration and the passing of this bill, there was no Senator or Representative in Congress from the eleven States which are to be mainly affected by its provisions. The very fact that reports were and are made against the good disposition of the people of that portion of the country is an additional reason why they need, and should have, representatives of their own in Congress, to explain their condition, reply to accusations, and assist, by their local knowledge, in the perfecting of measures immediately affecting themselves. While the liberty of deliberation would then be free, and Congress would have full power to decide according to its judgment, there could be no objection urged that the States most interested had not been permitted to be heard. The principle is firmly fixed in the minds of the American people, that there should be no taxation without representation. Great burdens have now to be borne by all the country, and we may best demand that they shall be borne without murmur when they are voted by a majority of the representatives of all the people. I would not interfere with the unquestionable right of Congress to judge, each house for itself, "of the elections, returns, and qualifications of its own members." But that authority cannot be construed as including the right to shut out, in time of peace, any State from the representation to which it is entitled by the Constitution. At present all the people of eleven States are excluded—those who were most faithful during the war not less than others. The State of Tennessee, for instance, whose authorities engaged in rebellion, was restored to all her constitutional relations to the Union by the patriotism and energy of her injured and betrayed people. Before the war was brought to a termination they had placed themselves in relations with the General Government, had established a State government of their own, and, as they were not included in the emancipation proclamation, they, by their own act, had amended their constitution so as to abolish slavery within the limits of their State. I know no reason why the State of Tennessee, for example, should not fully enjoy "all her constitutional relations to the United States."

The President of the United States stands towards the country in a somewhat different attitude from that of any member of Congress. Each member of Congress is chosen from a single district or State; the President is chosen by the people of all the States. As eleven States are not at this time represented in either branch of Congress, it would seem to be his duty, on all proper occasions, to present their just claims to Con-

gress. There always will be differences of opinion in the community, and individuals may be guilty of transgressions of the law, but these do not constitute valid objections against the right of a State to representation. I would in no wise interfere with the discretion of Congress with regard to the qualifications of members; but I hold it my duty to recommend to you, in the interests of peace and the interests of union, the admission of every State to its share in public legislation, when, however insubordinate, insurgent, or rebellious its people may have been, it presents itself not only in an attitude of loyalty and harmony, but in the persons of representatives whose loyalty cannot be questioned under any existing constitutional or legal test. It is plain that an indefinite or permanent exclusion of any part of the country from representation must be attended by a spirit of disquiet and complaint. It is unwise and dangerous to pursue a course of measures which will unite a very large section of the country against another section of the country, however much the latter may preponderate. The course of emigration, the development of industry and business, and natural causes, will raise up at the South men as devoted to the Union as those of any other part of the land. But if they are all excluded from Congress; if, in a permanent statute, they are declared not to be in full constitutional relations to the country, they may think they have cause to become a unit in feeling and sentiment against the Government. Under the political education of the American people, the idea is inherent and ineradicable that the consent of the majority of the whole people is necessary to secure a willing acquiescence in legislation.

The bill under consideration refers to certain of the States as though they had not "been fully restored in all their constitutional relations to the United States." If they have not, let us at once act together to secure that desirable end at the earliest possible moment. It is hardly necessary for me to inform Congress that in my own judgment most of those States, so far at least as depends upon their own action, have already been fully restored, and are to be deemed as entitled to enjoy their constitutional rights as members of the Union. Reasoning from the Constitution itself, and from the actual situation of the country, I feel not only entitled but bound to assume, that with the Federal courts restored and those of the several States in the full exercise of their functions, the rights and interests of all classes of people will, with the aid of the military in cases of resistance to the laws, be essentially protected against unconstitutional infringement or violation. Should this expectation unhappily fail, which I do not anticipate, then the Executive is already fully armed with the powers conferred by the act of March, 1865, establishing the Freedmen's Bureau, and hereafter, as heretofore, he can employ the land and naval forces of the country to suppress insurrection or to overcome obstructions to the laws.

In accordance with the Constitution I return the bill to the Senate in the earnest hope that a measure involving questions and interests so

important to the country will not become a law, unless upon deliberate consideration by the people it shall receive the sanction of an enlightened public judgment.

ANDREW JOHNSON.

The veto message having been read in the Senate it was ordered to be printed and made the special order for the next day. The question "Shall the bill pass, the objection of the President to the contrary notwithstanding?" was determined in the negative by a vote of 30 yeas against 18 nays; so the bill did not pass—two-thirds of the Senators present not voting therefor.

ANDREW JOHNSON.—II.

March 27, 1866.

To the Senate of the United States :

I regret that the bill which has passed both houses of Congress, entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," contains provisions which I cannot approve consistently with my sense of duty to the whole people and my obligations to the Constitution of the United States. I am therefore constrained to return it to the Senate, the house in which it originated, with my objections to its becoming a law.

By the first section of the bill all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States. This provision comprehends the Chinese of the Pacific States, Indians subject to taxation, the people called Gypsies, as well as the entire race designated as blacks, people of color, negroes, mulattoes, and persons of African blood. Every individual of these races born in the United States is by the bill made a citizen of the United States. It does not purport to declare or confer any other right of citizenship than Federal citizenship. It does not purport to give these classes of persons any *status* as citizens of States, except that which may result from their *status* as citizens of the United States. The power to confer the right of State citizenship is just as exclusively with the several States as the power to confer the right of Federal citizenship is with Congress.

The right of Federal citizenship thus to be conferred on the several excepted races before mentioned is now, for the first time, proposed to be given by law. If, as is claimed by many, all persons who are native-born already are, by virtue of the Constitution, citizens of the United States, the passage of the pending bill cannot be necessary to make them such. If, on the other hand, such persons are not citizens, as may be assumed from the proposed legislation to make them such, the grave question presents itself, whether, when eleven of the thirty-six States are unrepresented in Congress at the present time, it is sound policy to

make our entire colored population and all other excepted classes citizens of the United States? Four millions of them have just emerged from slavery into freedom. Can it be reasonably supposed that they possess the requisite qualifications to entitle them to all the privileges and immunities of citizens of the United States? Have the people of the several States expressed such a conviction? It may also be asked whether it is necessary that they should be declared citizens in order that they may be secured in the enjoyment of the civil rights proposed to be conferred by the bill? Those rights are, by Federal as well as State laws, secured to all domiciled aliens and foreigners, even before the completion of the process of naturalization; and it may safely be assumed that the same enactments are sufficient to give like protection and benefits to those for whom this bill provides special legislation. Besides, the policy of the Government, from its origin to the present time, seems to have been that persons who are strangers to and unfamiliar with our institutions and our laws should pass through a certain probation, at the end of which; before attaining the coveted prize, they must give evidence of their fitness to receive and to exercise the rights of citizens, as contemplated by the Constitution of the United States. The bill, in effect, proposes a discrimination against large numbers of intelligent, worthy, and patriotic foreigners, and in favor of the negro, to whom, after long years of bondage, the avenues to freedom and intelligence have just now been suddenly opened. He must, of necessity, from his previous unfortunate condition of servitude, be less informed as to the nature and character of our institutions than he who coming, from abroad, has to some extent, at least, familiarized himself with the principles of a Government to which he voluntarily intrusts "life, liberty, and the pursuit of happiness." Yet it is now proposed, by a single legislative enactment, to confer the rights of citizens upon all persons of African descent born within the extended limits of the United States, while persons of foreign birth, who make our land their home, must undergo a probation of five years, and can only then become citizens upon proof that they are "of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same."

The first section of the bill also contains an enumeration of the rights to be enjoyed by these classes, so made citizens, "in every State and Territory in the United States." These rights are, "to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property," and to have "full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens." So, too, they are made subject to the same punishment, pains, and penalties in common with white citizens, and to none other. Thus a perfect equality of the white and colored races is attempted to be fixed by Federal law in every State of the Union, over the vast field of State jurisdiction cov-

ered by these enumerated rights. In no one of these can any State ever exercise any power of discrimination between the different races. In the exercise of State policy over matters exclusively affecting the people of each State it has frequently been thought expedient to discriminate between the two races. By the statutes of some of the States, Northern as well as Southern, it is enacted, for instance, that no white person shall intermarry with a negro or mulatto. Chancellor Kent says, speaking of the blacks, that "marriages between them and the whites are forbidden in some of the States where slavery does not exist, and they are prohibited in all the slaveholding States; and when not absolutely contrary to law, they are revolting, and regarded as an offense against public decorum."

I do not say that this bill repeals State laws on the subject of marriage between the two races; for, as the whites are forbidden to intermarry with the blacks, the blacks can only make such contracts as the whites themselves are allowed to make, and therefore cannot, under this bill, enter into the marriage contract with the whites. I cite this discrimination, however, as an instance of the State policy as to discrimination, and to inquire whether, if Congress can abrogate all State laws of discrimination between the two races in the matter of real estate, of suits, and of contracts generally, Congress may not also repeal the State laws as to the contract of marriage between the two races? Hitherto every subject embraced in the enumeration of rights contained in this bill has been considered as exclusively belonging to the States. They all relate to the internal police and economy of the respective States. They are matters which in each State concern the domestic condition of its people, varying in each according to its own peculiar circumstances and the safety and well being of its own citizens. I do not mean to say that upon all these subjects there are not Federal restraints, as, for instance, in the State power of legislation over contracts, there is a Federal limitation that no State shall pass a law impairing the obligations of contracts; and, as to crimes, that no State shall pass an *ex post facto* law; and, as to money, that no State shall make anything but gold and silver a legal tender. But where can we find a Federal prohibition against the power of any State to discriminate, as do most of them, between aliens and citizens, between artificial persons called corporations and natural persons, in the right to hold real estate? If it be granted that Congress can repeal all State laws discriminating between whites and blacks in the subjects covered by this bill, why, it may be asked, may not Congress repeal in the same way all State laws discriminating between the two races on the subjects of suffrage and office? If Congress can declare by law who shall hold lands, who shall testify, who shall have capacity to make a contract in a State, then Congress can by law also declare who, without regard to color or race, shall have the right to sit as a juror or as a judge, to hold any office, and, finally, to vote, "in every State and Territory of the

United States." As respects the Territories, they come within the power of Congress, for as to them the law-making power is the Federal power; but as to the States no similar provision exists vesting in Congress the power "to make rules and regulations" for them.

The object of the second section of the bill is to afford discriminating protection to colored persons in the full enjoyment of all the rights secured to them by the preceding section. It declares "that any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such persons having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed-guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court." This section seems to be designed to apply to some existing or future law of a State or Territory, which may conflict with the provisions of the bill now under consideration. It provides for counteracting such forbidden legislation by imposing fine and imprisonment upon the legislators who may pass such conflicting laws, or upon the officers or agents who shall put or attempt to put them into execution. It means an official offense—not a common crime committed against law upon the persons or property of the black race. Such an act may deprive the black man of his property, but not of the right to hold property. It means a deprivation of the right itself, either by the State judiciary or the State legislature. It is therefore assumed that, under this section, members of State legislatures, who should vote for laws conflicting with the provisions of the bill, that judges of the State courts who should render judgments in antagonism with its terms, and that marshals and sheriffs who should, as ministerial officers, execute processes sanctioned by State laws and issued by State judges in execution of their judgments, could be brought before other tribunals, and there subjected to fine and imprisonment for the performance of the duties which such State laws might impose. The legislation thus proposed invades the judicial power of the State. It says to every State court or judge, if you decide that this act is unconstitutional; if you refuse, under the prohibition of a State law, to allow a negro to testify; if you hold that over such a subject-matter the State law is paramount, and "under color" of a State law refuse the exercise of the right to the negro, your error of judgment, however conscientious, shall subject you to fine and imprisonment! I do not apprehend that the conflicting legislation which the bill seems to contemplate is so likely to occur as to render it necessary at this time to adopt a measure of such doubtful constitutionality.

In the next place, this provision of the bill seems to be unnecessary, as adequate judicial remedies could be adopted to secure the desired end without invading the immunities of legislators, always important to be preserved in the interest of public liberty; without assailing the independence of the judiciary, always essential to the preservation of individual rights; and without impairing the efficiency of ministerial officers, always necessary for the maintenance of public peace and order. The remedy proposed by this section seems to be, in this respect, not only anomalous, but unconstitutional, for the Constitution guarantees nothing with certainty, if it does not insure to the several States the right of making and executing laws in regard to all matters arising within their jurisdiction, subject only to the restriction that, in cases of conflict with the Constitution and constitutional laws of the United States, the latter should be held to be the supreme law of the land.

The third section gives the district courts of the United States exclusive "cognizance of all crimes and offenses committed against the provisions of this act," and concurrent jurisdiction with the circuit courts of the United States of all civil and criminal cases "affecting persons who are denied, or cannot enforce in the courts or judicial tribunals of the State or locality where they may be, any of the rights secured to them by the first section." The construction which I have given to the second section is strengthened by this third section, for it makes clear what kind of denial or deprivation of the rights secured by the first section was in contemplation. It is a denial or the deprivation of such rights "in the courts of judicial tribunals of the State." It stands, therefore, clear of doubt that the offense and the penalties provided in the second section are intended for the State judge who, in the clear exercise of his functions as a judge, not acting ministerially but judicially, shall decide contrary to this Federal law. In other words, when a State judge, acting upon a question involving a conflict between a State law and a Federal law, and bound, according to his own judgment and responsibility, to give an impartial decision between the two, comes to the conclusion that the State law is valid and the Federal law is invalid, he must not follow the dictates of his own judgment, at the peril of fine and imprisonment. The legislative department of the Government of the United States thus takes from the judicial department of the States the sacred and exclusive duty of judicial decision, and converts the State judge into a mere ministerial officer, bound to decide according to the will of Congress.

It is clear that in States which deny to persons whose rights are secured by the first section of the bill any one of those rights, all criminal and civil cases affecting them will, by the provisions of the third section, come under the exclusive cognizance of the Federal tribunals. It follows that if, in any State which denies to a colored person any one of all those rights, that person should commit a crime against the laws of

a State—murder, arson, rape, or any other crime—all protection and punishment through the courts of the State are taken away, and he can only be tried and punished in the Federal courts. How is the criminal to be tried? If the offense is provided for and punished by Federal law, that law and not the State law is to govern. It is only when the offense does not happen to be within the purview of Federal law that the Federal courts are to try and punish him under any other law. Then resort is to be had to the “common law, as modified and changed” by State legislation, “so far as the same is not inconsistent with the Constitution and laws of the United States.” So that over this vast domain of criminal jurisprudence provided by each State for the protection of its own citizens, and for the punishment of all persons who violate its criminal laws, Federal law, whenever it can be made to apply, displaces State law. The question here naturally arises, from what source Congress derives the power to transfer to Federal tribunals certain classes of cases embraced in this section. The Constitution expressly declares that the judicial power of the United States “shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming land under grants of different States, and between a State, or citizens thereof, and foreign States, citizens, or subjects.” Here the judicial power of the United States is expressly set forth and defined; and the act of September 24, 1789, establishing the judicial courts of the United States, in conferring upon the Federal courts jurisdiction over cases originating in State tribunals, is careful to confine them to the classes enumerated in the above-recited clause of the Constitution. This section of the bill undoubtedly comprehends cases and authorizes the exercise of powers that are not, by the Constitution, within the jurisdiction of the courts of the United States. To transfer them to those courts would be an exercise of authority well calculated to excite distrust and alarm on the part of all the States; for the bill applies alike to all of them—as well to those that have as to those that have not been engaged in rebellion.

It may be assumed that this authority is incident to the power granted to Congress by the Constitution, as recently amended, to enforce, by appropriate legislation, the article declaring that “neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” It cannot, however, be justly claimed that, with a view to the enforcement of this article of the Constitution, there is at present any necessity for the exercise of all

the powers which this bill confers. Slavery has been abolished, and at present nowhere exists within the jurisdiction of the United States; nor has there been, nor is it likely there will be, any attempt to revive it by the people or the States. If, however, any such attempt shall be made, it will then become the duty of the General Government to exercise any and all incidental powers necessary and proper to maintain inviolate this great constitutional law of freedom.

The fourth section of the bill provides that officers and agents of the Freedmen's Bureau shall be empowered to make arrests, and also that other officers may be specially commissioned for that purpose by the President of the United States. It also authorizes circuit courts of the United States and the superior courts of the Territories to appoint, without limitation, commissioners, who are to be charged with the performance of quasi-judicial duties. The fifth section empowers the commissioners so to be selected by the courts to appoint in writing, under their hands, one or more suitable persons from time to time to execute warrants and other processes described by the bill. These numerous official agents are made to constitute a sort of police, in addition to the military, and are authorized to summon a posse comitatus, and even to call to their aid such portion of the land and naval forces of the United States, or of the militia, "as may be necessary to the performance of the duty with which they are charged." This extraordinary power is to be conferred upon agents irresponsible to the Government and to the people, to whose number the discretion of the commissioners is the only limit, and in whose hands such authority might be made a terrible engine of wrong, oppression, and fraud. The general statutes regulating the land and naval forces of the United States, the militia, and the execution of the laws are believed to be adequate for every emergency which can occur in time of peace. If it should prove otherwise, Congress can at any time amend those laws in such manner as, while subserving the public welfare, not to jeopard the rights, interests, and liberties of the people.

The seventh section provides that a fee of ten dollars shall be paid to each commissioner in every case brought before him, and a fee of five dollars to his deputy, or deputies, "for each person he or they may arrest and take before any such commissioner," "with such other fees as may be deemed reasonable by such commission," "in general for performing such other duties as may be required in the premises." All these fees are to be "paid out of the Treasury of the United States," whether there is a conviction or not; but in case of conviction they are to be recoverable from the defendant. It seems to me that under the influence of such temptations bad men might convert any law, however beneficent, into an instrument of persecution and fraud.

By the eighth section of the bill the United States courts, which sit only in one place for white citizens, must migrate, with the marshal and district attorney (and necessarily with the clerk, although he is not

mentioned), to any part of the district upon the order of the President, and there hold a court "for the purpose of the more speedy arrest and trial of persons charged with a violation of this act"; and there the judge and officers of the court must remain, upon the order of the President, "for the time therein designated."

The ninth section authorizes the President, or such person as he may empower for that purpose, "to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act." This language seems to imply a permanent military force, that is to be always at hand, and whose only business is to be the enforcement of this measure over the vast region where it is intended to operate.

I do not propose to consider the policy of this bill. To me the details of the bill seem fraught with evil. The white race and the black race of the South have hitherto lived together under the relation of master and slave—capital owning labor. Now, suddenly, that relation is changed, and as to ownership, capital and labor are divorced. They stand now each master of itself. In this new relation, one being necessary to the other, there will be a new adjustment, which both are deeply interested in making harmonious. Each has equal power in settling the terms, and, if left to the laws that regulate capital and labor, it is confidently believed that they will satisfactorily work out the problem. Capital, it is true, has more intelligence, but labor is never so ignorant as not to understand its own interests, not to know its own value, and not to see that capital must pay that value.

This bill frustrates this adjustment. It intervenes between capital and labor, and attempts to settle questions of political economy through the agency of numerous officials, whose interest it will be to foment discord between the two races, for as the breach widens their employment will continue, and when it is closed their occupation will terminate.

In all our history, in all our experience as a people living under Federal and State law, no such system as that contemplated by the details of this bill has ever before been proposed or adopted. They establish for the security of the colored race safeguards which go infinitely beyond any that the General Government has ever provided for the white race. In fact, the distinction of race and color is, by the bill, made to operate in favor of the colored and against the white race. They interfere with the municipal legislation of the States, with the relations existing exclusively between a State and its citizens, or between inhabitants of the same State—an absorption of power by the General Government which, if acquiesced in, must sap and destroy our Federative system of limited powers, and break down the barriers which preserve the rights of the States. It is another step, or rather stride, towards centralization, and the concentration of all legislative powers in the National Government. The tendency of the bill must be to resuscitate the spirit of rebellion, and to arrest the progress of those influences

which are more closely drawing around the States the bonds of union and peace.

My lamented predecessor, in his proclamation of the 1st of January, 1863, ordered and declared that all persons held as slaves within certain States and parts of States therein designated were, and thenceforward should be, free; and further, that the executive government of the United States, including the military and naval authorities thereof, would recognize and maintain the freedom of such persons. This guarantee has been rendered especially obligatory and sacred by the amendment of the Constitution abolishing slavery throughout the United States. I therefore fully recognize the obligation to protect and defend that class of our people, whenever and wherever it shall become necessary, and to the full extent compatible with the Constitution of the United States.

Entertaining these sentiments, it only remains for me to say that I will cheerfully co-operate with Congress in any measure that may be necessary for the protection of the civil rights of the freedmen, as well as those of all other classes of persons throughout the United States, by judicial process, under equal and impartial laws, in conformity with the provisions of the Federal Constitution.

I now return the bill to the Senate, and regret that, in considering the bills and joint resolutions—forty-two in number—which have been thus far submitted for my approval, I am compelled to withhold my assent from a second measure that has received the sanction of both houses of Congress.

ANDREW JOHNSON.

The veto message was read, and after debate, the question was taken on the 6th of April "Shall the bill pass, the objections of the President notwithstanding?" It was determined in the affirmative by a vote of 33 yeas against 15 nays. The bill was then sent to House of Representatives, where two-thirds agreed to pass the same.

ANDREW JOHNSON.—III.

May 16, 1866.

To the Senate of the United States:

I return to the Senate, in which house it originated, the bill which has passed both houses of Congress, entitled "An act for the admission of the State of Colorado into the Union," with my objections to its becoming a law at this time.

First. From the best information which I have been able to obtain I do not consider the establishment of a State government at present necessary for the welfare of the people of Colorado. Under the existing Territorial government all the rights, privileges, and interests of the citizens are protected and secured. The qualified voters choose their

own legislators and their own local officers, and are represented in Congress by a delegate of their own selection. They make and execute their own municipal laws, subject only to revision by Congress—an authority not likely to be exercised, unless in extreme or extraordinary cases. The population is small, some estimating it so low as twenty-five thousand, while advocates of the bill reckon the number at from thirty-five thousand to forty thousand souls. The people are principally recent settlers, many of whom are understood to be ready for removal to other mining districts beyond the limits of the Territory, if circumstances shall render them more inviting. Such a population cannot but find relief from excessive taxation if the Territorial system, which devolves the expenses of the executive, legislative, and judicial departments upon the United States, is for the present continued. They cannot but find the security of person and property increased by their reliance upon the national executive power for the maintenance of law and order against the disturbances necessarily incident to all newly organized communities.

Second. It is not satisfactorily established that a majority of the citizens of Colorado desire, or are prepared for, an exchange of a Territorial for a State government. In September, 1864, under the authority of Congress, an election was lawfully appointed and held for the purpose of ascertaining the views of the people upon this particular question. Six thousand one hundred and ninety-two votes were cast, and of this number a majority of 3,152 was given against the proposed change. In September, 1865, without any legal authority, the question was again presented to the people of the Territory, with the view of obtaining a reconsideration of the result of the election held in compliance with the act of Congress approved March 21, 1864. At this second election 5,905 votes were polled, and a majority of 155 was given in favor of a State organization. It does not seem to me entirely safe to receive this, the last mentioned result, so irregularly obtained, as sufficient to outweigh the one which had been legally obtained in the first election. Regularity and conformity to law are essential to the preservation of order and stable government, and should as far as practicable, always be observed in the formation of new States.

Third. The admission of Colorado, at this time, as a State into the Federal Union, appears to me to be incompatible with the public interests of the country. While it is desirable that Territories, when sufficiently matured, should be organized as States, yet the spirit of the Constitution seems to require that there should be an approximation towards equality among the several States comprising the Union. No State can have less or more than two Senators in Congress. The largest State has a population of four millions; several of the States have a population exceeding two millions; and many others have a population exceeding one million. A population of 127,000 is the ratio of apportionment of Representatives among the several States.

If this bill should become a law, the people of Colorado, thirty thousand in number, would have in the House of Representatives one member, while New York, with a population of four millions, has but thirty-one; Colorado would have in the electoral college three votes, while New York has only thirty-three; Colorado would have in the Senate two votes, while New York has no more.

Inequalities of this character have already occurred, but it is believed that none have happened where the inequality was so great. When such inequality has been allowed, Congress is supposed to have permitted it on the ground of some high public necessity, and under circumstances which promised that it would rapidly disappear through the growth and development of the newly admitted State. Thus, in regard to the several States in what was formerly called the "North-west Territory," lying east of the Mississippi, the rapid advancement in population rendered it certain that States admitted with only one or two Representatives in Congress would, in a very short period, be entitled to a great increase of representation. So, when California was admitted on the ground of commercial and political exigencies, it was well foreseen that that State was destined rapidly to become a great, prosperous, and important mining and commercial community. In the case of Colorado, I am not aware that any national exigency, either of a political or commercial nature, requires a departure from the law of equality, which has been so generally adhered to in our history.

If information submitted in connection with this bill is reliable, Colorado, instead of increasing, has declined in population. At an election for members of a Territorial legislature, held in 1861, 10,580 votes were cast. At the election before mentioned, in 1864, the number of votes cast was 6,192; while at the irregular election held in 1865, which is assumed as a basis for legislative action at this time, the aggregate of votes was 5,905. Sincerely anxious for the welfare and prosperity of every Territory and State, as well as for the prosperity and welfare of the whole Union, I regret this apparent decline of population in Colorado; but it is manifest that it is due to emigration which is going on from that Territory into other regions within the United States, which either are in fact, or are believed by the inhabitants of Colorado to be, richer in mineral wealth and agricultural resources. If, however, Colorado has not really declined in population, another census, or another election under the authority of Congress, would place the question beyond doubt, and cause but little delay in the ultimate admission of the Territory as a State, if desired by the people.

The tenor of these objections furnishes the reply which may be expected to an argument in favor of the measure derived from the enabling act which was passed by Congress on the 21st day of March, 1864. Although Congress then supposed that the condition of the Territory was such as to warrant its admission as a State, the result of two years' experience shows that every reason which existed for the institution of

a Territorial instead of a State government in Colorado, at its first organization, still continues in force.

The condition of the Union at the present moment is calculated to inspire caution in regard to the admission of new States. Eleven of the old States have been for some time, and still remain, unrepresented in Congress. It is a common interest of all the States, as well those represented as those unrepresented, that the integrity and harmony of the Union should be restored as completely as possible, so that all those who are expected to bear the burdens of the Federal Government shall be consulted concerning the admission of new States; and that in the mean time no new State shall be prematurely and unnecessarily admitted to a participation in the political power which the Federal Government wields, not for the benefit of any individual State or section, but for the common safety, welfare, and happiness of the whole country.

ANDREW JOHNSON.

The veto message was read, ordered to be printed, and laid on the table.

ANDREW JOHNSON.—IV.

June 15, 1866.

To the Senate of the United States :

The bill entitled "An act to enable the New York and Montana Iron Mining and Manufacturing Company to purchase a certain amount of the public lands not now in market," is herewith returned to the Senate, in which it originated, with the objections which induce me to withhold my approval.

By the terms of this bill the New York and Montana Iron Mining and Manufacturing Company are authorized, at any time within one year after the date of approval, to *pre-empt* two tracts of land in the Territory of Montana, not exceeding in the aggregate twenty sections, and not included in any Indian reservation, or in any Government reservation for military or other purposes. Three of these sections may be selected from lands containing *iron ore and coal*, and the remainder from *timber* lands lying near thereto. These selections are to be made under regulations from the Secretary of the Interior, and be subject to his approval. The company, on the selection of the lands, may require immediate possession by permanently marking their boundaries and publishing description thereof in any two newspapers of general circulation in the Territory of Montana. Patents are to be issued on the performance, within two years, of the following conditions :

1st. The lands to be surveyed at the expense of the company, and each tract to be "as nearly in a square form as may be practicable."

2d. The company to furnish evidence, satisfactory to the Secretary of the Interior, that they have erected and have in operation, in one or

more places on said lands, iron works capable of manufacturing at least 1,500 tons of iron per annum.

3d. The company to have paid for said lands the minimum price of \$1.25 per acre.

It is also provided that the "patents shall convey no title to any mineral lands, except iron and coal, or to any other lands held by right of possession, or by any other title, *except Indian title*, valid at the time of the selection of the lands." The company are to have the privileges of *ordinary pre-emptors*, and be subject to the same restrictions as such pre-emptors with reference to wood and timber on the lands, with the exception of so much as may be necessarily used in the erection of buildings and in the legitimate business of manufacturing iron.

The parties upon whom these privileges are conferred are designated in the bill as "The New York and Montana Iron and Manufacturing Company." Their names and residence not being disclosed, it must be inferred that this company is a corporation, which, under color of corporate powers derived from some State or Territorial legislative authority, proposes to carry on the business of mining and manufacturing iron, and, to accomplish these ends, seeks this grant of public land in Montana. Two questions thus arise, viz, whether the privileges the bill would confer should be granted to any person or persons; and, secondly, whether, if unobjectionable in other respects, they should be conferred upon a corporation.

The public domain is a national trust, set apart and held for the general welfare upon principles of equal justice, and not to be bestowed as a special privilege upon a favored class. The proper rules for the disposal of public land have from the earliest period been the subject of earnest inquiry, grave discussion, and deliberate judgment. The purpose of *direct* revenue was the first object, and this was attained by public sale to the highest bidder, and subsequently by the right of private purchase at a fixed minimum. It was soon discovered that the surest and most speedy means of promoting the wealth and prosperity of the country was by encouraging actual settlement and occupation; and hence a system of pre-emption rights, resulting most beneficially in all the Western Territories. By progressive steps it has advanced to the homestead principle, securing to every head of a family, widow, and single man twenty-one years of age, and to every soldier who has borne arms for his country, a landed estate sufficient, with industry, for the purpose of independent support.

Without tracing the system of pre-emption laws through the general stages, it is sufficient to observe that it rests upon certain just and plain principles, firmly established in all our legislation. The object of these laws is to encourage the expansion of population and the development of agricultural interests; and hence they have been invariably restricted to settlers. Actual residence and cultivation are made indispensable conditions; and, to guard the privilege from abuses of speculation or

monopoly, the law is rigid as to the mode of establishing claims by adequate testimony, with penalties for perjury. Mining, trading, or any pursuit other than culture of the soil, is interdicted, mineral lands being expressly excluded from pre-emption privileges, excepting those containing coal, which, in quantities not exceeding one hundred and sixty acres, are restricted to individuals in actual possession and commerce, with an enhanced minimum of twenty dollars per acre.

For a quarter of a century the quantity of land subject to agricultural pre-emption has been limited so as not to exceed a quarter section, or one hundred and sixty acres; and, still further to guard against monopoly, the privilege of pre-emption is not allowed to any person who owns three hundred and twenty acres of land in any State or Territory of the United States, nor is any person entitled to more than one pre-emptive right, nor is it extended to lands to which the Indian usufruct has not been extinguished. To restrict the privilege within reasonable limits, credit to the ordinary pre-emptor on *offered* land is not extended beyond twelve months, within which time the minimum price must be paid. Where the settlement is upon *unoffered* territory, the time for payment is limited to the day of public offering designated by proclamation of the President; while, to prevent depreciation of the land by waste or destruction of what may constitute its value, penal enactments have been made for the punishment of persons depredating upon public timber.

Now, supposing the New York and Montana Iron Mining and Manufacturing Company to be entitled to all the pre-emption rights which it had been found just and expedient to bestow upon natural persons, it will be seen that the privileges conferred by the bill in question are in direct conflict with every principle heretofore observed in respect to the disposal of the public lands.

The bill confers pre-emption right to *mineral lands*, which, excepting coal lands, at an enhanced minimum, have heretofore, as a general principle, been carefully excluded from pre-emption. The object of the company is not to cultivate the soil or to promote agriculture, but is for the sole purpose of mining and manufacturing iron. The company is not limited like ordinary pre-emptors, to one pre-emptive claim of a quarter section, but may pre-empt two bodies of land, amounting in the aggregate to twenty sections, containing 12,800 acres, or eighty ordinary individual pre-emption rights. The timber is not protected, but, on the contrary, is devoted to speedy destruction; for even before the consummation of title the company are allowed to consume whatever may be necessary in the erection of buildings and the business of manufacturing iron. For these special privileges, in contravention of the land policy of so many years, the company are required to pay only the minimum price of one dollar and twenty-five cents per acre, or one-sixteenth of the established minimum, and are granted a credit of two years, or twice the time allowed ordinary pre-emptors on offered lands.

Nor is this all. The pre-emption right in question covers three sections of land containing iron ore and *coal*. The act passed on the 1st of July made it lawful for the President to cause tracts embracing coal-beds or coal-fields to be offered at public sale in suitable legal subdivisions to the highest bidder, after public notice of not less than three months, at a minimum price of twenty dollars per acre, and any lands not thus disposed of were thereafter to be liable to private entry at said minimum. By the act of March 3, 1865, the right of pre-emption to coal lands is granted to any citizen of the United States who at that date was engaged in the business of coal mining on the public domain for purposes of commerce; and he is authorized to enter, according to legal subdivisions, at the minimum price of twenty dollars per acre, a quantity of land not exceeding one hundred and sixty acres, to embrace his improvements and mining premises. Under these acts the minimum price of three sections of coal lands would be thirty-eight thousand four hundred dollars (\$38,400).

By the bill now in question these sections containing *coal and iron* are bestowed on this company at the nominal price of \$1.25 per acre, or two thousand four hundred dollars (\$2,400) thus making a gratuity or gift to the New York and Montana Iron Mining and Manufacturing Company of thirty-six thousand dollars (\$36,000).

On what ground can such a gratuity to this company be justified, especially at a time when the burdens of taxation bear so heavily upon all classes of the people?

Less than two years ago it appears to have been the deliberate judgment of Congress that tracts of land containing coal-beds or coal-fields should be sold after three months' notice, to the bidder at public auction who would give the highest price over twenty dollars per acre; and that a citizen engaged in the business of actual coal-mining on the public domain should only secure a tract of one hundred and sixty acres at private entry, upon payment of twenty dollars per acre, and formal and satisfactory proof that he in all respects came within the requirements of the statute. It cannot be that the coal-fields of Montana have depreciated nearly twenty-fold in value since July, 1864. So complete a revolution in the land policy as is manifested by this act can only be ascribed, therefore, to an inadvertence, which Congress will, I trust, promptly correct.

Believing that the pre-emption policy—so deliberately adopted, so long practiced, so carefully guarded with a view to the disposal of the public lands in a manner that would promote the population and prosperity of the country—should not be perverted to the purposes contemplated by this bill, I would be constrained to withhold my sanction, even if this company were, as natural persons, entitled to the privileges of ordinary pre-emptors; for if a corporation, as the name and the absence of any designation of individuals would denote, the measure before me is liable to another fatal objection.

Why should incorporated companies have the privileges of individual pre-emptors? What principle of justice requires such a policy? What motive of public welfare can fail to condemn it? Lands held by corporations were guarded by ancient laws as held in *mortmain*, or by "*dead-hand*," and from the time of *Magna Charta* corporations required the royal license to hold land, because such holding was regarded as in derogation of public policy and common right. Pre-emption is itself a special privilege, only authorized by its supposed public benefit in promoting the settlement and cultivation of vacant territory, and in rewarding the enterprise of the persons upon whom the privilege is bestowed. "Pre-emption rights," as declared by the Supreme Court of the United States, "are founded in an enlightened public policy, rendered necessary by the enterprise of our citizens. The adventurous pioneer, who is found in advance of our settlements, encounters many hardships, and not unfrequently dangers from savage incursions. He is generally poor, and it is fit that his enterprise should be rewarded by the privilege of purchasing the spot selected by him, not to exceed one hundred and sixty acres.

It may be said that this company, before they obtain a patent, must prove that within two years they "have erected, and have in operation in one or more places on the said lands, iron-works with a capacity for manufacturing at least fifteen hundred tons of iron per annum." On the other hand, they are to have possession for two years of more than twelve thousand acres of the choice land of the Territory, of which nearly two thousand acres are to contain *iron ore and coal*, and over ten thousand acres to be of *timber* land selected by themselves. They will thus have the first and exclusive choice. In fact, they are the only parties who at this time would have any privilege whatever in the way of obtaining titles in that Territory. Inasmuch as Montana has not yet been organized into a land district, the general pre-emption laws for the benefit of individual settlers have not yet been extended to that country, nor has a single acre of public land in the Territory yet been surveyed. With such exclusive and extraordinary privileges, how many companies would be willing to undertake furnaces that would produce five tons per day in much less time than two years?

It is plain the pretended consideration on which the patent is to issue bears no just proportion to that of the ordinary pre-emptor, and that this bill is but the precursor of a system of land distribution to a privileged class, unequal, unjust, and which ought not to receive the sanction of the General Government. Many thousand pioneers have turned their steps to the Western Territories, seeking with their wives and children, homesteads to be acquired by sturdy industry under the pre-emption laws. On their arrival they should not find the timbered lands and the tracts containing iron ore and coal already surveyed and claimed by corporate companies, favored by the special legislation of Congress, and with boundaries fixed even in advance of the public surveys—a de-

parture from the salutary provision requiring a settler upon surveyed lands to limit the boundaries of his claim to the lines of the public survey after they shall have been established. Here receives a title only to a legal subdivision, including his residence and improvements. The survey of the company may not accord with that which will hereafter be made by the Government, while the patent that issues will be descriptive of and confer a title to the tract as surveyed by the company.

I am aware of no precedent for granting such exclusive rights to a manufacturing company for a nominal consideration. Congress have made concessions to railway companies of alternate sections within given limits of the lines of their roads. This policy originated in the belief that the facilities afforded by reaching the parts of the country remote from the great centers of population would expedite the settlement and sale of the public domain. These incidental advantages were secured without pecuniary loss to the Government, by reason of the enhanced value of the reserved sections, which are held at the double minimum. Mining and manufacturing companies, however, have always been distinguished from public improvement corporations. The former are, in law and in fact, only private associations for trade and business on individual account, and for personal benefit. Admitting the proposition that railroad grants can stand on sound principle, it is plain that such cannot be the case with concessions to companies like that contemplated by this measure. In view of the strong temptation to monopolize the public lands, with the pernicious results, it would seem at least of doubtful expediency to lift corporations above all competition with actual settlers, by authorizing them to become purchasers of public lands in the Territories for any purpose, and particularly when clothed with the special benefits of this bill. For myself, I am convinced that the privileges of ordinary pre-emptors ought not to be extended to incorporated companies.

A third objection may be mentioned, as it exemplifies the spirit in which special privileges are sought by incorporated companies.

Land subject to Indian occupancy has always been scrupulously guarded by law from pre-emption settlements or encroachment under any pretext, until the Indian title should be extinguished. In the fourth section of this act, however, lands held by "Indian title" are excepted from prohibition against the patent to be issued to the New York and Montana Iron Mining and Manufacturing Company.

The bill provides that the patent "shall convey no title to any mineral lands, *except iron and coal*, or to any lands held by right of possession, or by any other title *except Indian title*, valid at the time of the selection of the said lands." It will be seen that by the first section, lands in "Indian reservation" are excluded from individual pre-emption right; but by the fourth section the patent may cover any Indian title *except a reservation*; so that no matter what may be the nature of

the Indian title, unless it be in a reservation, it is unprotected from the privilege conceded by this bill.

Without further pursuing the subject, I return the bill to the Senate without my signature, and with the following as prominent objections to its becoming a law :

1st. That it gives to the New York and Montana Iron Mining and Manufacturing Company pre-emption privileges to iron and coal lands on a large scale, and at the ordinary minimum—a privilege denied to ordinary pre-emptors. It bestows upon the company large tracts of coal lands at one-sixteenth of the minimum price required from ordinary pre-emptors. It also relieves the company from restrictions imposed upon ordinary pre-emptors in respect to *timber lands*; allows double the time for payment granted to pre-emptors on offered lands; and these privileges are for purposes not heretofore authorized by the pre-emption laws, but for trade and manufacturing.

2d. Pre-emption rights on such a scale to private corporations are unequal, and hostile to the policy and principles which sanction pre-emption laws.

3d. The bill allows this company to take possession of land, use it, and acquire a patent thereto before the Indian title is extinguished, and thus violates the good faith of the Government toward the aboriginal tribes.

ANDREW JOHNSON.

The veto message was read, ordered to be printed and lie on the table.

ANDREW JOHNSON.—V.

July 16, 1866.

To the House of Representatives :

A careful examination of the bill passed by the two houses of Congress, entitled "An act to continue in force and to amend 'An act to establish a Bureau for the relief of freedmen and refugees, and for other purposes,'" has convinced me that the legislation which it proposes would not be consistent with the welfare of the country, and that it falls clearly within the reasons assigned in my message of the 19th of February last, returning, without my signature, a similar measure which originated in the Senate. It is not my purpose to repeat the objections which I then urged. They are yet fresh in your recollection, and can be readily examined as a part of the records of one branch of the national legislature. Adhering to the principles set forth in that message, I now reaffirm them, and the line of policy therein indicated.

The only ground upon which this kind of legislation can be justified is that of the war-making power. The act of which this bill is intended as amendatory was passed during the existence of the war. By its own

provisions, it is to terminate within one year from the cessation of hostilities and the declaration of peace. It is therefore yet in existence, and it is likely that it will continue in force as long as the freemen may require the benefit of its provisions. It will certainly remain in operation, as a law, until some months subsequent to the meeting of the next session of Congress, when, if experience shall make evident the necessity of additional legislation, the two houses will have ample time to mature and pass the requisite measures. In the mean time the questions arise, why should this war measure be continued beyond the period designated in the original act; and why, in time of peace, should military tribunals be created to continue until each "State shall be fully restored in its constitutional relations to the Government, and shall be duly represented in the Congress of the United States."

It was manifest, with respect to the act approved March 3, 1865, that prudence and wisdom alike required that jurisdiction over all cases concerning the free enjoyment of the immunities and rights of citizenship, as well as the protection of person and property, should be conferred upon some tribunal in every State or district where the ordinary course of judicial proceedings was interrupted by the rebellion, and until the same should be fully restored. At that time, therefore, an urgent necessity existed for the passage of some such law. Now, however, war has substantially ceased; the ordinary course of judicial proceedings is no longer interrupted; the courts, both State and Federal, are in full, complete, and successful operation, and through them every person, regardless of race and color, is entitled to and can be heard. The protection granted to the white citizen is already conferred by law upon the freedman; strong and stringent guards, by way of penalties and punishments, are thrown around his person and property, and it is believed that ample protection will be afforded him by due process of law, without resort to the dangerous expedient of "military tribunals," now that the war has been brought to a close. The necessity no longer existing for such tribunals, which had their origin in the war, grave objections to their continuance must present themselves to the minds of all reflecting and dispassionate men. Independently of the danger, in representative republics, of conferring upon the military, in time of peace, extraordinary powers—so carefully guarded against by the patriots and statesmen of the earlier days of the Republic, so frequently the ruin of Governments founded upon the same free principles, and subversive of the rights and liberties of the citizen—the question of practical economy earnestly commends itself to the consideration of the law-making power. With an immense debt already burdening the incomes of the industrial and laboring classes, a due regard for their interests, so inseparably connected with the welfare of the country, should prompt us to rigid economy and retrenchment, and influence us to abstain from all legislation that would unnecessarily increase the public indebtedness. Tested by this rule of sound political wisdom, I can see no reason for the es-

tablishment of the "military jurisdiction" conferred upon the officials of the Bureau by the fourteenth section of the bill.

By the laws of the United States, and of the different States, competent courts, Federal and State, have been established, and are now in full practical operation. By means of these civil tribunals ample redress is afforded for all private wrongs, whether to the person or the property of the citizen, without denial or unnecessary delay. They are open to all, without regard to color or race. I feel well assured that it will be better to trust the rights, privileges, and immunities of the citizen to tribunals thus established, and presided over by competent and impartial judges, bound by fixed rules of law and evidence, and where the right of trial by jury is guaranteed and secured, than to the caprice or judgment of an officer of the Bureau, who, it is possible, may be entirely ignorant of the principles that underlie the just administration of the law. There is danger, too, that conflict of jurisdiction will frequently arise between the civil courts and these military tribunals, each having concurrent jurisdiction over the person and the cause of action—the one judicature administered and controlled by civil law, the other by the military. How is the conflict to be settled, and who is to determine between the two tribunals when it arises? In my opinion, it is wise to guard against such conflict by leaving to the courts and juries the protection of all civil rights and the redress of all civil grievances.

The fact cannot be denied that since the actual cessation of hostilities many acts of violence, such, perhaps as had never been witnessed in their previous history, have occurred in the States involved in the recent rebellion. I believe, however, that public sentiment will sustain me in the assertion that such deeds of wrong are not confined to any particular State or section, but are manifested over the entire country, demonstrating that the cause that produced them does not depend upon any particular locality, but is the result of the agitation and derangement incident to a long and bloody civil war. While the prevalence of such disorders must be greatly deplored, their occasional and temporary occurrence would seem to furnish no necessity for the extension of the Bureau beyond the period fixed in the original act.

Besides the objections which I have thus briefly stated, I may urge upon your consideration the additional reason, that recent developments in regard to the practical operations of the Bureau in many of the States show that in numerous instances it is used by its agents as a means of promoting their individual advantage, and that the freedmen are employed for the advancement of the personal ends of the officers instead of their own improvement and welfare—thus confirming the fears, originally entertained by many, that the continuation of such a Bureau for any unnecessary length of time would inevitably result in fraud, corruption, and oppression. It is proper to state, that in cases of this character investigations have been promptly ordered, and the offender punished whenever his guilt has been satisfactorily established.

As another reason against the necessity of the legislation contemplated by this measure, reference may be had to the "civil rights bill," now a law of the land, and which will be faithfully executed so long as it shall remain unrepealed, and may not be declared unconstitutional by courts of competent jurisdiction. By that act it is enacted "that all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains and penalties, and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding."

By the provisions of the act full protection is afforded, through the districts courts of the United States, to all persons injured, and whose privileges, as thus declared, are in any way impaired; and heavy penalties are denounced against the person who willfully violates the law. I need not state that that law did not receive my approval; yet its remedies are far more preferable than those proposed in the present bill—the one being civil and the other military.

By the sixth section of the bill herewith returned, certain proceedings by which the lands in the "parishes of Saint Helena and Saint Luke, South Carolina," were sold and bid in, and afterwards disposed of by the tax commissioners, are ratified and confirmed. By the seventh, eighth ninth, tenth, and eleventh sections, provisions by law are made for the disposal of the lands thus acquired to a particular class of citizens. While the quieting of titles is deemed very important and desirable, the discrimination made in the bill seems objectionable, as does also the attempt to confer upon the commissioners judicial powers, by which citizens of the United States are to be deprived of their property in a mode contrary to that provision of the Constitution which declares that no person "shall be deprived of life, liberty, or property without due process of law." As a general principle, such legislation is unsafe, unwise, partial, and unconstitutional. It may deprive persons of their property who are equally deserving objects of the nation's bounty, as those whom, by this legislation, Congress seeks to benefit. The title to the land thus to be portioned out to a favored class of citizens must depend upon the regularity of the tax sales, under the law as it existed at the time of the sale, and no subsequent legislation can give validity to the right thus acquired, as against the original claimants. The attention of Congress is therefore invited to

a more mature consideration of the measures proposed in these sections of the bill.

In conclusion, I again urge upon Congress the danger of class legislation, so well calculated to keep the public mind in a state of uncertain expectation, disquiet, and restlessness, and to encourage interested hopes and fears that the National Government will continue to furnish to classes of citizens in the several States means for support and maintenance, regardless of whether they pursue a life of indolence or of labor, and regardless also of the constitutional limitations of the national authority in times of peace and tranquillity.

The bill is herewith returned to the House of Representatives, in which it originated, for its final action.

ANDREW JOHNSON.

The veto message was read, and the question "Will the House, on reconsideration, agree to pass the said bill?" was decided in the affirmative by a vote of 103 yeas against 33 nays, 46 not voting. The Senate agreed to the same, and the bill was passed.

ANDREW JOHNSON.—VI.

July 28, 1866.

To the House of Representatives:

I herewith return without my approval the bill entitled "An act erecting the Territory of Montana into a surveying district, and for other purposes."

The bill contains four sections, the first of which erects the Territory into a surveying district, and authorizes the appointment of a surveyor-general; the second constitutes the Territory a land district; the third authorizes the appointment of a register and receiver for said district; and the fourth requires the surveyor-general to "select and survey eighteen alternate odd sections of non-mineral timber lands within said district for the New York and Montana Iron Mining and Manufacturing Company, incorporated under the laws of the State of New York, which lands the said company shall have immediate possession of on the payment of \$1.25 per acre, and shall have a patent for the same whenever, within two years after their selection, they shall have furnished evidence, satisfactory to the Secretary of the Interior, that they have erected and have in operation on the said lands iron works with a capacity for manufacturing fifteen hundred tons of iron per annum; provided that the said lands shall revert to the United States in case the above-mentioned iron works be not erected within the specified time, and provided that until the title to the said lands shall have been perfected the timber shall not be cut off from more than one section of the said lands."

To confer the special privileges specified in this fourth section appears to be the chief object of the bill, the provisions of which are subject to some of the most important objections that induced me to return to the Senate with my disapproval the bill entitled "An act to enable the New York and Montana Iron Mining and Manufacturing Company to purchase a certain amount of the public lands not now in market." That bill authorized the same corporation to select and survey in the Territory of Montana, in square form, twenty-one sections of land, three of which might contain coal and iron ore, for which the minimum rate of \$1.25 per acre was to be paid. The present bill omits these sections of mineral lands and directs the surveyor-general to select and survey the timber lands; but it contains the objectionable feature of granting to a private mining and manufacturing corporation exclusive rights and privileges in the public domain which are by law denied to individuals. The first choice of timber land in the Territory is bestowed upon a corporation foreign to the Territory, and over which Congress has no control. The surveyor-general of the district, a public officer who should have no connection with any purchase of public land, is made the agent of the corporation to select the land; the selections to be made in the absence of all competition, and over eleven thousand acres are bestowed at the lowest price of public lands. It is by no means certain that the substitution of alternate sections for the compact body of lands contemplated by the other bill is any less injurious to the public interest; for alternate sections stripped of timber are not likely to enhance the value of those reserved by the Government. Be this as it may, this bill bestows a large monopoly of public lands without adequate consideration; confers a right and privilege in quantity equivalent to seventy-two pre-emption rights; introduces a dangerous system of privileges to private trading corporations; and is an unjust discrimination in favor of traders and speculators against individual settlers and pioneers who are seeking homes and improving our Western Territories. Such a departure from a long-established, wise, and just policy which has heretofore governed the disposition of the public funds cannot receive my sanction. The objections enumerated apply to the fourth section of the bill. The first, second, and third sections, providing for the appointment of a surveyor-general, register, and receiver, are unobjectionable, if any necessity requires the creation of these offices and the additional expenses of a new surveying land district. But they appear in this instance to be only needed as a part of the machinery to enable the "New York and Montana Iron Mining and Manufacturing Company" to secure these privileges; for I am informed by the proper Department, in a communication hereto annexed, that there is no public necessity for a surveyor-general, register, or receiver in Montana Territory, since it forms part of an existing surveying and land district, wherein the public business is, under present laws, trans-

acted with adequate facility, so that the provisions of the first, second, and third sections would occasion needless expense to the General Government.

ANDREW JOHNSON.

The message was read and referred to the Committee on Territories on the last day of the session.

ANDREW JOHNSON.—VII.

January 5, 1867.

To the Senate of the United States :

I have received and considered a bill entitled "An act to regulate the elective franchise in the District of Columbia," passed by the Senate on the 13th of December, and by the House of Representatives on the succeeding day. It was presented for my approval on the 26th ultimo—six days after the adjournment of Congress—and is now returned with my objections to the Senate, in which house it originated.

Measures having been introduced, at the commencement of the first session of the present Congress, for the extension of the elective franchise to persons of color in the District of Columbia, steps were taken by the corporate authorities of Washington and Georgetown to ascertain and make known the opinion of the people of the two cities upon a subject so immediately affecting their welfare as a community. The question was submitted to the people at special elections, held in the month of December, 1865, when the qualified voters of Washington and Georgetown, with great unanimity of sentiment, expressed themselves opposed to the contemplated legislation. In Washington, in a vote of 6,556—the largest, with but two exceptions, ever polled in that city—only thirty-five ballots were cast for negro suffrage; while in Georgetown, in an aggregate of 813 votes—a number considerably in excess of the average vote at the four preceding annual elections—but one was given in favor of the proposed extension of the elective franchise. As these elections seems to have been conducted with entire fairness, the result must be accepted as a truthful expression of the opinion of the people of the District upon the question which evoked it. Possessing, as an organized community, the same popular right as the inhabitants of a State or Territory to make known their will upon matters which affect their social and political condition, they could have selected no more appropriate mode of memorializing Congress upon the subject of this bill than through the suffrages of their qualified voters.

Entirely disregarding the wishes of the people of the District of Columbia, Congress has deemed it right and expedient to pass the measure now submitted for my signature. It therefore becomes the duty of the Executive, standing between the legislation of the one, and the will

of the other, fairly expressed, to determine whether he should approve the bill, and thus aid in placing upon the statute books of the nation a law against which the people to whom it is to apply have solemnly and with such unanimity protested, or whether he should return it with his objections, in the hope that, upon reconsideration, Congress, acting as the representatives of the inhabitants of the seat of government, will permit them to regulate a purely local question as to them may seem best suited to their interests and condition.

The District of Columbia was ceded to the United States by Maryland and Virginia in order that it might become the permanent seat of Government of the United States. Accepted by Congress, it at once became subject to the "exclusive legislation" for which provision is made in the Federal Constitution. It should be borne in mind, however, that in exercising its functions as the lawmaking power of the District of Columbia, the authority of the national legislature is not without limit, but that Congress is bound to observe the letter and spirit of the Constitution as well in the enactment of local laws for the seat of Government as in legislation common to the entire Union. Were it to be admitted that the right "to exercise exclusive legislation in all cases whatsoever" conferred upon Congress unlimited power within the District of Columbia, titles of nobility might be granted within its boundaries; laws might be made "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." Despotism would thus reign at the seat of Government of a free republic, and, as a place of permanent residence, it would be avoided by all who prefer the blessings of liberty to the mere emoluments of official position.

It should also be remembered that in legislating for the District of Columbia, under the Federal Constitution, the relation of Congress to its inhabitants is analogous to that of a legislature to the people of a State under their own local constitution. It does not, therefore, seem to be asking too much, that in matters pertaining to the District Congress should have a like respect for the will and interest of its inhabitants as is entertained by a State legislature for the wishes and prosperity of those for whom they legislate. The spirit of our Constitution and the genius of our Government require that, in regard to any law which is to affect and have a permanent bearing upon a people, their will should exert at least a reasonable influence upon those who are acting in the capacity of their legislators. Would, for instance, the legislature of the State of New York, or of Pennsylvania, or of Indiana, or of any State in the Union, in opposition to the expressed will of a large majority of the people whom they were chosen to represent, arbitrarily force upon them, as voters, all persons of the African or negro race, and make them eligible for office without any other qualification than a certain term of residence within the State? In neither of the

States named would the colored population, when acting together, be able to produce any great social or political result. Yet, in New York, before he can vote the man of color must fulfill conditions that are not required of the white citizen; in Pennsylvania the elective franchise is restricted to white freemen; while in Indiana negroes and mulattoes are expressly excluded from the right of suffrage. It hardly seems consistent with the principles of right and justice that representatives of States where suffrage is either denied the colored man or granted to him on qualifications requiring intelligence or property should compel the people of the District of Columbia to try an experiment which their own constituents have thus far shown an unwillingness to test for themselves. Nor does it accord with our republican ideas that the principle of self-government should lose its force when applied to the residents of the District, merely because their legislators are not, like those of the States, responsible, through the ballot, to the people for whom they are the law-making power.

The great object of placing the seat of Government under the exclusive legislation of Congress was to secure the entire independence of the General Government from undue State influence, and to enable it to discharge, without danger of interruption or infringement of its authority, the high functions for which it was created by the people. For this important purpose it was ceded to the United States by Maryland and Virginia, and it certainly never could have been contemplated, as one of the objects to be attained by placing it under the exclusive jurisdiction of Congress, that it would afford to propagandists or political parties a place for an experimental test of their principles and theories. While, indeed, the residents of the seat of Government are not citizens of any State, and are not therefore allowed a voice in the electoral college, or representation in the councils of the nation, they are, nevertheless, American citizens, entitled as such to every guarantee of the Constitution, to every benefit of the laws, and to every right which pertains to citizens of our common country. In all matters, then, affecting their domestic affairs, the spirit of our democratic form of government demands that their wishes should be consulted and respected, and they taught to feel that although not permitted practically to participate in national concerns, they are, nevertheless, under a paternal government regardful of their rights, mindful of their wants, and solicitous for their prosperity. It was evidently contemplated that all local questions would be left to their decision, at least to an extent that would not be incompatible with the object for which Congress was granted exclusive legislation over the seat of Government. When the Constitution was yet under consideration, it was assumed by Mr. Madison that its inhabitants would be allowed "a municipal legislature for local purposes, derived from their own suffrages." When, for the first time, Congress, in the year 1800, assembled at Washington, President Adams, in his speech at its opening, reminded the two houses that it was for them to

consider whether the local powers over the District of Columbia, vested by the Constitution in the Congress of the United States, should be immediately exercised, and he asked them to "consider it as the capital of a great nation, advancing with unexampled rapidity in arts, in commerce, in wealth, and in population, and possessing within itself those resources which, if not thrown away or lamentably misdirected, would secure to it a long course of prosperity and self-government." Three years had not elapsed when Congress was called upon to determine the propriety of retroceding to Maryland and Virginia the jurisdiction of the territory which they had respectively relinquished to the Government of the United States. It was urged on the one hand that exclusive jurisdiction was not necessary or useful to the Government; that it deprived the inhabitants of the District of their political rights; that much of the time of Congress was consumed in legislation pertaining to it; that its government was expensive; that Congress was not competent to legislate for the District, because the members were strangers to its local concerns; and that it was an example of a government without representation—an experiment dangerous to the liberties of the States. On the other hand it was held, among other reasons, and successfully, that the Constitution, the acts of cession of Virginia and Maryland, and the act of Congress accepting the grant, all contemplated the exercise of exclusive legislation by Congress, and that its usefulness, if not its necessity, was inferred from the inconvenience which was felt for want of it by the Congress of the Confederation; that the people themselves, who it was said had been deprived of their political rights, had not complained and did not desire a retrocession; that the evil might be remedied by giving them a representation in Congress when the District should become sufficiently populous, and in the mean time a local legislature; that if the inhabitants had not political rights, they had great political influence; that the trouble and expense of legislating for the District would not be great, but would diminish, and might, in a great measure, be avoided by a local legislature; and that Congress could not retrocede the inhabitants without their consent. Continuing to live substantially under the laws that existed at the time of the cession, and such changes only having been made as were suggested by themselves, the people of the District have not sought, by a local legislature, that which has generally been willingly conceded by the Congress of the nation.

As a general rule sound policy requires that the legislature should yield to the wishes of a people, when not inconsistent with the Constitution and the laws. The measures suited to one community might not be adapted to the condition of another; and the persons best qualified to determine such questions are those whose interests are to be directly affected by any proposed law. In Massachusetts, for instance, male persons are allowed to vote without regard to color, provided they possess a certain degree

of intelligence. In a population in that State of 1,231,066, there were, by the census of 1860, only 9,602 persons of color ; and of the males over twenty years of age, there were 339,086 white to 2,602 colored. By the same official enumeration there were in the District of Columbia 60,764 whites to 14,316 persons of the colored race. Since then, however, the population of the District has largely increased, and it is estimated that at the present time there are nearly a hundred thousand whites to thirty thousand negroes. The cause of the augmented members of the latter class needs no explanation. Contiguous to Maryland and Virginia, the District, during the war, became a place of refuge for those who escaped from servitude, and it is yet the abiding place of a considerable proportion of those who sought within its limits a shelter from bondage. Until then held in slavery, and denied all opportunities for mental culture, their first knowledge of the Government was acquired when, by conferring upon them freedom, it became the benefactor of their race ; the test of their capability for improvement began when, for the first time, the career of free industry and the avenues to intelligence were opened to them. Possessing these advantages but a limited time—the greater number perhaps having entered the District of Columbia during the later years of the war, or since its termination—we may well pause to inquire whether, after so brief a probation, they are as a class capable of an intelligent exercise of the right of suffrage, and qualified to discharge the duties of official position. The people who are daily witnesses of their mode of living, and who have become familiar with their habits of thought, have expressed the conviction that they are not yet competent to serve as electors, and thus become eligible for office in the local governments under which they live. Clothed with the elective franchise, their numbers, already largely in excess of the demand for labor, would be soon increased by an influx from the adjoining States. Drawn from fields where employment is abundant, they would in vain seek it here, and so add to the embarrassments already experienced from the large class of idle persons congregated in the District. Hardly yet capable of forming correct judgments upon the important questions that often make the issues of a political contest, they could readily be made subservient to the purposes of designing persons. While in Massachusetts, under the census of 1860, the proportion of white to colored males over twenty years of age was one hundred and thirty to one, here the black race constitutes nearly one-third of the entire population, whilst the same class surrounds the District on all sides, ready to change their residence at a moment's notice, and with all the facility of a nomadic people, in order to enjoy here, after a short residence, a privilege they find nowhere else. It is within their power in one year to come into the District in such numbers as to have the supreme control of the white race, and to govern them by their own officers, and by the exercise of all the municipal authority—among the rest, of the power of taxation over property in which they have no in-

terest. In Massachusetts, where they have enjoyed the benefits of a thorough educational system, a qualification of intelligence is required, while here suffrage is extended to all, without discrimination—as well to the most incapable, who can prove a residence in the District of one year, as to those persons of color who, comparatively few in number, are permanent inhabitants, and having given evidence of merit and qualification, are recognized as useful and responsible members of the community. Imposed upon an unwilling people, placed by the Constitution under the exclusive legislation of Congress, it would be viewed as an arbitrary exercise of power, and as an indication by the country of the purpose of Congress to compel the acceptance of negro suffrage by the States. It would engender a feeling of opposition and hatred between the two races, which, becoming deep-rooted and ineradicable, would prevent them from living together in a state of mutual friendliness. Carefully avoiding every measure that might tend to produce such a result, and following the clear and well ascertained popular will, we should assiduously endeavor to promote kindly relations between them, and thus, when that popular will leads the way, prepare for the gradual and harmonious introduction of this new element into the political power of the country.

It cannot be urged that the proposed extension of suffrage in the District of Columbia is necessary to enable persons of color to protect either their interests or their rights. They stand here precisely as they stand in Pennsylvania, Ohio, and Indiana. Here, as elsewhere, in all that pertains to civil rights, there is nothing to distinguish this class of persons from citizens of the United States; for they possess the “full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens,” and are made “subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding.” Nor, as has been assumed, are their suffrages necessary to aid a loyal sentiment here; for local governments already exist of undoubted fealty to the Government, and are sustained by communities which were among the first to testify their devotion to the Union, and which during the struggle furnished their full quotas of men to the military service of the country.

The exercise of the elective franchise is the highest attribute of an American citizen, and, when guided by virtue, intelligence, patriotism, and a proper appreciation of our institutions, constitutes the true basis of a democratic form of government, in which the sovereign power is lodged in the body of the people. Its influence for good necessarily depends upon the elevated character and patriotism of the elector; for if exercised by persons who do not justly estimate its value, and who are indifferent as to its results, it will only serve as a means of placing power in the hands of the unprincipled and ambitious, and must eventually in the complete destruction of that liberty of which it should be

the most powerful conservator. Great danger is, therefore, to be apprehended from an untimely extension of the elective franchise to any new class in our country, especially when the large majority of that class, in wielding the power thus placed in their hands, cannot be expected correctly to comprehend the duties and responsibilities which pertain to suffrage. Yesterday, as it were, four millions of persons were held in a condition of slavery that had existed for generations; to day they are freemen, and are assumed by law to be citizens. It cannot be presumed, from their previous condition of servitude, that, as a class, they are as well informed as to the nature of our Government as the intelligent foreigner who makes our land the home of his choice. In the case of the latter, neither a residence of five years, and the knowledge of our institutions which it gives, nor attachment to the principles of the Constitution are the only conditions upon which he can be admitted to citizenship; he must prove, in addition, a good moral character, and thus give reasonable ground for the belief that he will be faithful to the obligations which he assumes as a citizen of the Republic. Where a people—the source of all political power—speak, by their suffrages, through the instrumentality of the ballot-box, it must be carefully guarded against the control of those who are corrupt in principle and enemies of free institutions, for it can only become to our political and social system a safe conductor of healthy popular sentiment when kept free from demoralizing influences. Controlled, through fraud and usurpation, by the designing anarchy, and despotism must inevitably follow. In the hands of the patriotic and worthy, our Government will be preserved upon the principles of the Constitution inherited from our fathers. It follows, therefore, that in admitting to the ballot-box a new class of voters not qualified for the exercise of the elective franchise, we weaken our system of Government instead of adding to its strength and durability.

In returning this bill to the Senate, I deeply regret that there should be any conflict of opinion between the legislative and executive departments of the Government in regard to measures that vitally affect the prosperity and peace of the country. Sincerely desiring to reconcile the States with one another, and the whole people to the Government of the United States, it has been my earnest wish to co-operate with Congress in all measures having for their object a proper and complete adjustment of the questions resulting from our late civil war. Harmony between the co-ordinate branches of the Government, always necessary for the public welfare, was never more demanded than at the present time, and it will therefore be my constant aim to promote, as far as possible, concert of action between them. The differences of opinion that have already occurred have rendered me only the more cautious, lest the Executive should encroach upon any of the prerogatives of Congress, or, by exceeding in any manner the constitutional limit of his duties, destroy the equilibrium which should exist between the several

co-ordinate departments, and which is so essential to the harmonious working of the Government. I know it has been urged that the Executive department is more likely to enlarge the sphere of its action than either of the other two branches of the Government, and especially in the exercise of the veto power conferred upon it by the Constitution. It should be remembered, however, that this power is wholly negative and conservative in its character, and was intended to operate as a check upon unconstitutional, hasty, and improvident legislation, and as a means of protection against invasions of the just powers of the executive and judicial departments. It is remarked by Chancellor Kent that "to enact laws is a transcendent power; and, if the body that possesses it be a full and equal representation of the people, there is danger of its pressing with destructive weight upon all the other parts of the machinery of Government. It has, therefore, been thought necessary, by the most skillful and most experienced artists in the science of civil polity, that strong barriers should be erected for the protection and security of the other necessary powers of the Government. Nothing has been deemed more fit and expedient for the purpose than the provision that the head of the Executive department should be so constituted as to secure a requisite share of independence, and that he should have a negative upon the passing of laws; and that the judiciary power, resting on a still more permanent basis, should have the right of determining upon the validity of laws by the standard of the Constitution."

The necessity of some such check in the hands of the Executive is shown by reference to the most eminent writers upon our system of government, who seem to concur in the opinion that encroachments are most to be apprehended from the department in which all legislative powers are vested by the Constitution. Mr. Madison, in referring to the difficulty of providing some practical security for each against the invasion of the others, remarks that "the legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex." "The founders of our Republic * * * seem never to have recollected the danger from legislative usurpations; which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by Executive usurpations." "In a representative Republic, where the Executive magistracy is carefully limited, both in the extent and the duration of its power, and where the legislative power is exercised by an assembly which is inspired by a supposed influence over the people, with an intrepid confidence in its own strength, which is sufficiently numerous to feel all the passions which actuate a multitude, yet, not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes—it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions."

"The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive and less susceptible of precise limits, it can with the greater facility mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments." "On the other side, the Executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all. As the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter which gives still greater facility to encroachments of the former." "We have seen that the tendency of republican governments is to an aggrandizement of the legislative, at the expense of the other departments."

Mr. Jefferson, in referring to the early constitution of Virginia, objected that by its provisions all the powers of government—legislative, executive, and judicial—resulted to the legislative body, holding that "the concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others. For this reason that convention which passed the ordinance of government laid its foundation on this basis, that the legislative, executive, and judicial departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers. The judiciary and executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made, nor if made, can be effectual; because in that case they may put their proceedings into the form of an act of assembly, which will render them obligatory on the other branches. They have accordingly, in many instances, decided rights which should have been left to judiciary controversy; and the direction of the Executive, during the whole time of their session, is becoming habitual and familiar."

Mr. Justice Story, in his Commentaries on the Constitution, reviews the same subject, and says :

“The truth is that the legislative power is the great and overruling power in every free Government.” “The representatives of the people will watch with jealousy every encroachment of the Executive magistrate, for it trenches upon their own authority. But who shall watch the encroachment of these representatives themselves? Will they be as jealous of the exercise of power by themselves as by others?” “There are many reasons which may be assigned for the engrossing influence of the legislative department. In the first place, its constitutional powers are more extensive, and less capable of being brought within precise limits than those of either of the other departments. The bounds of the Executive authority are easily marked out and defined. It reaches few objects, and those are known. It cannot transcend them without being brought in contact with the other departments. Laws may check and restrain and bound its exercise. The same remarks apply with still greater force to the judiciary. The jurisdiction is, or may be, bounded to a few objects or persons; or, however general and unlimited, its operations are necessarily confined to the mere administration of private and public justice. It cannot punish without law. It cannot create controversies to act upon. It can decide only upon rights and cases as they are brought by others before it. It can do nothing for itself. It must do everything for others. It must obey the laws; and if it corruptly administers them, it is subjected to the power of impeachment. On the other hand, the legislative power, except in the few cases of constitutional prohibition, is unlimited. It is forever varying its means and its ends. It governs the institutions, and laws, and public policy of the country. It regulates all its vast interests. It disposes of all its property. Look but at the exercise of two or three branches of its ordinary powers. It levies all taxes; it directs and appropriates all supplies; it gives the rules for the descent, distribution, and devises of all property held by individuals. It controls the sources and the resources of wealth. It changes at its will the whole fabric of the laws. It molds at its pleasure almost all the institutions which give strength, and comfort, and dignity to society. In the next place, it is the direct, visible representative of the will of the people in all the changes of times and circumstances. It has the pride as well as the power of numbers. It is easily moved and steadily moved by the strong impulses of popular feeling and popular odium. It obeys, without reluctance, the wishes and the will of the majority for the time being. The path to public favor lies open by such obedience, and it finds not only support, but impunity, in whatever measures the majority advises, even though they transcend the constitutional limits. It has no motive, therefore, to be jealous or scrupulous in its own use of power; and it finds its ambition stimulated and its arm strengthened by the countenance and the courage of numbers. These views are not alone those of men who look with apprehension upon the fate of republics, but they are also admitted by some of the strongest advocates for popular rights and the permanency of republican institutions.” “Each department should have a will of its own.” “Each should have its own independence secured beyond the power of being taken away by either or both of the others. But at the same time the relations of each to the other should be so strong that there should be a mutual interest to sustain and protect each other. There should not only be constitutional means, but personal motives to resist encroachments of one or either of the

others. Thus, ambition would be made to counteract ambition; the desire of power to check power; and the pressure of interest to balance an opposing interest." "The judiciary is naturally and almost necessarily (as has been already said) the weakest department. It can have no means of influence by patronage. Its powers can never be wielded for itself. It has no command over the purse or the sword of the nation. It can neither lay taxes, nor appropriate money, nor command armies, nor appoint to office. It is never brought into contact with the people by constant appeals and solicitations, and private intercourse, which belong to all the other departments of government. It is seen only in controversies, or in trials and punishments. Its rigid justice and impartiality give it no claims to favor, however they may to respect. It stands solitary and unsupported except by that portion of public opinion which is interested only in the strict administration of justice. It can rarely secure the sympathy or zealous support either of the executive or the legislature. If they are not (as is not unfrequently the case) jealous of its prerogatives, the constant necessity of scrutinizing the acts of each, upon the application of any private person, and the painful duty of pronouncing judgment that these acts are a departure from the law or Constitution can have no tendency to conciliate kindness or nourish influence. It would seem, therefore, that some additional guards would, under the circumstances, be necessary to protect this department from the absolute dominion of the others. Yet rarely have any such guards been applied, and every attempt to introduce them has been resisted with a pertinacity which demonstrates how slow popular leaders are to introduce checks upon their own power, and how slow the people are to believe that the judiciary is the real bulwark of their liberties." "If any department of the government has undue influence or absorbing power, it certainly has not been the executive or judiciary."

In addition to what has been said by these distinguished writers, it may also be urged that the dominant party in each house may, by the expulsion of a sufficient number of members, or by the exclusion from representation of a requisite number of States, reduce the minority to less than one-third. Congress, by these means, might be enabled to pass a law, the objections of the President to the contrary notwithstanding, which would render impotent the other two departments of the Government, and make inoperative the wholesome and restraining power which it was intended by the framers of the Constitution should be exerted by them. This would be a practical concentration of all power in the Congress of the United States; this, in the language of the author of the Declaration of Independence, would be "precisely the definition of despotic government."

I have preferred to reproduce these teachings of the great statesmen and constitutional lawyers of the early and later days of the Republic rather than to rely simply upon an expression of my own opinions. We cannot too often recur to them, especially at a conjuncture like the present. Their application to our actual condition is so apparent that they now come to us a living voice, to be listened to with more attention than at any other previous period of our history. We have been and are yet in the midst of popular commotion. The passions aroused by a great civil war are still dominant. It is not a time favorable to that

calm and deliberate judgment which is the only safe guide when radical changes in our institutions are to be made. The measure now before me is one of those changes. It initiates an untried experiment for a people who have said, with one voice, that it is not for their good. This alone should make us pause, but it is not all. The experiment has not been tried, or so much as demanded, by the people of the several States for themselves. In but few of the States has such an innovation been allowed as giving the ballot to the colored population without any other qualification than a residence of one year, and in most of them the denial of the ballot to this race is absolute, and by fundamental law placed beyond the domain of ordinary legislation. In most of those States the evil of such suffrage would be partial, but, small as it would be, it is guarded by constitutional barriers. Here the innovation assumes formidable proportions, which may easily grow to such an extent as to make the white population a subordinate element in the body politic.

After full deliberation upon this measure, I cannot bring myself to approve it, even upon local considerations, nor yet as the beginning of an experiment on a larger scale. I yield to no one in attachment to that rule of general suffrage which distinguishes our policy as a nation. But there is a limit, wisely observed hitherto, which makes the ballot a privilege and a trust, and which requires of some classes a time suitable for probation and preparation. To give it indiscriminately to a new class, wholly unprepared, by previous habits and opportunities, to perform the trust which it demands, is to degrade it, and finally to destroy its power, for it may be safely assumed that no political truth is better established than that such indiscriminate and all-embracing extension of popular suffrage must end at last in its destruction.

ANDREW JOHNSON.

The veto message was read, and after debate, the question "Shall the bill pass, the objections of the President to the contrary notwithstanding?" was determined in the affirmative, by a vote of 29 yeas against 10 nays, two-thirds of the Senators present voting in the affirmative. The House of Representatives agreed to pass the same, and a resolution was adopted directing the Secretary of the Senate to present the bill to the Secretary of State, together with the certificates of the Secretary of the Senate and Clerk of the House of Representatives, showing that the act was passed by a vote of two-thirds of both houses of Congress, after the same had been returned by the President with his objections, and after the reconsideration of said act by both houses of Congress, in accordance with the Constitution.

ANDREW JOHNSON.—VIII.

January 29, 1867.

To the Senate of the United States:

I return to the Senate, in which house it originated, a bill entitled "An act to admit the State of Colorado into the Union," to which I cannot, consistently with my sense of duty, give my approval. With

the exception of an additional section, containing new provisions, it is substantially the same as the bill of a similar title passed by Congress during the last session, submitted to the President for his approval, returned with the objections contained in a message bearing date the 15th of May last, and yet awaiting the reconsideration of the Senate.

A second bill, having in view the same purpose, has now passed both houses of Congress, and been presented for my signature. Having again carefully considered the subject, I have been unable to perceive any reason for changing the opinions which have already been communicated to Congress. I find, on the contrary, that there are many objections to the proposed legislation, of which I was not at that time aware; and that while several of those which I then assigned have, in the interval, gained in strength, yet others have been created by the altered character of the measures now submitted.

The constitution under which this State government is proposed to be formed very properly contains a provision that all laws in force at the time of its adoption, and the admission of the State into the Union, shall continue as if the constitution had not been adopted. Among those laws is one absolutely prohibiting negroes and mulattoes from voting. At the recent session of the Territorial legislature a bill for the repeal of this law, introduced into the council, was almost unanimously rejected; and at the very time when Congress was engaged in enacting the bill now under consideration, the legislature passed an act excluding negroes and mulattoes from the right to sit as jurors. This bill was vetoed by the governor of the Territory, who held that by the laws of the United States negroes and mulattoes are citizens, and subject to the duties, as well as entitled to the rights, of citizenship. The bill, however, was passed, the objections of the governor to the contrary notwithstanding, and is now a law of the Territory. Yet, in the bill now before me, by which it is proposed to admit the Territory as a State, it is provided that "there shall be no denial of the elective franchise or any other rights, to any person, by reason of race or color, excepting Indians not taxed."

The incongruity thus exhibited between the legislation of Congress and that of the Territory, taken in connection with the protest against the admission of the State hereinafter referred to, would seem clearly to indicate the impolicy and injustice of the proposed enactment.

It might, indeed, be a subject of grave inquiry, and doubtless will result in such inquiry if this bill becomes a law, whether it does not attempt to exercise a power not conferred upon Congress by the Federal Constitution. That instrument simply declares that Congress may admit new States into the Union. It nowhere says that Congress may make new States for the purpose of admitting them into the Union, or for any other purpose; and yet this bill is as clear an attempt to make the institutions as any in which the people themselves could engage.

In view of this action of Congress, the house of representatives of the Territory have earnestly protested against being forced into the Union without first having the question submitted to the people. Nothing could be more reasonable than the position which they thus assume; and it certainly cannot be the purpose of Congress to force upon a community, against their will, a government which they do not believe themselves capable of sustaining.

The following is a copy of the protest alluded to, as officially transmitted to me :

"Whereas it is announced in the public prints that it is the intention of Congress to admit Colorado as a State into the Union : Therefore,

"Resolved by the house of representatives of the Territory, That, representing as we do the last and only legal expression of public opinion on this question, we earnestly protest against the passage of a law admitting the State, without first having the question submitted to a vote of the people, for the reasons, first, that we have a right to a voice in the selection of the character of our government ; second, that we have not a sufficient population to support the expenses of a State government. For these reasons we trust that Congress will not force upon us a government against our will."

Upon information which I considered reliable, I assumed in my message of the 15th of May last that the population of Colorado was not more than thirty thousand, and expressed the opinion that this number was entirely too small either to assume the responsibilities or to enjoy the privileges of a State.

It appears that previous to that time the legislature, with a view to ascertaining the exact condition of the Territory, had passed a law authorizing a census of the population to be taken. The law made it the duty of the assessors in the several counties to take the census in connection with the annual assessments, and, in order to secure a correct enumeration of the population, allowed them a liberal compensation for the service by paying them for every name returned, and added to their previous oath of office an oath to perform this duty with fidelity.

From the accompanying official report it appears that returns have been received from fifteen of the eighteen counties into which the State is divided, and that their population amounts in the aggregate to twenty-four thousand nine hundred and nine. The three remaining counties are estimated to contain three thousand—making a total population of twenty-seven thousand nine hundred and nine.

This census was taken in the summer season, when it is claimed that the population is much larger than at any other period, as in the autumn miners in large numbers leave their work and return to the East, with the results of their summer enterprise.

The population, it will be observed, is but slightly in excess of one-fifth of the number required as the basis of representation for a single Congressional district in any of the States—the number being 127,000.

I am unable to perceive any good reason for such great disparity in the right of representaton, giving, as it would, to the people of Colo-

ratio not only this vast advantage in the House of Representatives, but an equality in the Senate, where the other States are represented by millions. With perhaps a single exception, no such inequality as this has ever before been attempted. I know that it is claimed that the population of the different States at the time of their admission has varied at different periods, but it has not varied much more than the population of each decade and the corresponding basis of representation for the different periods.

The obvious intent of the Constitution was, that no State should be admitted with a less population than the ratio for a representative at the time of application. The limitation in the second section of the first article of the Constitution, declaring that "each State shall have at least one representative," was manifestly designed to protect the States which originally composed the Union from being deprived, in the event of a waning population, of a voice in the popular branch of Congress, and was never intended as a warrant to force a new State into the Union with a representative population far below that which might at the time be required of sister members of the Confederacy. This bill, in view of the prohibition of the same section, which declares that "the number of representatives shall not exceed one for every thirty thousand," is at least a violation of the spirit, if not the letter of the Constitution.

It is respectfully submitted that however Congress, under the pressure of circumstances, may have admitted two or three States with less than a representative population at the time, there has been no instance in which an application for admission has ever been entertained when the population, as officially ascertained, was below thirty thousand.

Were there any doubt of this being the true construction of the Constitution, it would be dispelled by the early and long-continued practice of the Federal Government. For nearly sixty years after the adoption of the Constitution no State was admitted with a population believed at the time to be less than the current ratio for a representative, and the first instance in which there appears to have been a departure from the principle was in 1845, in the case of Florida. Obviously the result of sectional strife, we would do well to regard it as a warning of evil rather than as an example for imitation, and I think candid men of all parties will agree that the inspiring cause of the violation of this wholesome principle of restraint is to be found in a vain attempt to balance these antagonisms, which refused to be reconciled, except through the bloody arbitrament of arms. The plain facts of our history will attest that the great and leading States admitted since 1845, viz, Iowa, Wisconsin, California, Minnesota, and Kansas, including Texas, which was admitted that year, have all come with an ample population for one representative, and some of them with nearly or quite enough for two.

To demonstrate the correctness of my views on this question, I subjoin a table containing a list of the States admitted since the adoption

of the Federal Constitution, with the date of admission, the ratio of representation, and the representative population when admitted, deduced from the United States census tables, the calculation being made for the period of the decade corresponding with the date of admission.

Colorado, which it is now proposed to admit as a State, contains, as has already been stated, a population less than twenty-eight thousand, while the present ratio of representation is one hundred and twenty-seven thousand.

There can be no reason, that I can perceive, for the admission of Colorado that would not apply with equal force to nearly every other Territory now organized; and I submit whether, if this bill become a law, it will be possible to resist the logical conclusion that such Territories as Dakota, Montana, and Idaho must be received as States whenever they present themselves, without regard to the number of inhabitants they may respectively contain. Eight or ten new Senators and four or five new members of the House of Representatives would thus be admitted to represent a population scarcely exceeding that which, in any other portion of the nation, is entitled to but a single member of the House of Representatives, while the average for two Senators in the Union, as now constituted, is at least one million of people. It would surely be unjust to all other sections of the Union to enter upon a policy with regard to the admission of new States which might result in conferring such a disproportionate share of influence in the national legislature upon communities which, in pursuance of the wise policy of our fathers, should for some years to come be retained under the fostering care and protection of the National Government. If it is deemed just and expedient now to depart from the settled policy of the nation during all its history, and to admit all the Territories to the rights and privileges of States, irrespective of their population or fitness for such government, it is submitted whether it would not be well to devise such measures as will bring the subject before the country for consideration and decision. This would seem to be evidently wise, because, as has already been stated, if it is right to admit Colorado now, there is no reason for the exclusion of the other Territories.

It is no answer to these suggestions that an enabling act was passed authorizing the people of Colorado to take action on this subject. It is well known that that act was passed in consequence of representations that the population reached, according to some statements, as high as eighty thousand, and to none less than fifty thousand, and was growing with a rapidity which, by the time the admission could be consummated, would secure a population of over a hundred thousand. These representations prove to have been wholly fallacious, and, in addition, the people of the Territory, by a deliberate vote, decided that they would not assume the responsibilities of a State government. By that decision they utterly exhausted all power that was conferred by the enabling

act, and there has been no step taken since in relation to the admission that has had the slighted sanction or warrant of law.

The proceeding upon which the present application is based was in the utter absence of all law in relation to it, and there is no evidence that the votes on the question of the formation of a State government bear any relation whatever to the sentiment of the Territory. The protest of the house of representatives previously quoted is conclusive evidence to the contrary.

But if none of these reasons existed against this proposed enactment, the bill itself, besides being inconsistent in its provisions in conferring power upon a person unknown to the laws, and who may never have a legal existence, is so framed as to render its execution almost impossible. It is, indeed, a question whether it is not in itself a nullity. To say the least, it is of exceedingly doubtful propriety to confer the power proposed in this bill upon the "governor elect;" for, as by its own terms the constitution is not to take effect until after the admission of the State, he in the mean time has no more authority than any other private citizen. But, even supposing him to be clothed with sufficient authority to convene the legislature, what constitutes the "State legislature," to which is to be referred the submission of the conditions imposed by Congress? Is it a new body to be elected and convened by proclamation of the "governor elect," or is it that body which met more than a year ago under the provisions of the State constitution? By reference to the second section of the schedule, and to the eighteenth section of the fourth article of the State constitution, it will be seen that the term of the members of the house of representatives, and that of one-half of the members of the senate, expire on the first Monday of the present month. It is clear that, if there were no intrinsic objections to the bill itself in relation to purposes to be accomplished, this objection would be fatal; as it is apparent that the provisions of the third section of the bill to admit Colorado have reference to a period and a state of facts entirely different from the present, and affairs as they now exist, and if carried into effect, must necessarily lead to confusion.

Even if it were settled that the old and not a new body were to act, it would be found impracticable to execute the law, because a considerable number of the members, as I am informed, have ceased to be residents of the Territory, and in the sixty days within which the legislature is to be convened after the passage of the act, there would not be sufficient time to fill the vacancies by new elections, were there any authority under which they could be held.

It may not be improper to add that if these proceedings were all regular, and the result to be obtained were desirable, simple justice to the people of the Territory would require a longer period than sixty days within which to obtain action on the conditions proposed by the third section of the bill. There are, as is well known, large portions of the Territory with which there is and can be no general communication,

there being several counties which, from November to May, can only be reached by persons traveling on foot, while with other regions of the Territory, occupied by a large portion of the population, there is very little more freedom of access. Thus, if this bill should become a law, it would be impracticable to obtain any expression of public sentiment in reference to its provisions, with a view to enlighten the legislature, if the old body were called together, and, of course, equally impracticable to procure the election of a new body. This defect might have been remedied by an extension of the time and a submission of the question to the people, with a fair opportunity to enable them to express their sentiments.

The admission of a new State has generally been regarded as an epoch in our history, marking the onward progress of the nation; but, after the most careful and anxious inquiry on the subject, I cannot perceive that the proposed proceeding is in conformity with the policy which from the origin of the Government, has uniformly prevailed in the admission of new States. I therefore return the bill to the Senate without my signature.

ANDREW JOHNSON.

The veto message was read and ordered to be printed. On the 1st of March the Senate voted on the question, "Shall the bill pass, the objections of the President to the contrary notwithstanding?" and it was determined in the negative by a vote of 29 yeas against 19 nays. Two-thirds of the Senate present not having voted in the affirmative the bill was not passed.

ANDREW JOHNSON.—IX.

January 30, 1867.

To the Senate of the United States:

I return, for reconsideration, a bill entitled "An act for the admission of the State of Nebraska into the Union," which originated in the Senate, and has received the assent of both houses of Congress. A bill having in view the same object was presented for my approval a few hours prior to the adjournment of the last session, but, submitted at a time when there was no opportunity for a proper consideration of the subject, I withheld my signature, and the measure failed to become a law.

It appears, by the preamble of this bill, that the people of Nebraska, availing themselves of the authority conferred upon them by the act passed on the 19th day of April, 1864, "have adopted a constitution which, upon due examination, is found to conform to the provisions and comply with the conditions of said act, and to be republican in its form of government, and that they now ask for admission into the Union." This proposed law would, therefore, seem to be based upon the declaration contained in the enabling act, that, upon compliance with its terms,

the people of Nebraska should be admitted into the Union upon an equal footing with the original States. Reference to the bill, however, shows that while, by the first section, Congress distinctly accepts, ratifies, and confirms the constitution and State government which the people of the Territory have formed for themselves, declares Nebraska to be one of the United States of America, and admits her into the Union upon an equal footing with the original States in all respects whatsoever, the third section provides that this measure "shall not take effect except upon the fundamental condition that within the State of Nebraska there shall be no denial of the elective franchise, or of any other right, to any person, by reason of race or color, excepting Indians not taxed; and upon the further fundamental condition that the legislature of said State, by a solemn public act, shall declare the assent of said State to the said fundamental condition, and shall transmit to the President of the United States an authentic copy of said act, upon receipt whereof the President, by proclamation, shall forthwith announce the fact, whereupon said fundamental condition shall be held as a part of the organic law of the State; and thereupon, and without any further proceeding on the part of Congress, the admission of said State into the Union shall be considered as complete." This condition is not mentioned in the original enabling act; was not contemplated at the time of its passage; was not sought by the people themselves; has not heretofore been applied to the inhabitants of any State asking admission, and is in direct conflict with the constitution adopted by the people, and declared in the preamble "to be republican in its form of government," for in that instrument the exercise of the elective franchise, and the right to hold office, are expressly limited to white citizens of the United States. Congress thus undertakes to authorize and compel the legislature to change a constitution which, it is declared in the preamble, has received the sanction of the people, and which, by this bill, is "accepted, ratified, and confirmed" by the Congress of the nation.

The first and third sections of the bill exhibit yet further incongruity. By the one Nebraska is "admitted into the Union upon an equal footing with the original States, in all respects whatsoever," while by the other Congress demands, as a condition precedent to her admission, requirements which in our history have never been asked of any people when presenting a constitution and State government for the acceptance of the law-making power. It is expressly declared by the third section that the bill "shall not take effect, except upon the fundamental condition that within the State of Nebraska there shall be no denial of the elective franchise, or of any other right, to any person by reason of race or color, except Indians not taxed." Neither more nor less than the assertion of the right of Congress to regulate the elective franchise of any State hereafter to be admitted, this condition is in clear violation of the Federal Constitution, under the provisions of which, from the very foundation of the Government, each State has been left free to

determine for itself the qualifications necessary for the exercise of suffrage within its limits. Without precedent in our legislation, it is in marked contrast with those limitations which, imposed upon States that, from time to time, have become members of the Union, had for their object the single purpose of preventing any infringement of the Constitution of the country.

If Congress is satisfied that Nebraska, at the present time, possesses sufficient population to entitle her to full representation in the councils of the nation, and that her people desire an exchange of a Territorial for a State government, good faith would seem to demand that she should be admitted without further requirements than those expressed in the enabling act, with all of which, it is asserted in the preamble, her inhabitants have complied. Congress may, under the Constitution, admit new States or reject them, but the people of a State can alone make or change their organic law, and prescribe the qualifications requisite for electors. Congress, however, in passing the bill in the shape in which it has been submitted for my approval, does not merely reject the application of the people of Nebraska for present admission as a State into the Union, on the ground that the constitution which they have submitted restricts the exercise of the elective franchise to the white population, but imposes conditions which, if accepted by the legislature, may, without the consent of the people, so change the organic law as to make electors of all persons within the State, without distinction of race or color. In view of this fact, I suggest for the consideration of Congress, whether it would not be just, expedient, and in accordance with the principles of our Government, to allow the people, by popular vote, or through a convention chosen by themselves for that purpose, to declare whether or not they will accept the terms upon which it is now proposed to admit them into the Union. This course would not occasion much greater delay than that which the bill contemplates when it requires that the legislature shall be convened within thirty days after this measure shall have become a law, for the purpose of considering and deciding the conditions which it imposes, and gains additional force when we consider that the proceedings attending the formation of the State constitution were not in conformity with the provisions of the enabling act; that in an aggregate vote of 7,776, the majority in favor of the constitution did not exceed one hundred; and that it is alleged that, in consequence of frauds, even this result cannot be received as a fair expression of the wishes of the people. As upon them must fall the burdens of a State organization, it is but just that they should be permitted to determine for themselves a question which so materially affects their interests. Possessing a soil and a climate admirably adapted to those industrial pursuits which bring prosperity and greatness to a people, with the advantage of a central position on the great highway that will soon connect the Atlantic and Pacific States, Nebraska is rapidly gaining in numbers and wealth; and may, within

a very brief period, claim admission on grounds which will challenge and secure universal assent. She can therefore wisely and patiently afford to wait. Her population is said to be steadily and even rapidly increasing, being now generally conceded as high as forty thousand, and estimated by some whose judgment is entitled to respect at a still greater number. At her present rate of growth she will, in a very short time, have the requisite population for a Representative in Congress, and, what is far more important to her own citizens, will have realized such an advance in material wealth as will enable the expenses of a State government to be borne without oppression to the tax-payer. Of new communities it may be said with special force—and it is true of old ones—that the inducement to emigrants, other things being equal is in almost the precise ratio of the rate of taxation. The great States of the Northwest owe their marvelous prosperity largely to the fact that they were continued as Territories until they had grown to be wealthy and populous communities.

ANDREW JOHNSON.

The veto message was read and ordered to be printed. On the 8th of February the Senate voted on the question, "Shall the bill pass, the objections of the President to the contrary notwithstanding?" and it was determined in the affirmative by a vote of 31 yeas against 9 nays—two-thirds of the Senators present voting therefor. The House of Representatives voted on the bill the 9th, yeas 120, nays 44; not voting 27. So the House agreed to pass the said bill.

ANDREW JOHNSON.—X.

March 2, 1867.

To the Senate of the United States:

I have carefully examined the bill "to regulate the tenure of certain civil offices." The material portion of the bill is contained in the first section, and is of the effect following, namely: "That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been appointed by the President, with the advice and consent of the Senate, and duly qualified; and that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and the Attorney-General shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

These provisions are qualified by a reservation in the fourth section, "that nothing contained in the bill shall be construed to extend the term of any office, the duration of which is limited by law." In effect

the bill provides that the President shall not remove from their places any of the civil officers whose terms of service are not limited by law, without the advice and consent of the Senate of the United States. The bill in this respect conflicts, in my judgment, with the Constitution of the United States. The question, as Congress is well aware, is by no means a new one. That the power of removal is constitutionally vested in the President of the United States is a principle which has been not more distinctly declared by judicial authority and judicial commentators than it has been uniformly practiced upon by the legislative and executive departments of the Government. The question arose in the House of Representatives so early as the 16th of June, 1789, on the bill for establishing an Executive department denominated "the Department of Foreign Affairs." The first clause of the bill, after recapitulating the functions of that officer and defining his duties, had these words: "to be removable from office by the President of the United States." It was moved to strike out these words, and the motion was sustained with great ability and vigor. It was insisted that the President could not constitutionally exercise the power of removal exclusively of the Senate; that the Federalists so interpreted the Constitution when arguing for its adoption by the several States; that the Constitution had nowhere given the President power of removal, either expressly or by strong implication, but, on the contrary, had distinctly provided for removals from office by impeachment only.

A construction which denied the power of removal by the President was further maintained by arguments drawn from the danger of the abuse of the power; from the supposed tendency of an exposure of public officers to capricious removal to impair the efficiency of the civil service; from the alleged injustice and hardship of displacing incumbents dependent upon their official stations, without sufficient consideration; from a supposed want of responsibility on the part of the President, and from an imagined defect of guarantees against a vicious President who might incline to abuse the power. On the other hand, an exclusive power of removal by the President was defended as a true exposition of the text of the Constitution. It was maintained that there are certain causes for which persons ought to be removed from office without being guilty of treason, bribery, or malfeasance, and that the nature of things demands that it should be so. "Suppose," it was said, "a man becomes insane by the visitation of God, and is likely to ruin our affairs; are the hands of the Government to be confined from warding off the evil? Suppose a person in office, not possessing the talents he was judged to have at the time of the appointment; is the error not to be corrected? Suppose he acquires vicious habits and incurable indolence, or total neglect of the duties of his office, which shall work mischief to the public welfare; is there no way to arrest the threatened danger? Suppose he became odious and unpopular by reason of the measures he pursues—and this he may do without com-

mitting any positive offense against the law—must he preserve his office in despite of the popular will? Suppose him grasping for his own aggrandizement and the elevation of his connections by every means short of the treason defined by the Constitution, hurrying your affairs to the precipice of destruction, endangering your domestic tranquility, plundering you of the means of defense, alienating the affections of your allies and promoting the spirit of discord; must the tardy, tedious, desultory road by way of impeachment be traveled to overtake the man who, barely confining himself within the letter of the law, is employed in drawing off the vital principle of the Government? The nature of things, the great objects of society, the express objects of the Constitution itself require that this thing should be otherwise. To unite the Senate with the President in the exercise of the power," it was said, "would involve us in the most serious difficulty. Suppose a discovery of any of those events should take place when the Senate is not in session; how is the remedy to be applied? The evil could be avoided in no other way than by the Senate sitting always." In regard to the danger of the power being abused if exercised by one man, it was said, "that the danger is as great with respect to the Senate, who are assembled from various parts of the continent, with different impressions and opinions;" "that such a body is most likely to misuse the power of removal than the man whom the united voice of America calls to the Presidential chair. As the nature of government requires the power of removal," it was maintained "that it should be exercised in this way by the hand capable of exerting itself with effect; and the power must be conferred on the President by the Constitution as the Executive officer of the Government."

Mr. Madison, whose adverse opinion in the *Federalist* had been relied upon by those who denied the exclusive power, now participated in the debate. He declared that he had reviewed his former opinion, and he summed up the whole case, as follows:

The Constitution affirms that the executive power is vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says that in appointing to office the Senate shall be associated with the President, unless in the case of inferior offices, when the law shall otherwise direct. Have we (that is, Congress) a right to extend this exception? I believe not. If the Constitution has invested exclusive power in the President, I venture to assert that the legislature has no right to diminish or modify his executive authority. The question now resolves itself into this: Is the power of displacing an executive power? I conceive that if any power whatsoever is in the Executive it is the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his executive power, to make such appointments? Should we be authorized, in defiance of that clause in the Constitution—"The executive power shall be vested in the President"—to unite the Senate with the President in the appointment to office? I

conceive not. If it is admitted that we should not be authorized to do this, I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first one is authorized by being excepted out of the general rule established by the Constitution in these words: "The executive power shall be vested in the President."

The question thus ably and exhaustively argued was decided by the House of Representatives, by a vote of thirty-four to twenty, in favor of the principle that the executive power of removal is vested by the Constitution in the Executive, and in the Senate by the casting vote of the Vice-President.

The question has often been raised in subsequent times of high excitement, and the practice of the Government has nevertheless conformed in all cases to the decision thus early made.

The question was revived during the administration of President Jackson, who made, as is well recollected, a very large number of removals, which were made an occasion of close and rigorous scrutiny and remonstrance. The subject was long and earnestly debated in the Senate, and the early construction of the Constitution was nevertheless freely accepted as binding and conclusive upon Congress.

The question came before the Supreme Court of the United States in January, 1839, *ex parte Hennen*. It was declared by the court on that occasion that the power of removal from office was a subject much disputed, and upon which a great diversity of opinion was entertained in the early history of the Government. This related, however, to the power of the President to remove officers appointed with the concurrence of the Senate; and the great question was, whether the removal was to be by the President alone, or with the concurrence of the Senate, both constituting the appointing power. No one denied the power of the President and Senate jointly to remove where the tenure of the office was not fixed by the Constitution, which was a full recognition of the principle that the power of removal was incident to the power of appointment, but it was very early adopted as a practical construction of the Constitution that this power was vested in the President alone, and such would appear to have been the legislative construction of the Constitution, for in the organization of the three great Departments of State, War, and Treasury, in the year 1789, provision was made for the appointment of a subordinate officer by the head of the Department, who should have charge of the records, books, and papers appertaining to the office when the head of the Department should be removed from office by the President of the United States. When the Navy Department was established, in the year 1798, provision was made for the charge and custody of the books, records, and documents of the Department in case of vacancy in the office of Secretary by removal or otherwise. It is not here said "by removal of the President," as is done with respect to the heads of the other Departments, yet there can be no doubt that he holds his office with the same tenure as the

other Secretaries and is removable by the President. The change of phraseology arose, probably, from its having become the settled and well understood construction of the Constitution that the power of removal was vested in the President alone in such cases, although the appointment of the officer is by the President and Senate. (13 Peters, page 139.)

Our most distinguished and accepted commentators upon the Constitution concur in the construction thus early given by Congress, and thus sanctioned by the Supreme Court. After a full analysis of the Congressional debate to which I have referred, Mr. Justice Story comes to this conclusion :

After a most animated discussion, the vote finally taken in the House of Representatives was affirmative of the power of removal in the President, without any co-operation of the Senate, by the vote of thirty-four members against twenty. In the Senate, the clause in the bill affirming the power was carried by the casting vote of the Vice-President. That the final decision of this question so made was greatly influenced by the exalted character of the President then in office, was asserted at the time, and has always been believed, yet the doctrine was opposed as well as supported by the highest talents and patriotism of the country. The public have acquiesced in this decision, and it constitutes, perhaps, the most extraordinary case in the history of the Government of a power conferred by implication on the Executive by the assent of a bare majority of Congress, which has not been questioned on many other occasions.

The commentator adds :

Nor is this general acquiescence and silence without a satisfactory explanation.

Chancellor Kent's remarks on the subject are as follows :

On the first organization of the Government it was made a question whether the power of removal in case of officers appointed to hold at pleasure resided nowhere but in the body which appointed, and, of course, whether the consent of the Senate was not requisite to remove. This was the construction given to the Constitution while it was pending for ratification before the Senate conventions, by the author of the *Federalist*. But the construction which was given to the Constitution by Congress, after great consideration and discussion, was different. The words of the act (establishing the Treasury Department) are: "And whenever the same shall be removed from office by the President of the United States, or in any other case of vacancy in the office, the assistant shall act." This amounted to a legislative construction of the Constitution, and it has ever since been acquiesced in and acted upon as a decisive authority in the case. It applies equally to every other officer of the Government appointed by the President, whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the Executive department ought to hold at the pleasure of the head of the department, because he is invested generally with the executive authority, and the participation in that authority by the Senate was an exception to a general principle and ought to be taken strictly. The President is the great responsible officer for the faithful execution of the law, and the power of removal was incidental to that duty, and might often be requisite to fulfill it.

Thus has the important question presented by this bill been settled, in the language of the late Daniel Webster (who, while dissenting from it, admitted that it was settled), by construction, settled by precedent, settled by the practice of the Government, and settled by statute. The events of the last war furnished a practical confirmation of the wisdom of the Constitution as it has hitherto been maintained, in many of its parts, including that which is now the subject of consideration. When the war broke out rebel enemies, traitors, abettors, and sympathizers were found in every Department of the Government, as well in the civil service as in the land and naval military service. They were found in Congress and among the keepers of the Capitol; in foreign missions; in each and all the Executive Departments; in the judicial service; in the post office, and among the agents for conducting Indian affairs. Upon probable suspicion they were promptly displaced by my predecessor, so far as they held their offices under executive authority, and their duties were confided to new and loyal successors. No complaints against that power or doubts of its wisdom were entertained in any quarter. I sincerely trust and believe that no such civil war is likely to occur again. I cannot doubt, however, that in whatever form, and on whatever occasion, sedition can raise an effort to hinder, or embarrass, or defeat the legitimate action of this Government, whether by preventing the collection of revenue, or disturbing the public peace, or separating the States, or betraying the country to a foreign enemy, the power of removal from office by the Executive, as it has heretofore existed and been practiced, will be found indispensable.

Under these circumstances, as a depositary of the executive authority of the nation, I do not feel at liberty to unite with Congress in reversing it by giving my approval to the bill. At the early day when this question was settled, and, indeed, at the several periods when it has subsequently been agitated, the success of the Constitution of the United States, as a new and peculiar system of free representative Government, was held doubtful in other countries, and was even a subject of patriotic apprehension among the American people themselves. A trial of nearly eighty years, through the vicissitudes of foreign conflicts and of civil war, is confidently regarded as having extinguished all such doubts and apprehensions for the future. During that eighty years the people of the United States have enjoyed a measure of security, peace, prosperity, and happiness, never surpassed by any nation. It cannot be doubted that the triumphant success of the Constitution is due to the wonderful wisdom with which the functions of Government were distributed between the three principal departments—the legislative, the executive, and the judicial—and to the fidelity with which each has confined itself or been confined by the general voice of the nation within its peculiar and proper sphere. While a just, proper, and watchful jealousy of executive power constantly prevails as it ought ever to pre-

vail, yet it is equally true that an efficient Executive, capable, in the language of the oath prescribed to the President, of executing the laws and, within the sphere of executive action, of preserving, protecting, and defending the Constitution of the United States, is an indispensable security for tranquility at home, and peace, honor, and safety abroad. Governments have been erected in many countries upon our model. If one or many of them have thus far failed in fully securing to their people the benefits which we have derived from our system, it may be confidently asserted that their misfortune has resulted from their unfortunate failure to maintain the integrity of each of the three great departments while preserving harmony among them all.

Having at an early period accepted the Constitution in regard to the Executive office in the sense in which it was interpreted with the concurrence of its founders, I have found no sufficient grounds in the arguments now opposed to that construction or in any assumed necessity of the times for changing those opinions. For these reasons I return the bill to the Senate, in which house it originated, for the further consideration of Congress which the Constitution prescribes. Inasmuch as the several parts of the bill which I have not considered are matters chiefly of detail, and are based altogether upon the theory of the Constitution from which I am obliged to dissent, I have not thought it necessary to examine them with a view to make them an occasion of distinct and special objections.

Experience, I think, has shown that it is the easiest, as it is also the most attractive of studies, to frame constitutions for the self-government of free States and nations. But I think experience has equally shown that it is the most difficult of all political labors to preserve and maintain such free constitutions of self-government when once happily established. I know no other way in which they can be preserved and maintained, except by a constant adherence to them through the various vicissitudes of national existence, with such adaptations as may become necessary, always to be effected, however, through the agencies and in the forms prescribed in the original constitutions themselves.

Whenever administration fails or seems to fail in securing any of the great ends for which republican government is established, the proper course seems to be to renew the original spirit and forms of the Constitution itself.

ANDREW JOHNSON.

The veto message was read and ordered to be printed. A vote being taken by the Senate on the question "Shall the bill pass, the objections of the President to the contrary notwithstanding," it was determined in the affirmative by a vote 35 yeas against 11 nays—two-thirds of the Senators present voting in the affirmative. On the same day the House of Representatives agreed to pass the same.

ANDREW JOHNSON.—XI.

*March 2, 1867.**To the House of Representatives:*

The act entitled "An act making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes," contains provisions to which I must call attention. Those provisions are contained in the second section, which, in certain cases, virtually deprives the President of his constitutional functions as commander-in-chief of the Army, and in the sixth section, which denies to ten States of this Union their constitutional right to protect themselves in any emergency by means of their own militia. Those provisions are out of place in an appropriation act. I am compelled to defeat these necessary appropriations if I withhold my signature to the act. Pressed by these considerations I feel constrained to return the bill with my signature, but to accompany it with my protest against the sections which I have indicated.

ANDREW JOHNSON.

The above message was transmitted before, but not received until after the expiration of, the Thirty-ninth Congress. It was read on the 4th of March, 1867, and ordered to be laid on the table and printed.

ANDREW JOHNSON.—XII.

*March 23, 1867.**To the House of Representatives:*

I have considered the bill entitled "An act supplementary to an act entitled 'An act to provide for the more efficient government of the rebel States,' passed March 2, 1867, and to facilitate restoration," and now return it the House of Representatives with my objections.

This bill provides for elections in the ten States brought under the operation of the original act to which it is supplementary. Its details are principally directed to the elections for the formation of the State constitutions; but by the sixth section of the bill "all elections" in these States, occurring while the original act remains in force, are brought within its purview. Referring to these details, it will be found that, first of all, there is to be a registration of the voters. No one whose name has not been admitted on the list is to be allowed to vote at any of these elections. To ascertain who is entitled to registration, reference is made necessary, by the express language of the supplement, to the original act and to the pending bill. The fifth section of the original act provides as to voters that they shall be "male citizens of the State, twenty-one years old or upward, of whatever race, color, or pre-

vious condition, who have been residents of said State for one year." This is the general qualification followed, however, by many exceptions. No one can be registered, according to the original act, "who may be disfranchised for participation in the rebellion"; a provision which left undetermined the question as to what amounted to disfranchisement, and whether, without a judicial sentence, the act itself produced that effect. This supplemental bill superadds an oath to be taken by every person before his name can be admitted upon the registration, that he has "not been disfranchised for participation in any rebellion or civil war against the United States." It thus imposes upon every person the necessity and responsibility of deciding for himself, under the peril of punishment by a military commission if he makes a mistake, what works disfranchisement by participation in rebellion, and what amounts to such participation. Almost every man—the negro as well as the white—above twenty-one years of age, who was resident in these ten States during the rebellion, voluntarily or involuntarily, at some time and in some way, did participate in resistance to the lawful authority of the General Government. The question with the citizen to whom this oath is to be proposed must be a fearful one; for while the bill does not declare that perjury may be assigned for such false swearing, nor fix any penalty for the offense, we must not forget that martial law prevails; that every person is answerable to a military commission without previous presentment by a grand jury, for any charge that may be made against him; and that the supreme authority of the military commander determines the question as to what is an offense, and what is to be the measure of punishment.

The fourth section of the bill provides "that the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons." The only qualification stated for these officers is that they must be "loyal." They may be persons in the military service or civilians, residents of the State, or strangers. Yet these persons are to exercise most important duties, and are vested with unlimited discretion. They are to decide what names shall be placed upon the register, and from their decision there is to be no appeal. They are to superintend the elections, and to decide all questions which may arise. They are to have the custody of the ballots and to make return of the persons elected. Whatever frauds or errors they may commit must pass without redress. All that is left for the commanding general is, to receive the returns of the elections, open the same, and ascertain who are chosen "according to the returns of the officers who conducted said elections. By such means, and with this sort of agency, are the conventions of delegates to be constituted.

As the delegates are to speak for the people, common justice would seem to require that they should have authority from the people themselves. No convention so constituted will in any sense represent the

wishes of the inhabitants of these States, for under the all-embracing exceptions of these laws, by a construction which the uncertainty of the clause as to disfranchisement leaves open to the board of officers, the great body of the people may be excluded from the polls and from all opportunity of expressing their own wishes, or voting for delegates who will faithfully reflect their sentiments.

I do not deem it necessary further to investigate the details of this bill. No consideration could induce me to give my approval to such an election law for any purpose, and especially for the great purpose of framing the constitution of a State. If ever the American citizen should be left to the free exercise of his own judgment, it is when he is engaged in the work of forming the fundamental law under which he is to live. That work is his work and it cannot properly be taken out of his hands. All this legislation proceeds upon the contrary assumption that the people of each of these States shall have no constitution, except such as may be arbitrarily dictated by Congress, and formed under the restraint of military rule. A plain statement of facts makes this evident.

In all these States there are existing constitutions, framed in the accustomed way by the people. Congress, however, declares that these constitutions are not "loyal and republican," and requires the people to form them anew. What, then, in the opinion of Congress, is necessary to make the constitution of a State "loyal and republican?" The original act answers the question: It is universal negro suffrage—a question which the Federal Constitution leaves exclusively to the States themselves. All this legislative machinery of martial law, military coercion, and political disfranchisement is avowedly for that purpose and none other. The existing constitutions of the ten States conform to the acknowledged standards of loyalty and republicanism. Indeed, if there are degrees in republican forms of Government, their constitutions are more republican now than when these States—four of which were members of the original thirteen—first became members of the Union.

Congress does not now demand that a single provision of their constitutions be changed, except such as confine suffrage to the white population. It is apparent, therefore, that these provisions do not conform to the standard of republicanism which Congress seeks to establish. That there may be no mistake, it is only necessary that reference should be made to the original act, which declares "such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates." What class of persons is here meant clearly appears in the same section, that is to say, "the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election."

Without these provisions no constitution which can be framed in any one of the ten States will be of any avail with Congress. This, then, is the test of what the constitution of a State of this Union must contain to make it republican. Measured by such a standard, how few of the States now composing the Union have republican constitutions. If, in the exercise of the constitutional guarantee that Congress shall secure to every State a republican form of government, universal suffrage for blacks as well as whites is a *sine qua non*, the work of reconstruction may as well begin in Ohio as in Virginia, in Pennsylvania as in North Carolina.

When I contemplate the millions of our fellow-citizens of the South with no alternative left but to impose upon themselves this fearful and untried experiment of complete negro enfranchisement and white disfranchisement, it may be, almost as complete, or submit indefinitely to the rigor of martial law, without a single attribute of freemen, deprived of all the sacred guarantees of our Federal Constitution, and threatened with even worse wrongs, if any worse are possible, it seems to me their condition is the most deplorable to which any people can be reduced. It is true that they have been engaged in rebellion, and that their object being a separation of the States and a dissolution of the Union, there was an obligation resting upon every loyal citizen to treat them as enemies, and to wage war against their cause.

Inflexibly opposed to any movement imperilling the integrity of the Government, I did not hesitate to urge the adoption of all measures necessary for the suppression of the insurrection. After a long and terrible struggle the efforts of the Government were triumphantly successful, and the people of the South, submitting to the stern arbitrament, yielded forever the issues of the contest. Hostilities terminated soon after it became my duty to assume the responsibilities of the chief executive officer of the Republic, and I at once endeavored to repress and control the passions which our civil strife had engendered, and no longer regarding these erring millions as enemies, again acknowledged them as our friends and our countrymen. The war had accomplished its object. The nation was saved, and that seminal principal of mischief, which from the birth of the Government had gradually but inevitably brought on the rebellion, was totally eradicated. Then, it seemed to me, was the auspicious time to commence the work of reconciliation; then, when these people sought once more our friendship and protection, I considered it our duty generously to meet them in the spirit of charity and forgiveness and to conquer them even more effectually by the magnanimity of the nation than by the force of its arms. I yet believe that if the policy of reconciliation then inaugurated, and which contemplated an early restoration of these people to all their political rights, had received the support of Congress, every one of these ten States and all their people would at this moment be fast anchored in the Union, and the great work which gave the war all its

sanction and made it just and holy would have been accomplished. Then over all the vast and fruitful regions of the South peace and its blessings would have prevailed; while now millions are deprived of rights guaranteed by the Constitution to every citizen and after nearly two years of legislation find themselves placed under an absolute military depotism. "A military republic, a government founded on mock elections, and supported only by the sword," was nearly a quarter of a century since pronounced by Daniel Webster, when speaking of the South American States, as "a movement, indeed, but a retrograde and disastrous movement from the regular and old-fashioned monarchical systems;" and he added :

If men would enjoy the blessings of republican Government, they must govern themselves by reason, by mutual counsel and consultation, by a sense and feeling of general interest, and by the acquiescence of the minority in the will of the majority, properly expressed; and, above all, the military must be kept, according to the language of our bill of rights, in strict subordination to the civil authority. Wherever this lesson is not both learned and practiced, there can be no political freedom. Absurd, preposterous is it, a scoff and a satire on free forms of constitutional liberty, for frames of government to be prescribed by military leaders, and the right of suffrage to be exercised at the point of the sword.

I confidently believe, that a time will come when these States will again occupy their true positions in the Union. The barriers which now seem so obstinate must yield to the force of an enlightened and just public opinion, and, sooner or later, unconstitutional and oppressive legislation will be effaced from our statute books. When this shall have been consummated, I pray God that the errors of the past may be forgotten, and that once more we shall be a happy, united, and prosperous people, and that at last, after the bitter and eventful experience through which the nation has passed, we shall all come to know that our only safety is in the preservation of our Federal Constitution, and in according to every American citizen and to every State the rights which that Constitution secures.

ANDREW JOHNSON.

The veto message was read, and the previous question was seconded. The question was then put "Will the House, on reconsideration, agree to the passage of the said bill," which was decided in the affirmative, by a vote of 114 yeas against 25 nays, 25 not voting—two-thirds having voted in favor of the bill, which was sent to the Senate, where two-thirds of the Senators agreed to pass the same.

ANDREW JOHNSON.—XIII.

July 19, 1867.

To the House of Representatives of the United States :

I return herewith the bill entitled "An act supplementary to an act entitled 'An act to provide for the more efficient government of the rebel States,' passed on the second day of March, 1867, and the act supple-

mentary thereto, passed on the 23d day of March, 1867," and will state as briefly as possible some of the reasons which prevent me from giving it my approval.

This is one of a series of measures passed by Congress during the last four months on the subject of reconstruction. The message returning the act of the 2d of March last states at length my objections to the passage of that measure. They apply equally well to the bill now before me, and I am content merely to refer to them and to reiterate my conviction that they are sound and unanswerable.

There are some points peculiar to this bill, which I will proceed at once to consider.

The first section purports to declare "the true intent and meaning," in some particulars, of the two prior acts upon this subject.

It is declared that the intent of those acts was, first, that the existing governments in the ten "rebel States were not legal State governments;" and, second, "that thereafter said governments, if continued, were to be continued subject in all respects to the military commanders of the respective districts, and to the paramount authority of Congress."

Congress may, by a declaratory act, fix upon a prior act a construction altogether at variance with its apparent meaning, and from the time, at least, when such a construction is fixed, the original act will be construed to mean exactly what it is stated to mean by the declaratory statute. There will be, then, from the time this bill may become a law, no doubt, no question, as to the relation in which the "existing governments" in those States, called in the original act "the provisional governments," stand toward the military authority. As those relations stood before the declaratory act, these "governments," it is true, were made subject to absolute military authority in many important respects, but not in all, the language of the act being, "subject to the military authority of the United States, as hereinafter prescribed." By the sixth section of the original act these governments were made, "in all respects, subject to the paramount authority of the United States."

Now, by this declaratory act, it appears that Congress did not by the original act intend to limit the military authority to any particulars or subjects therein "prescribed," but meant to make it universal. Thus, over all of these ten States this military government is now declared to have unlimited authority. It is no longer confined to the preservation of the public peace, the administration of criminal law, the registration of voters, and the superintendence of elections, but "in all respects" is asserted to be paramount to the existing civil governments.

It is impossible to conceive any state of society more intolerable than this; and yet it is to this condition that twelve millions of American citizens are reduced by the Congress of the United States. Over every foot of the immense territory occupied by these American citizens, the Constitution of the United States is theoretically in full operation. It

binds all the people there and should protect them ; yet they are denied every one of its sacred guarantees.

Of what avail will it be to any one of these Southern people when seized by a file of soldiers to ask for the cause of arrest, or for the production of the warrant ? Of what avail to ask for the privilege of bail when in military custody, which knows no such thing as bail ? Of what avail to demand a trial by jury, process for witnesses, a copy of the indictment, the privilege of counsel, or that greater privilege, the writ of *habeas corpus* ?

The veto of the original bill of the 2d of March was based on two distinct grounds, the interference of Congress in matters strictly appertaining to the reserved powers of the States, and the establishment of military tribunals for the trial of citizens in time of peace. The impartial reader of that message will understand that all that it contains with respect to military despotism and martial law has reference especially to the fearful power conferred on the district commanders to displace the criminal courts and assume jurisdiction to try and to punish by military boards ; that, potentially, the suspension of the *habeas corpus* was martial law and military despotism. The act now before me not only declares that the intent was to confer such military authority, but also to confer unlimited military authority over all the other courts of the State, and over all the officers of the State, legislative, executive, and judicial. Not content with the general grant of power, Congress, in the second section of this bill, specifically gives to each military commander the power "to suspend or remove from office, or from the performance of official duties, and the exercise of official powers, any officer or person holding or exercising, or professing to hold or exercise, any civil or military office or duty in such district, under any power, election, appointment, or authority derived from, or granted by, or claimed under, any so-called State, or the government thereof, or any municipal or other division thereof."

A power that hitherto all the departments of the Federal Government, acting in concert or separately, have not dared to exercise, is here attempted to be conferred on a subordinate military officer. To him, as a military officer of the Federal Government, is given the power, supported by "a sufficient military force," to remove every civil officer of the State. What next ? The district commander, who has thus displaced the civil officer, is authorized to fill the vacancy by the detail of an officer or soldier of the Army, or by the appointment of "some other person."

This military appointee, whether an officer, a soldier, or "some other person," is to perform "the duties of such officer or person so suspended or removed." In other words, an officer or soldier of the Army is thus transformed into a civil officer. He may be made a governor, a legislator, or a judge. However unfit he may deem himself for such civil duties, he must obey the order. The officer of the Army must, if

"detailed," go upon the supreme bench of the State with the same prompt obedience as if he were detailed to go upon a court-martial. The soldier, if detailed to act as a justice of the peace, must obey as quickly as if he were detailed for picket duty.

What is the character of such a military civil officer? This bill declares that he shall perform the duties of the civil office to which he is detailed. It is clear, however, that he does not lose his position in the military service. He is still an officer or soldier of the Army; he is still subject to the rules and regulations which govern it, and must yield due deference, respect, and obedience towards his superiors.

The clear intent of this section is, that the officer or soldier detailed to fill a civil office must execute its duties according to the laws of the State. If he is appointed a governor of a State he is to execute the duties as provided by the laws of that State, and for the time being his military character is to be suspended in his new civil capacity. If he is appointed a State treasurer he must at once assume the custody and disbursement of the funds of the State, and must perform those duties precisely according to the laws of the State, for he is intrusted with no other official duty or other official power. Holding the office of treasurer, and intrusted with funds, it happens that he is required by the State laws to enter into bond with security, and to take an oath of office; yet, from the beginning of the bill to the end, there is no provision for any bond or oath of office, or for any single qualification required under the State law, such as residence, citizenship, or anything else. The only oath is that provided for in the ninth section, by the terms of which every one detailed or appointed to any civil office in the State is required "to take and to subscribe the oath of office prescribed by law for officers of the United States." Thus an officer of the Army of the United States detailed to fill a civil office in one of these States gives no official bond and takes no official oath for the performance of his new duties, but, as a civil officer of the State, only takes the same oath which he had already taken as a military officer of the United States. He is, at last, a military officer performing civil duties, and the authority under which he acts is Federal authority only; and the inevitable result is, that the Federal Government, by the agency of its own sworn officers, in effect assumes the civil government of the State.

A singular contradiction is apparent here. Congress declares these local State governments to be illegal governments, and then provides that these illegal governments shall be carried on by Federal officers, who are to perform the very duties imposed on its own officers by this illegal State authority. It certainly would be a novel spectacle if Congress should attempt to carry on a *legal* State government by the agency of its own officers. It is yet more strange that Congress attempts to sustain and carry on an *illegal* State government by the same Federal agency.

In this connection I must call attention to the 10th and 11th sections of the bill, which provide that none of the officers or appointees of these military commanders "shall be bound in his action by any opinion of any civil officer of the United States;" and that all the provisions of the act "shall be construed liberally, to the end that all the intents thereof may be fully and perfectly carried out."

It seems Congress supposed that this bill might require construction, and they fix, therefore, the rule to be applied. But where is the construction to come from? Certainly no one can be more in want of construction than a soldier or an officer of the Army detailed for a civil service, perhaps the most important in a State, with the duties of which he is altogether unfamiliar. This bill says he shall not be bound in his action by the opinion of any civil officer of the United States. The duties of the office are altogether civil, but when he asks for an opinion he can only ask the opinion of another military officer, who, perhaps, understands as little of his duties as he does himself; and as to his "action," he is answerable to the military authority and to the military authority alone. Strictly, no opinion of any civil officer other than a judge has a binding force.

But these military appointees would not be bound even by a judicial opinion. They might very well say, even when their action is in conflict with the Supreme Court of the United States, "That court is composed of civil officers of the United States, and we are not bound to conform our action to any opinion of any such authority."

This bill and the acts to which it is supplementary are all founded upon the assumption that these ten communities are not States, and that their existing governments are not legal. Throughout the legislation upon this subject they are called "rebel States," and in this particular bill they are denominated "so-called States," and the vice of illegality is declared to pervade all of them. The obligations of consistency bind a legislative body as well as the individuals who compose it. It is now too late to say that these ten political communities are not States of this Union. Declarations to the contrary made in these three acts are contradicted again and again by repeated acts of legislation enacted by Congress from the year 1861 to the year 1867.

During that period, while these States were in actual rebellion, and after that rebellion was brought to a close, they have been again and again recognized as States of the Union. Representation has been apportioned to them as States. They have been divided into judicial districts for the holding of district and circuits courts of the United States, as States of the Union only can be districted. The last act on this subject was passed July 23, 1866, by which every one of these ten States was arranged into districts and circuits.

They have been called upon by Congress to act through their legislatures upon at least two amendments to the Constitution of the United States. As States they have ratified one amendment, which required

the vote of twenty-seven States of the thirty-six then composing the Union. When the requisite twenty-seven votes were given in favor of that amendment—seven of which votes were given by seven of these ten States—it was proclaimed to be a part of the Constitution of the United States, and slavery was declared no longer to exist within the United States or any place subject to their jurisdiction. If these seven States were not legal States of the Union, it follows as an inevitable consequence that in some of the States slavery yet exists. It does not exist in these seven States, for they have abolished it also in their State constitutions; but Kentucky not having done so, it would still remain in that State. But, in truth, if this assumption that these States have no legal State governments be true, then the abolition of slavery by these illegal governments binds no one, for Congress now denies to these States the power to abolish slavery by denying to them the power to elect a legal State legislature, or to frame a constitution for any purpose, even for such a purpose as the abolition of slavery.

As to the other constitutional amendment having reference to suffrage, it happens that these States have not accepted it. The consequence is, that it has never been proclaimed or understood, even by Congress, to be a part of the Constitution of the United States. The Senate of the United States has repeatedly given its sanction to the appointment of judges, district attorneys, and marshals for every one of these States; yet, if they are not legal States, not one of these judges is authorized to hold a court. So, too, both houses of Congress have passed appropriation bills to pay all these judges, attorneys, and officers of the United States for exercising their functions in these States. Again, in the machinery of the internal revenue laws, all these States are distrusted, not as "Territories," but as "States."

So much for continuous legislative recognition. The instances cited, however, fall far short of all that might be enumerated. Executive recognition, as is well known, has been frequent and unwavering. The same may be said as to judicial recognition through the Supreme Court of the United States. That august tribunal, from first to last, in the administration of its duties in banc and upon the circuit, has never failed to recognize these ten communities as legal States of the Union. The cases depending in that court, upon appeal and writ of error from these States, when the rebellion began, have not been dismissed upon any idea of the cessation of jurisdiction. They were carefully continued from term to term until the rebellion was entirely subdued and peace re-established, and then they were called for argument and consideration as if no insurrection had intervened. New cases, occurring since the rebellion, have come from these States before that court by writ of error and appeal, and even by original suit, where only "a State" can bring such a suit. These cases are entertained by that tribunal in the exercise of its acknowledged jurisdiction, which could not attach to them if they had come from any political body other than a State of the Union.

Finally, in the allotment of their circuits, made by the judges at the December term, 1865, every one of these States is put on the same footing of legality with all the other States of the Union. Virginia and North Carolina being a part of the fourth circuit, are allotted to the Chief Justice. South Carolina, Georgia, Alabama, Mississippi, and Florida constitute the fifth circuit, and are allotted to the late Mr. Justice Wayne. Louisiana, Arkansas, and Texas are allotted to the sixth judicial circuit, as to which there is a vacancy on the bench.

The Chief Justice, in the exercise of his circuit duties, has recently held a circuit court in the State of North Carolina. If North Carolina is not a State of this Union, the Chief Justice had no authority to hold a court there, and every order, judgment, and decree rendered by him in that court were *coram non judice* and void.

Another ground on which these reconstruction acts are attempted to be sustained is this: that these ten States are conquered territory, that the constitutional relation in which they stood as States towards the Federal Government prior to the rebellion has given place to a new relation; that their territory is a conquered country, and their citizens a conquered people, and that in this new relation Congress can govern them by military power.

A title by conquest stands on clear ground; it is a new title acquired by war; it applies only to territory; for goods or movable things regularly captured in war are called "booty," or, if taken by individual soldiers, "plunder."

There is not a foot of the land in any one of these ten States which the United States holds by conquest, save only such land as did not belong to either of these States or to any individual owner. I mean such lands as did belong to the pretended government called the Confederate States. These lands we may claim to hold by conquest. As to all other land or territory, whether belonging to the States or to individuals, the Federal Government has now no more title or right to it than it had before the rebellion. Our own forts, arsenals, navy-yards, custom-houses, and other Federal property situated in those States we now hold, not by the title of conquest, but by our old title, acquired by purchase or condemnation for public use, with compensation to former owners. We have not conquered these places, but have simply "repossessed" them.

If we require more sites for forts, custom-houses, or other public use, we must acquire the title to them by purchase or appropriation in the regular mode. At this moment the United States, in the acquisition of sites for national cemeteries in these States, acquires title in the same way. The Federal courts sit in court-houses owned or leased by the United States, not in the court-houses of the States. The United States pays each of these States for the use of its jails. Finally, the United States levies its direct taxes and its internal revenue upon the property in these States, including the productions of the lands within

their territorial limits, not by way of levy and contribution in the character of a conqueror, but in the regular way of taxation, under the same laws which apply to all the other States of the Union.

From first to last, during the rebellion and since, the title of each of these States to the lands and public buildings owned by them has never been disturbed, and not a foot of it has ever been acquired by the United States, even under a title of confiscation, and not a foot of it has ever been taxed under Federal law.

In conclusion, I must respectfully ask the attention of Congress to the consideration of one more question arising under this bill. It vests in the military commander, subject only to the approval of the General of the Army of the United States, an unlimited power to remove from office any civil or military officer in each of these ten States, and the further power, subject to the same approval, to detail or appoint any military officer or soldier of the United States to perform the duties of the officer so removed, and to fill all vacancies occurring in these States by death, resignation, or otherwise.

The military appointee thus required to perform the duties of a civil office according to the laws of the State, and, as such, required to take an oath, is, for the time being, a civil officer. What is his character? Is he a civil officer of the State, or a civil officer of the United States? If he is a civil officer of the State, where is the Federal power under our Constitution which authorizes his appointment by any Federal officer? If, however, he is to be considered a civil officer of the United States, as his appointment and oath would seem to indicate, where is the authority for his appointment vested by the Constitution? The power of appointment of all officers of the United States, civil or military where not provided for in the Constitution, is vested in the President, by and with the advice and consent of the Senate, with this exception—that Congress “may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of the Departments.” But this bill, if these are to be considered inferior officers within the meaning of the Constitution, does not provide for their appointment by the President alone or by the courts of law or by the heads of Departments; but vests the appointment in one subordinate executive officer, subject to the approval of another subordinate executive officer. So that, if we put this question and fix the character of this military appointee either way, this provision of the bill is equally opposed to the Constitution.

Take the case of a soldier or officer appointed to perform the office of judge in one of these States, and, as such, to administer the proper laws of the State. Where is the authority to be found in the Constitution for vesting in a military or an executive officer strict judicial functions to be exercised under State law? It has been again and again decided by the Supreme Court of the United States that acts of Congress which have attempted to vest *executive* powers in the *judicial* courts or judges

of the United States are not warranted by the Constitution. If Congress cannot clothe *a judge* with merely *executive* duties, how can they clothe *an officer* or *soldier* of the Army with *judicial* duties over citizens of the United States who are not in the military or naval service? So, too, it has been repeatedly decided that Congress cannot require a State officer, executive or judicial, to perform any duty enjoined upon him by a law of the United States. How, then, can Congress confer power upon an executive officer of the United States to perform such duties in a State? If Congress could not vest in a judge of one of these States any judicial authority under the United States by direct enactment, how can it accomplish the same thing indirectly, by removing the State judge and putting an officer of the United States in his place?

To me these considerations are conclusive of the unconstitutionality of this part of the bill now before me, and I earnestly commend their consideration to the deliberate judgment of Congress.

Within a period less than a year the legislation of Congress has attempted to strip the Executive department of the Government of some of its essential powers. The Constitution, and the oath provided in it, devolve upon the President the power and duty to see that the laws are faithfully executed. The Constitution, in order to carry out this power, gives him the choice of the agents, and makes them subject to his control and supervision. But in the execution of these laws the constitutional obligation upon the President remains, but the power to exercise that constitutional duty is effectually taken away. The military commander is, as to the power of appointment, made to take the place of the President, and the General of the Army the place of the Senate; and any attempt on the part of the President to assert his own constitutional power may, under pretense of law, be met by official insubordination. It is to be feared that these military officers, looking to the authority given by these laws rather than to the letter of the Constitution, will recognize no authority but the commander of the district and the General of the Army.

If there were no other objection than this to this proposed legislation, it would be sufficient. Whilst I hold the chief executive authority of the United States, whilst the obligation rests upon me to see that all the laws are faithfully executed, I can never willingly surrender that trust or the powers given for its execution. I can never give my assent to be made responsible for the faithful execution of laws, and at the same time surrender that trust and the powers which accompany it to any other executive officer, high or low, or to any number of executive officers. If this executive trust, vested by the Constitution in the President, is to be taken from him and vested in a subordinate officer, the responsibility will be with Congress in clothing the subordinate with unconstitutional power, and with the officer who assumes its exercise.

This interference with the constitutional authority of the Executive department is an evil that will inevitably sap the foundations of our

Federal system; but it is not the worst evil of this legislation. It is a great public wrong to take from the President powers conferred on him alone by the Constitution, but the wrong is more flagrant and more dangerous when the powers so taken from the President are conferred upon subordinate executive officers, and especially upon military officers. Over nearly one-third of the States of the Union military power, regulated by no fixed law, rules supreme. Each one of the five district commanders, though not chosen by the people or responsible to them, exercises at this hour more executive power, military and civil, than the people have ever been willing to confer upon the head of the Executive department, though chosen by and responsible to themselves. The remedy must come from the people themselves. They know what it is, and how it is to be applied. At the present time they cannot, according to the forms of the Constitution, repeal these laws; they cannot remove or control this military despotism. The remedy is nevertheless in their hands; it is to be found in the ballot, and is a sure one, if not controlled by fraud, overawed by arbitrary power, or, from apathy on their part, too long delayed. With abiding confidence in their patriotism, wisdom, and integrity, I am still hopeful of the future, and that in the end the rod of despotism will be broken, the armed heel of power lifted from the necks of the people, and the principles of a violated Constitution preserved.

ANDREW JOHNSON.

The veto message having been read, the question was put, "Will the House, on reconsideration, agree to the passage of the said bill?" and it was decided in the affirmative by a vote of 109 yeas against 25 nays; not voting, 37. So the bill, on reconsideration, was passed, and the Senate agreed to the same.

ANDREW JOHNSON.—XIV.

July 19, 1867.

To the House of Representatives:

For reasons heretofore stated in my several veto messages to Congress upon the subject of reconstruction, I return without my approval "the joint resolution to carry into effect the several acts providing for the more efficient government of the rebel States," and appropriating for that purpose the sum of \$1,000,000.

ANDREW JOHNSON.

The veto message was read. The question, "Will the House, on reconsideration, agree to the passage of the said joint resolution?" was put, and was decided in the affirmative by a vote of 99 yeas against 22 nays, 49 not voting. Two-thirds having voted in favor thereof, the joint resolution was passed, and the Senate agreed to the same, two-thirds of the Senators present voting in the affirmative.

ANDREW JOHNSON—XV.

*March 25, 1868.**To the Senate of the United States :*

I have considered, with such care as the pressure of other duties has permitted, a bill entitled "An act to amend an act entitled 'An act to amend the judiciary act, passed the twenty-fourth of September, seventeen hundred and eighty-nine.'" Not being able to approve all of its provisions, I herewith return it to the Senate, in which house it originated, with a brief statement of my objections.

The first section of the bill meets my approbation, as for the purpose of protecting the rights of property from the erroneous decision of inferior judicial tribunals, it provides means for obtaining uniformity, by appeal to the Supreme Court of the United States, in cases which have now become very numerous and of much public interest, and in which such remedy is not now allowed. The second section, however, takes away the right of appeal to that court in cases which involve the life and liberty of the citizen, and leaves them exposed to the judgment of numerous inferior tribunals. It is apparent that the two sections were conceived in a very different spirit, and I regret that my objections to one impose upon me the necessity of withholding my sanction from the other.

I cannot give my assent to a measure which proposes to deprive any person "restrained of his or her liberty in violation of the Constitution, or of any treaty or law of the United States," from the right of appeal to the highest judicial authority known to our Government. To "secure the blessings of liberty to ourselves and our posterity," is one of the declared objects of the Federal Constitution. To assure these, guarantees are provided in the same instrument, as well against "unreasonable searches and seizures," as against the suspensions of "the privilege of the writ of *habeas corpus*," "unless when, in cases of rebellion or invasion, the public safety may require it." It was doubtless to afford the people the means of protecting and enforcing these inestimable privileges that the jurisdiction which this bill proposes to take away was conferred upon the Supreme Court of the nation. The act conferring that jurisdiction was approved on the 5th day of February, 1867, with a full knowledge of the motives that prompted its passage, and because it was believed to be necessary and right. Nothing has since occurred to disprove the wisdom and justness of the measures; and to modify it, as now proposed, would be to lessen the protection of the citizen from the exercise of arbitrary power, and to weaken the safeguards of life and liberty, which can never be made too secure against illegal encroachments.

The bill not only prohibits the adjudication by the Supreme Court of cases in which appeals may hereafter be taken, but interdicts its juris-

diction on appeals which have already been made to that high judicial body. If, therefore, it should become a law, it will, by its retroactive operation, wrest from the citizen a remedy which he enjoyed at the time of his appeal. It will thus operate most harshly upon those who believe that justice has been denied them in the inferior courts.

The legislation proposed in the second section, it seems to me, is not in harmony with the spirit and intention of the Constitution. It cannot fail to affect most injuriously the just equipoise of our system of Government; for it establishes a precedent which, if followed, may eventually sweep away every check on arbitrary and unconstitutional legislation. Thus far, during the existence of the Government, the Supreme Court of the United States has been viewed by the people as the true expounder of their Constitution, and in the most violent party conflicts its judgments and decrees have always been sought and deferred to with confidence and respect. In public estimation, it combines judicial wisdom and impartiality in a greater degree than any other authority known to the Constitution; and any act which may be construed into or mistaken for an attempt to prevent or evade its decision, on a question which affects the liberty of the citizens and agitates the country, cannot fail to be attended with unpropitious consequences. It will be justly held by a large portion of the people as an admission of the unconstitutionality of the act on which its judgment may be forbidden or forestalled, and may interfere with that willing acquiescence in its provisions which is necessary for the harmonious and efficient execution of any law.

For these reasons, thus briefly and imperfectly stated, and for others, of which want of time forbids the enumeration, I deem it my duty to withhold my assent from this bill, and to return it for the reconsideration of Congress.

ANDREW JOHNSON.

The veto message was read and ordered to be printed. After debate, the question was put "Shall the bill pass, the objections of the President to the contrary notwithstanding?" and it was determined in the affirmative by a vote of 33 yeas against 9 nays. Two-thirds of the Senators present having voted in the affirmative, it was resolved that the bill do pass, and two-thirds of the House of Representatives agreed to pass the same.

ANDREW JOHNSON.—XVI.

June 20, 1868.

To the House of Representatives :

I return without my signature a bill entitled "An act to admit the State of Arkansas to representation in Congress."

The approval of this bill would be an admission on the part of the Executive that the act for the more efficient government of the rebel

States, passed March 2, 1867, and the act supplementary thereto, were proper and constitutional. My opinion, however, in reference to these measures has undergone no change, but, on the contrary, has been strengthened by the results which have attended their execution.

Even were this not the case, I could not consent to a bill which is based upon the assumption either that by an act of rebellion of a portion of its people the State of Arkansas seceded from the Union, or that Congress may, at its pleasure, expel or exclude a State from the Union, or interrupt its relations with the Government by arbitrarily depriving it of representation in the Senate and House of Representatives. If Arkansas is a State not in the Union, this bill does not admit it as a State in the Union. If, on the other hand, Arkansas is a State in the Union, no legislation is necessary to declare it entitled to "representation in Congress as one of the States of the Union." The Constitution already declares that "each State shall have at least one representative;" "that the Senate shall be composed of two Senators from each State;" and "that no State without its consent shall be deprived of its suffrage in the Senate."

That instrument also makes each house "the judges of the elections, returns, and qualifications of its own members," and therefore all that is now necessary to restore Arkansas in all its constitutional relations to the Government is the decision by each house upon the eligibility of those who, presenting their credentials, claim seats in the respective houses of Congress. This is the plain and simple plan of the Constitution; and believing that had it been pursued when Congress assembled in the month of December, 1865, the restoration of the States would long since have been completed, I once again recommend that it be adopted by each house in preference to legislation which I respectfully submit is not only of at least doubtful constitutionality, and therefore unwise and dangerous as a precedent, but is unnecessary, and not so effective in its operation as the mode prescribed by the Constitution, involves the additional delay, and from its terms may be taken rather as applicable to a Territory about to be admitted as one of the United States than to a State which has occupied a place in the Union for upward of a quarter of a century.

The bill declares the State of Arkansas entitled and admitted to representation in Congress as one of the States of the Union upon the following fundamental condition:

That the constitution of Arkansas shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall be duly convicted under laws equally applicable to all the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters.

I have been unable to find in the Constitution of the United States any warrant for the exercise of the authority thus claimed by Congress. In assuming the power to impose a "fundamental condition" upon a State which has been duly admitted into the Union on an equal footing with the original States in all respects whatever, Congress asserts a right to enter a State as it may a Territory, and to regulate the highest prerogative of a free people—the elective franchise. This question is reserved by the Constitution to the States themselves, and to concede to Congress the power to regulate this subject would be to reverse the fundamental principle of the Republic, and to place in the hands of the Federal Government (which is the creature of the States), the sovereignty which justly belongs to the States or the people, to the true source of all political power by whom our Federal system was created, and to whose will all is subordinate.

The bill fails to provide in what manner the State of Arkansas is to signify its acceptance of the "fundamental condition" which Congress endeavors to make unalterable and irrevocable. Nor does it prescribe the penalty to be imposed, should the people of the State amend or change the particular portions of the constitution which it is one of the purposes of the bill to perpetuate, but leaves them in uncertainty and doubt as to the consequences of such action, when the circumstances under which this constitution has been brought to the attention of Congress are considered. It is not unreasonable to suppose that efforts will be made to modify its provisions, and especially those in respect to which this measure prohibits any alteration. It is seriously questioned whether the constitution has been ratified by a majority of the persons who, under the act of March 2, 1867, and the acts supplementary thereto, were entitled to registration and to vote upon that issue. Section ten of the schedule provides that—

No person disqualified from voting or registering under this constitution shall vote for candidates for any office, nor shall be permitted to vote for the ratification or rejection of the constitution at the polls herein authorized.

Assumed to be in force before its adoption, in disregard of the law of Congress, the constitution undertakes to impose upon the elector other and further conditions. The fifth section of the eighth article provides that "all persons, before registering or voting," must take and subscribe an oath which, among others, contains the following clause:

That I accept the civil and political equality of all men, and agree not to attempt to deprive any person or persons, on account of race, color, or previous condition, of any political or civil right, privilege, or immunity enjoyed by any other class of men.

It is well known that a very large portion of the electors in all the States, if not a large majority of all of them, do not believe in or accept the political equality of Indians, Mongolians, or negroes with the race to which they belong. If the voters of many of the States of the North and West were required to take such an oath as a test of their qualifica-

tion, there is reason to believe that a majority of them would remain from the polls rather than comply with its degrading conditions.

How far and to what extent this test-oath prevented the registration of those who were qualified under the laws of Congress it is not possible to know; but that such was its effect, at least sufficient to overcome them all and give a doubtful majority in favor of this constitution, there can be no reasonable doubt.

Should the people of Arkansas, therefore, desiring to regulate the elective franchise so as to make it conform to the constitutions of a large proportion of the States of the North and West, modify the provisions referred to in the "fundamental conditions," what is to be the consequence? Is it intended that a denial of representation shall follow? And if so, may we not dread, at some future day, a recurrence of the troubles which have so long agitated the country? Would it not be the part of wisdom to take for our guide the Federal Constitution, rather than resort to measures which, looking only to the present, may in a few years renew, in an aggravated form, the strife and bitterness caused by legislation which has proved to be ill-timed and unfortunate?

ANDREW JOHNSON.

The veto message was read, and the Speaker stated the question to be "Will the House, on reconsideration, agree to the passage of the bill?" which was decided in the affirmative by a vote of 111 yeas against 31 nays, 48 not voting. So the bill was passed—two-thirds having voted in the affirmative, and the Senate agreed to the same by a vote of 30 yeas against 7 nays, 17 Senators not voting.

ANDREW JOHNSON.—XVII.

June 25, 1868.

To the House of Representatives:

In returning to the House of Representatives, in which it originated, a bill entitled "An act to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to representation in Congress," I do not deem it necessary to state at length the reasons which constrain me to withhold my approval. I will not, therefore, undertake at this time to reopen the discussion upon the grave constitutional questions involved in the act of March 2, 1867, and the acts supplementary thereto, in pursuance of which it is claimed, in the preamble to this bill, these States have framed and adopted constitutions of State government. Nor will I repeat the objections contained in my message of the 20th instant, returning without my signature the bill to admit to representation the State of Arkansas, and which are equally applicable to the pending measure.

Like the act recently passed in reference to Arkansas, this bill supersedes the plain and simple mode prescribed by the Constitution for the

admission to seats in the respective houses of Senators and Representatives from the several States. It assumes authority over six States of the Union which has never been delegated to Congress, or is even warranted by previous unconstitutional legislation upon the subject of restoration. It imposes conditions which are in derogation of the equal rights of the States, and is founded upon a theory which is subversive of the fundamental principles of the Government. In the case of Alabama it violates the plighted faith of Congress by forcing upon that State a constitution which was rejected by the people, according to the express terms of an act of Congress requiring that a majority of the registered electors should vote upon the question of its ratification.

For these objections, and many others that might be presented, I cannot approve this bill, and therefore return it for the action of Congress required in such cases by the Federal Constitution.

ANDREW JOHNSON.

The veto message was read, and the question "Will the House, on reconsideration, agree to the passage of this bill, notwithstanding the objections of the President?" was decided in the affirmative by a vote of 108 yeas against 32 nays; 54 not voting. So the bill was passed, and the Senate agreed to the same by a vote of 35 yeas against 8 nays; 13 Senators not voting.

ANDREW JOHNSON.—XVIII.

July 20, 1868.

To the Senate of the United States:

I have given to the joint resolution entitled "A resolution excluding from the electoral college the votes of States lately in rebellion which shall not have been reorganized" as careful examination as I have been able to bestow upon the subject during the few days that have intervened since the measure was submitted for my approval.

Feeling constrained to withhold my consent, I herewith return the resolution to the Senate, in which house it originated, with a brief statement of the reasons which have induced my action. This joint resolution is based upon the assumption that some of the States whose inhabitants were lately in rebellion are not now entitled to representation in Congress and participation in the election of President and Vice-President of the United States.

Having heretofore had occasion to give in detail my reasons for dissenting from this view, it is not necessary at this time to repeat them. It is sufficient to state that I continue strong in my conviction that the acts of secession, by which a number of the States sought to dissolve their connection with the other States, and to subvert the Union, being unauthorized by the Constitution and in direct violation thereof, were from the beginning absolutely null and void. It follows necessarily that when the rebellion terminated the several States which had at-

tempted to secede continued to be States in the Union, and all that was required to enable them to resume their relations to the Union was that they should adopt the measures necessary to their practical restoration as States. Such measures were adopted, and the legitimate result was that those States, having conformed to all the requirements of the Constitution, resumed their former relations, and became entitled to the exercise of all the rights guaranteed to them by its provisions.

The joint resolution under consideration, however, seems to assume that by the insurrectionary acts of their respective inhabitants those States forfeited their rights as such, and can never again exercise them except upon readmission into the Union on the terms prescribed by Congress. If this position be correct, it follows that they were taken out of the Union by virtue of their acts of secession, and hence that the war waged upon them was illegal and unconstitutional. We would thus be placed in this inconsistent attitude—that while the war was commenced and carried on upon the distinct ground that the Southern States, being component parts of the Union, were in rebellion against the lawful authority of the United States, upon its termination we resort to a policy of reconstruction which assumes that it was not in fact a rebellion, but that the war was waged for the conquest of territories assumed to be outside of the constitutional Union.

The mode and manner of receiving and counting the electoral votes for President and Vice-President of the United States are in plain and simple terms prescribed by the Constitution. That instrument imperatively requires that the President of the Senate “shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.” Congress has, therefore, no power, under the Constitution, to receive the electoral votes or reject them. The whole power is exhausted when, in the presence of the two houses, the votes are counted and the result declared. In this respect the power and duty of the President of the Senate are, under the Constitution, purely ministerial. When, therefore, the joint resolution declares that no electoral votes shall be received or counted from States that since the 4th of March, 1867, have not “adopted a constitution of State government under which a State government shall have organized,” a power is assumed which is nowhere delegated to Congress, unless upon the assumption that the State governments organized prior to the 4th of March, 1867, were illegal and void.

The joint resolution, by implication, at least, concedes that these States were States by virtue of their organization prior to the 4th of March, 1867, but denies to them the right to vote in the election of President and Vice-President of the United States. It follows either that this assumption of power is wholly unauthorized by the Constitution or that the States so excluded from voting were out of the Union by reason of the rebellion, and have never been legitimately restored. Being fully satisfied that they were never out of the Union, and that

their relations thereto have been legally and constitutionally restored, I am forced to the conclusion that the joint resolution, which deprives them of the right to have their votes for President and Vice-President received and counted, is in conflict with the Constitution, and that Congress has no more power to reject their votes than those of the States which have been uniformly loyal to the Federal Union.

It is worthy of remark that if the States where inhabitants were recently in rebellion were legally and constitutionally organized and restored to their rights prior to the 4th of March, 1867, as I am satisfied they were, the only legitimate authority under which the election for President and Vice-President can be held therein must be derived from the governments instituted before that period. It clearly follows that all the State governments organized in those States under act of Congress for that purpose, and under military control, are illegitimate and of no validity whatever; and, in that view, the votes cast in those States for President and Vice-President, in pursuance of acts passed since the 4th of March, 1867, and in obedience to the so-called reconstruction acts of Congress, cannot be legally received and counted, while the only votes in those States that can be legally cast and counted will be those cast in pursuance of the laws in force in the several States prior to the legislation by Congress upon the subject of reconstruction.

I cannot refrain from directing your special attention to the declaration contained in the joint resolution, that "none of the States whose inhabitants were lately in rebellion shall be entitled to representation in the electoral college," &c. If it is meant by this declaration that no State is to be allowed to vote for President and Vice-President, *all* of whose inhabitants were engaged in the late rebellion, it is apparent that no one of the States will be excluded from voting, since it is well known that in every Southern State there were many inhabitants who not only did not participate in the rebellion, but who actually took part in the suppression, or refrained from giving it any aid or countenance. I therefore conclude that the true meaning of the joint resolution is, that no State, a *portion* of whose inhabitants were engaged in the rebellion, shall be permitted to participate in the Presidential election, except upon the terms and conditions therein prescribed.

Assuming this to be the true construction of the resolution, the inquiry becomes pertinent: May those Northern States, a portion of whose inhabitants were actually in the rebellion, be prevented, at the discretion of Congress, from having their electoral votes counted? It is well known that a portion of the inhabitants of New York and a portion of the inhabitants of Virginia were alike engaged in the rebellion; yet it is equally well known that Virginia, as well as New York, was at all times during the war recognized by the Federal Government as a State in the Union—so clearly that upon the termination of hostilities it was not even deemed necessary for her restoration that a provisional governor should be appointed; yet, according to this joint resolution, the

people of Virginia, unless they comply with the terms it prescribes, are denied the right of voting for President, while the people of New York, a portion of the inhabitants of which State were also in rebellion, are permitted to have their electoral votes counted, without undergoing the process of reconstruction prescribed for Virginia. New York is no more a State than Virginia; the one is as much entitled to representation in the electoral college as the other. If Congress has the power to deprive Virginia of this right, it can exercise the same authority with respect to New York or any other of the States. Thus the result of the Presidential election may be controlled and determined by Congress, and the people be deprived of their right under the Constitution to choose a President and Vice-President of the United States.

If Congress were to provide by law that the votes of none of the States should be received and counted, if cast for a candidate who differed in political sentiment with a majority of the two houses, such legislation would at once be condemned by the country as an unconstitutional and revolutionary usurpation of power. It would, however, be exceedingly difficult to find in the Constitution any more authority for the passage of the joint resolution under consideration than for an enactment looking directly to the rejection of all votes not in accordance with the political preferences of a majority of Congress. No power exists in the Constitution authorizing the joint resolution or the supposed law—the only difference being that one would be more palpably unconstitutional and revolutionary than the other. Both would rest upon the radical error that Congress has the power to prescribe terms and conditions to the right of the people of the States to cast their votes for President and Vice-President.

For the reasons thus indicated I am constrained to return the joint resolution to the Senate for such further action thereon as Congress may deem necessary.

ANDREW JOHNSON.

The veto message was read, and after debate, the question on “the passage of the joint resolution, the objections of the President of the United States to the contrary notwithstanding,” was passed in the affirmative by a vote of 45 yeas against 8 nays, 9 Senators being absent. So the resolution was passed. The House agreed to the same by a vote of 134 yeas against 36 nays, 40 Representatives not voting.

ANDREW JOHNSON.—XIX.

July 25, 1868.

To the Senate of the United States:

Believing that a bill entitled “An act relating to the Freedmen’s Bureau, and providing for its discontinuance,” interferes with the appointing power conferred by the Constitution upon the Executive, and

for other reasons which, at this late period of the session, time will not permit me to state, I herewith return it to the Senate, in which house it originated, without my approval.

ANDREW JOHNSON.

The veto message having been read, the question was put "Shall the bill pass, the objections of the President to the contrary notwithstanding?" and it was determined in the affirmative by a vote of 42 yeas against 5 nays, seventeen Senators not voting. So the bill was passed, and the House of Representatives agreed to the same by a vote of 115 yeas against 23 nays, 82 not voting.

ANDREW JOHNSON.—XX.

February 13, 1869.

To the Senate of the United States:

The bill entitled "An act transferring the duties of trustees of colored schools of Washington and Georgetown" is herewith returned to the Senate, in which house it originated, without my approval.

The accompanying paper exhibits the fact that the legislation which the bill proposes is contrary to the wishes of the colored residents of Washington and Georgetown, and that they prefer that the schools for their children should be under the management of trustees selected by the Secretary of the Interior, whose term of office is for four years, rather than subject to the control of bodies whose tenure of office, depending merely upon political considerations, may be annually affected by the elections which take place in the two cities.

The colored people of Washington and Georgetown are at present not represented by a person of their own race in either of the boards of trustees of public schools appointed by the municipal authorities. Of the three trustees, however, who, under the act of July 11, 1862, compose the board of trustees of the schools for colored children, two are persons of color. The resolutions transmitted herewith show that they have performed their trust in a manner entirely satisfactory to the colored people of the two cities, and no good reason is known to the Executive why the duties which now devolve upon them should be transferred, as proposed in the bill.

With these brief suggestions the bill is respectfully returned, and the consideration of Congress invited to the accompanying preamble and resolutions.

ANDREW JOHNSON.

The veto message was read, and it was stated that it concerned a bill which had passed the Senate the previous year. It was ordered to lie upon the table and be printed, and no further action on it was taken.

ANDREW JOHNSON.—XXI.

*February 22, 1869.**To the House of Representatives :*

The accompanying bill, entitled "An act regulating the duties on imported copper and copper ores," is, for the following reasons, returned, without my approval, to the House of Representatives, in which branch of Congress it originated.

Its immediate effect will be to diminish the public receipts, for the object of the bill cannot be accomplished without seriously affecting the importation of copper and copper ores, from which a considerable revenue is at present derived. While thus impairing the resources of the Government, it imposes an additional tax upon an already overburdened people, who should not be further impoverished that monopolies may be fostered and corporations enriched.

It is represented, and the declaration seems to be sustained by evidence, that the duties for which this bill provides are nearly or quite sufficient to prohibit the importation of certain foreign ores of copper. Its enactment, therefore, will prove detrimental to the shipping interests of the nation, and at the same time destroy the business, for many years successfully established, of smelting home ores in connection with a smaller amount of the imported articles. This business, it is credibly asserted, has heretofore yielded the larger share of the copper production of the country, and thus the industry which this legislation is designed to encourage is actually less than that which will be destroyed by the passage of this bill.

It seems also to be evident that the effect of this measure will be to enhance, by seventy per cent., the cost of blue vitrol—an article extensively used in dyeing and in the manufacture of printed and colored cloths. To produce such an augmentation in the price of this commodity will be to discriminate against other great branches of domestic industry, and by increasing their cost to expose them most unfairly to the effects of foreign competition. Legislation can neither be wise nor just which seeks the welfare of a single interest at the expense and to the injury of many and varied interests at least equally important and equally deserving the consideration of Congress. Indeed, it is difficult to find any reason which will justify the interference of Government with any legitimate industry, except so far as may be rendered necessary by the requirements of the revenue. As has already been stated, however, the legislative intervention proposed in the present instance will diminish, not increase, the public receipts.

The enactment of such a law is urged as necessary for the relief of certain mining interests upon Lake Superior, which, it is alleged, are in a greatly depressed condition, and can only be sustained by an enhancement of the price of copper. If this result should follow the passage

of the bill, a tax for the exclusive benefit of a single class would be imposed upon the consumers of copper throughout the entire country not warranted by any need of the Government, and the avails of which would not in any degree find their way into the Treasury of the nation. If the miners of Lake Superior are in a condition of want, it cannot be justly affirmed that the Government should extend charity to them in preference to those of its citizens who, in other portions of the country, suffer in like manner from destitution. Least of all should the endeavor to aid them be based upon a method so uncertain and indirect as that contemplated by the bill, and which, moreover, proposes to continue the exercise of its benefaction through an indefinite period of years. It is, besides, reasonable to hope that positive suffering from want, if it really exists, will prove but temporary in a region where agricultural labor is so much in demand and so well compensated. A careful examination of the subject appears to show that the present low price of copper, which alone has induced any depression the mining interests of Lake Superior may have recently experienced, is due to causes which is wholly impolitic, if not impracticable, to contravene by legislation. These causes are, in the main, an increase in the general supply of copper, owing to the discovery and working of remarkably productive mines, and to a coincident restriction in the consumption and use of copper, by the substitution of other and cheaper metals for industrial purposes. It is now sought to resist, by artificial means, the action of natural laws; to place the people of the United States, in respect to the enjoyment and use of an essential commodity, upon a different basis from other nations, and especially to compensate certain private and sectional interests for the changes and losses which are always incident to industrial progress.

Although providing for an increase of duties, the proposed law does not even come within the range of protection, in the fair acceptance of the term. It does not look to the fostering of a young and feeble interest, with a view to the ultimate attainment of strength and the capacity of self-support. It appears to assume that the present inability for successful production is inherent and permanent, and is more likely to increase than to be gradually overcome; yet in spite of this it proposes by the exercise of the law-making power to sustain that interest, and to impose it in hopeless perpetuity as a tax upon the competent and beneficent industries of the country.

The true method for the mining interests of Lake Superior to obtain relief, if relief is needed, is to endeavor to make their great natural resources fully available by reducing the cost of production. Special or class legislation cannot remedy the evils which this bill is designed to meet. They can only be overcome by laws which will effect a wise, honest, and economical administration of the Government, a re-establishment of the specie standard of value, and an early adjustment of our system of State, municipal, and national taxation (especially the latter),

upon the fundamental principle that all taxes, whether collected under the internal revenue or under a tariff, shall interfere as little as possible with the productive energies of the people.

The bill is therefore returned, in the belief that the true interests of the Government and of the people require that it should not become a law.

ANDREW JOHNSON.

The veto message was read, and after debate the question was put, "Will the House, on reconsideration, agree to the passage of the said bill?" which was decided in the affirmative by a vote of 115 yeas against 56 nays, 51 not voting—two-thirds voting in favor thereof. The Senate agreed to the same by a vote of 38 yeas against 12 nays, 16 not voting. So the bill was passed.

ULYSSES S. GRANT.—I.

January 11, 1870.

To the Senate of the United States :

I return herewith, without my approval, Senate bill No. 273, entitled "An act for the relief of Rollin White," for the reasons set forth in the accompanying communication, dated December 11, 1869, from the Chief of Ordnance.

U. S. GRANT.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, December 11, 1869.

SIR: In the year 1855 Rollin White obtained letters patent for improvements in repeating pistols, in (among other things) extending the chambers of the rotating cylinder through to the rear, so as to enable the chambers to be charged at the rear by hand or by a self-acting charger.

Some time afterward, and prior to the breaking out of the rebellion, he assigned his patent to Smith & Wesson, of Springfield, Massachusetts, for the sum of five hundred dollars in cash, and their obligation to pay him twenty-five cents royalty on each pistol manufactured under the patent, binding himself to apply for, and to use his influence to procure, a renewal of the patent. He afterward surrendered this original patent, and obtained a reissue in three divisions. Two years before the expiration of the latter he applied to the Commissioner of Patents for an extension, upon the ground of insufficiency of compensation. The Commissioner rejected the application for an extension, without assigning any reason, and the patents expired by limitation on the 3d of April, 1869, and the invention became public property.

On the 9th of April, 1869, a bill authorizing the Commissioner of Patents to reconsider the application of Rollin White for extension of his patents was introduced in the Senate and passed without debate. It passed the House without debate on the 10th of April, but failed to receive the signature of the Vice-President before Congress adjourned. It is understood that it has now been signed by that officer, and only awaits the approval of the President to become a law.

Unless the ends of justice require the extension of this patent it should not be renewed. So far as I have been able to ascertain, justice to the Government and to the public forbids this patent from being renewed.

The validity of the patent has been questioned for many years; and it is understood that it was only affirmed by the Supreme Court by a tie vote, four of the justices voting affirmatively and an equal number negatively.

Its renewal is urged by Rollin White upon the ground that he has not been sufficiently compensated for his invention. Rollin White has received nearly seventy-one thousand dollars as royalty. Smith & Wesson, for the years 1862-'63-'64-'65-'66-'67 and '68, returned incomes amounting in the aggregate to about one million dollars. This was derived chiefly from the manufacture of fire-arms under Rollin White's patent, that firm holding the exclusive right to manufacture under it, and being engaged almost exclusively in their manufacture.

It is believed that the Government suffered inconvenience and embarrassment enough during the war in consequence of the inability of manufacturers to use this patent, and that its further extension will operate prejudicially to its interest by compelling it to pay, to parties already well paid, a large royalty for altering its revolvers to use metallic cartridges.

For these reasons, I respectfully request that you will call the attention of the President of the United States to this subject before he acts upon the bill which is now before him.

Respectfully, your obedient servant,

A. B. DYER,
Brevet Major-General, Chief of Ordnance.

The veto message was read and ordered to be printed. A vote on it was reached on the 31st of May, when the question was put, "Shall the bill pass, the objections of the President to the contrary notwithstanding?" This was decided in the affirmative by a vote of 41 yeas against 13 nays, 18 Senators being absent. Two-thirds of the Senators voting in the affirmative, the bill was passed. In the House, when the question was taken on the 22d of June, "Will the House, on reconsideration, pass this bill, the objections of the President to the contrary notwithstanding?" it was passed in the negative by a vote of 12 yeas against 168 nays, 50 Representatives not voting. So, two-thirds not voting in the affirmative, the House refused to repass the bill, and it did not become a law.

ULYSSES S. GRANT.—II.

July 14, 1870.

To the Senate of the United States :

I herewith return, without my approval, Senate bill No. 476, "An act to fix the status of certain Federal soldiers enlisting in the Union Army from the States of Alabama and Florida," for the reasons embodied in the following facts which have been obtained from the office of the Second Comptroller :

The First Regiment of Florida Cavalry, composed of six companies, was organized from December, 1862, to August, 1864, to serve three years. It was mustered out of service November 17, 1865, by reason of general

order from the War Department, discharging all cavalry organizations east of the Mississippi.

The men of this regiment enlisting prior to July 18, 1864, received twenty-five dollars advance bounty at muster-in, and the discharged soldiers and heirs of those deceased have been paid the same bounty under act of July 22, 1861, joint resolution January 13, 1864, an act of July 28, 1866, as men enlisted at the same time in other volunteer organizations.

The Second Regiment of Florida Cavalry, composed of seven companies, was organized from December, 1863, to June, 1864, to serve three years. It was mustered out November 29, 1865, by reason of the order discharging cavalry organizations east of the Mississippi. Most of the men received the twenty-five dollars advance bounty at muster-in, and the discharged men and heirs of deceased men have received bounty under the several acts of Congress cited above, subject to the same conditions which apply to men who enlisted at the same time in other volunteer organizations.

The First Alabama Cavalry was originally organized as a one-year regiment from December, 1862, to September, 1863, and two companies of three-year men (Companies I and K) were added to complete its organization. These companies were formerly Companies D and E of the First Middle Tennessee Cavalry. Prior to the expiration of the term of the one-year men, the Adjutant-General of the Army, of date May 15, 1863, authorized General Dodge to fill up this command, and in accordance therewith the places of the companies discharged by reason of expiration of term were filled by companies of men enlisted for three years. The original Companies, A, B, C, D, E, F, G, H, and L, were organized from December, 1862, to September 25, 1863, and were discharged by companies from December 22, 1863, to September 28, 1864, in order as the term (one year) of each company expired. Companies I and K, mustered in August, 1862, to serve three years, were discharged in July, 1865, by reason of expiration of term of service. As reorganized under the order above mentioned, the regiment consisted of Companies A, B, C, D, E, and G, organized from February 5, 1864, to October, 1864, to serve three years; Companies F, L, and M, organized from December 28, 1863, to October 31, 1864, to serve one and three years; Company H, organized in March and April, 1865, to serve three years, and Companies I and K, of the old organization described above. The men of the First Alabama Cavalry who enlisted for three years have been paid bounty under the several acts of Congress, upon the same principles which apply to other three-year volunteers. The one-year men enlisted prior to July 18, 1864, received no bounty, but \$100 bounty has been paid the proper heirs of the one-year men of this organization who died in the service, in accordance with the act of July 22, 1861, under which the regiment was originally organized.

Some of the men of these organizations were erroneously paid by the Pay Department at the time of their muster-out of service, they having

been paid but \$100, when they should have been allowed \$300 under the joint resolution of January 13, 1844. The balance of bounty due these men is being paid by the proper accounting officers. It will be seen, by comparing the above statement with the act under consideration, that the effect of the act will be to give the one-year men of the First Alabama Cavalry, nearly all of whom enlisted in 1862 and 1863, a bounty of \$100 each, or a proportionate part, according to the time served. It would give each man of Companies I and K of the First Alabama Cavalry \$100 more bounty. The bounty of the other three-year men of the First Alabama Cavalry, First Florida Cavalry, and Second Florida Cavalry, who enlisted prior to December 25, 1863, and from April 1, 1864, to July 17, 1864, inclusive, and who were discharged by reason of orders from the War Department, will not be affected.

The men enlisting in these organizations, under joint resolution of January 13, 1864, receive under existing laws \$100 more bounty than they would be entitled to receive if the act under consideration becomes a law.

In case of deceased men, the working of the act is still more perplexing, as the prescribed order of inheritance under the act of July 4, 1864, is entirely different from that under all other acts.

A large proportion of the claims in case of the deceased men have been settled, and the bounties have been paid fathers, mothers, brothers, and sisters, the proper heirs under existing laws, which under this act would go only to the widow, children, and widowed mother. Bounty has also been paid to parents under act of July 28, 1866, which this act would require to be paid to the widow, although she may have remarried.

Under the act of July 28, 1866, children of age are not entitled; but this act makes them joint heirs with the minor children.

In case of the deceased one-year men, and the three-year men enlisted under joint resolution of January 13, 1864, the effect of this act would only be to change the prescribed order of inheritance.

In case of the three-year men enlisted under act of July 22, 1861, the order of inheritance is changed by this act, and the heirs entitled (widow, children, and widowed mother) will receive \$100 more bounty than they are now entitled to receive.

It may be well to state that November 14, 1864, the War Department gave authority to enlist men who had deserted from the rebel army as recruits for the First Alabama Cavalry, with the distinct understanding that they were to receive no bounty. Such recruits have not been paid bounty, and it may be a question whether the act under consideration would entitle them to any.

U. S. GRANT.

The veto message was read, and as it had been determined to end the session on the next day, a motion was agreed to that the message be printed, and the matter laid over until the December session.

ULYSSES S. GRANT.—III.

*January 4, 1871.**To the House of Representatives :*

I herewith return, without my approval, House bill No. 1395, entitled "An act for the relief of Charles Cooper, Goshorn A. Jones, Jerome Rowley, William Hannegan, and John Hannegan," for the following reasons:

The act directs the discontinuance of an action at law said to be now pending in the United States district court for the northern district of Ohio, for the enforcement of the bond executed by said parties to the United States, whereas, in fact, no such suit is pending in the district court, but such a suit is now pending in the circuit court of the United States for the sixth circuit and northern district of Ohio.

Neither the body of said act, nor the proviso, requires the obligors in said bond, who are released from all liability to the United States on account thereof, to abandon or release their pretended claim against the Government.

Since these parties have gone to Congress to ask relief from liability for a large sum of money on account of the failure of the principals in the bond to execute their contract, it is but just and proper that they at the same time should abandon the claim heretofore asserted by them against the Government growing out of the same transaction.

U. S. GRANT.

The veto message having been read, it was ordered by the House that it be printed

ULYSSES S. GRANT.—IV.

*February 7, 1871.**To the Senate of the United States :*

I herewith return, without my approval, Senate resolution No. 92, entitled "A resolution for the relief of certain contractors for the construction of vessels of war and steam machinery," for the following reasons:

The act of March 2, 1867 (14 United States Statutes at Large, page 424), directs the Secretary of the Navy "to investigate the claims of all contractors for building vessels of war and steam machinery for the same under contracts made after the 1st day of May, 1861, and prior to the 1st day of January, 1864; and said investigation to be made upon the following basis: he shall ascertain the additional cost which was necessarily incurred by each contractor in the completion of his work by reason of any changes or alterations in the plans and specifications required, and delays in the prosecution of the work occasioned by the

Government, which were not provided for in the original contract; but no allowance for any advance in the price of labor or material shall be considered unless such advance occurred during the prolonged time for completing the work rendered necessary by the delay resulting from the action of the Government aforesaid, and then only when such advance could not have been avoided by the exercise of ordinary prudence and diligence on the part of the contractor," &c. The present joint resolution transfers the investigation to the Court of Claims, and repeals "so much of said act as provides against considering any allowance in favor of any such parties for any advance in the price of labor or material, unless such advance could have been avoided by the exercise of ordinary diligence and prudence on the part of the contractor." It seems to me that the provision thus repealed is a very reasonable one. It prevents the contractor from receiving any allowance for an advance in the price of labor and material, when he could have avoided that advance by the exercise of ordinary prudence and diligence. The effect of the repeal will be to relieve contractors from the consequences of their own imprudence and negligence. I see no good reason for thus relieving contractors who have not exercised ordinary prudence and diligence in their business transactions.

U. S. GRANT.

The veto message was read, referred to the Committee on Naval Affairs, and ordered to be printed.

ULYSSES S. GRANT.—V.

March 28, 1872.

To the House of Representatives:

I herewith return for the further consideration of Congress, without my approval, House bill No. 1550, an act for the relief of the estate of Dr. John F. Hanks, for the reason that the records of the Treasury Department show that the current moneys taken by Col. S. B. Holabird from the Louisiana State Bank of New Orleans, in the month of August, 1862, were accounted for by that officer to the Treasury Department, and the names of the depositors given, and that the name of Dr. John F. Hanks does not appear among them.

It also appears from the records of the Treasury Department that among the effects taken from the Louisiana State Bank of New Orleans was the sum of \$1,729 of Confederate money, and that the said sum stood upon the books of said bank to the credit of J. F. Hanks. It is but justice, however, to the executors of the estate of Dr. Hanks to state that there is every reason to believe that the money deposited by Dr. Hanks in the Louisiana State Bank was in current funds, and that when application was made to Congress for the recovery of the same they believed and had evidence to satisfy them that such funds had found their

way into the Treasury of the United States. There has unquestionably been a mistake made, either by the officers of the Louisiana State Bank or the persons engaged in removing the funds of that bank, by which the estate of Dr. Hanks is loser to the amount of relief afforded by House bill No. 1550.

Accompanying this I send the statement furnished by the Secretary of the Treasury of the funds covered into his Department, and accounted for through it, arising from the seizure of the funds of the Louisiana State Bank of New Orleans, in the month of August, 1862.

U. S. GRANT.

The veto message was read, and it was ordered that it be referred to the Committee on Claims and printed. On the 18th of January, Mr. Holman, from the Committee on Claims, reported the bill, with the message of the President returning the same with his objections, accompanied by a recommendation that it do pass, and a report thereon in writing, which report was ordered to be printed. The question was then put, "Will the House, on reconsideration, agree to the passage of the bill?" and it was decided in the affirmative by a vote of 126 yeas against 17 nays, 98 Representatives not voting. So the bill was passed. The Senate, on being informed that the bill had been passed by the House on a reconsideration of the same, ordered that the bill and accompanying message be referred to the Committee on Claims.

ULYSSES S. GRANT.—VI.

April 1, 1872.

To the House of Representatives :

I return herewith, for the further consideration of Congress, House bill No. 1867, an act for the relief of James T. Johnson, without my approval, for the reason that the records of the Treasury Department show that the lot sold in the name of J. T. Johnson, situate on Prince street, Alexandria, Virginia, for taxes due the United States, is numbered 162 instead of 163, as represented in this bill. With the exception of this discrepancy in the number of the lot, there is no reason why the bill should not receive my approval.

U. S. GRANT.

The veto message was read, and it was ordered that it be referred to the Committee on the Judiciary, with leave to report at any time.

ULYSSES S. GRANT.—VII.

April 10, 1872.

To the House of Representatives :

I have received and taken into consideration the bill entitled "An act for the relief of the children of John M. Baker, deceased," and pursuant to the duty required of me by the Constitution I return the same,

with my objections, to the House of Representatives, in which it originated.

The bill proposes to pay a sum of money to the children of John M. Baker, deceased, late United States consul at Rio Janeiro, for services of that person as acting *chargé d'affaires* of the United States in the year 1834. So far as it can be ascertained, it is apprehended that the bill may have received the sanction of Congress through some inadvertence, for, upon inquiry at the proper Department, it appears that Mr. Baker never did act as *chargé d'affaires* of the United States at Rio Janeiro, and that he was not authorized so to act, but, on the contrary, was expressly forbidden to enter into diplomatic correspondence with the Government of Brazil.

The letter of the 8th of February, 1854, a copy of which is annexed, addressed by William L. Marcy, then Secretary of State, to James M. Mason, chairman of the Committee on Foreign Relations of the Senate, specifies objections to the claim which it is believed have not since diminished, and in which I fully concur.

U. S. GRANT.

The veto message was read, and it was ordered that it be referred to the Committee on Claims and be printed.

U. S. GRANT.—VIII.

April 15, 1872.

To the Senate of the United States :

I return, without my approval, an act entitled "An act granting a pension to Abigail Ryan, widow of Thomas A. Ryan." The name of Mrs. Ryan is now borne upon the pension-rolls, pursuant to an act of Congress entitled "An act for the relief of Mrs. Abigail Ryan," approved June 15, 1866. (U. S. Statutes, vol. 14, page 590.)

U. S. GRANT.

The veto message was read, and it was ordered that it be referred to the Committee on Pensions and be printed.

ULYSSES S. GRANT.—IX.

April 22, 1872.

To the House of Representatives :

I return herewith House Resolution No. 622, entitled "An act granting a pension to Richard B. Crawford," without my approval, for the reason that said Crawford is now drawing a pension as a private soldier, the wound on account of which he was pensioned having been received before his promotion to a lieutenancy.

U. S. GRANT.

The veto message was read, referred to the Committee on Invalid Pensions and ordered to be printed.

ULYSSES S. GRANT.—X.

May 14, 1872.

To the Senate of the United States :

I have the honor to return herewith the bill (S. No. 955) entitled "An act granting a pension to Mary Ann Montgomery, widow of William W. Montgomery, late captain in Texas volunteers," without my approval, inasmuch as the concluding phrase, "and in respect to her minor children under sixteen years of age," has obviously no meaning whatsoever.

If it were the intention of the framer of the bill that the pension thereby granted should revert to said minor children upon the remarriage or death of the widow, the phrase referred to should read as follows: "and in the event of her remarriage or death, to her minor children under sixteen years of age." I therefore return the bill for proper action.

U. S. GRANT.

The veto message was read, referred to the Committee on Pensions, and ordered to be printed.

 ULYSSES S. GRANT.—XI.

June 1, 1872.

To the Senate of the United States :

I have examined the bill (S. No. 105) entitled "An act for the relief of J. Milton Best," and, being unable to give it my approval, return the same to the Senate, the house in which it originated, without my signature.

The bill appropriates the sum of \$25,000 to compensate Dr. J. Milton Best for the destruction of his dwelling-house and its contents by order of the commanding officer of the United States military forces at Paducah, Kentucky, on the 26th day of March, 1864. It appears that this house was one of a considerable number destroyed for the purpose of giving open range to the guns of a United States fort. On the day preceding the destruction the houses had been used as a cover for rebel troops attacking the fort, and, apprehending a renewal of the attack, the commanding officer caused the destruction of the houses. This, then, is a claim for compensation on account of the ravages of war. It cannot be denied that the payment of this claim would invite the presentation of demands for very large sums of money; and such is the supposed magnitude of the claims that may be made against the Government for necessary and unavoidable destruction of property by the Army that I deem it proper to return this bill for reconsideration.

It is a general principal of both international and municipal law that all property is held subject, not only to be taken by the Government for public uses, in which case under the Constitution of the United States the owner is entitled to just compensation, but also subject to be temporarily occupied, or even actually destroyed in times of great public danger, and when the public safety demands it, and in this latter case, Governments do not admit a legal obligation on their part to compensate the owner. The temporary occupation of, injuries to, and destruction of, property caused by actual and necessary military operations, is generally considered to fall within the last-mentioned principle. If a Government makes compensation under such circumstances, it is a matter of bounty rather than of strict legal right.

If it be deemed proper to make compensation for such losses, I suggest for the consideration of Congress whether it would not be better, by general legislation, to provide some means for the ascertainment of the damage in all similar cases, and thus save to claimants the expense, inconvenience, and delay of attendance upon Congress, and, at the same time, save the Government from the danger of having imposed upon it fictitious or exaggerated claims supported wholly by *ex parte* proof. If the claimant in this case ought to be paid, so ought all others similarly situated, and that there are many such cannot be doubted. Besides, there are strong reasons for believing that the amount of damage in this case has been greatly overestimated. If this be true, it furnishes an illustration of the danger of trusting entirely to *ex parte* testimony in such matters.

U. S. GRANT.

The veto message was read, and it was ordered that it be referred to the Committee on Claims and be printed.

ULYSSES S. GRANT.—XII.

June 7, 1872.

To the Senate of the United States :

I have the honor to return herewith Senate bill No. 569, an act entitled "An act for the relief of Thomas B. Wallace, of Lexington, in the State of Missouri," without my approval.

This claim, for which \$11,250 are appropriated by this bill, is of the same nature and character as the claim of Dr. J. Milton Best, which was returned to the Senate on the 1st instant, without my signature.

The same reasons which prompted the return of that bill for reconsideration apply in this case, which also is a claim for compensation on account of the ravages of war, and comes under the same general principle of both international and municipal law, that all property is held subject not only to be taken by the Government for public uses, in which

case, under the Constitution of the United States, the owner is entitled to just compensation, but also subject to be temporarily occupied, or even actually destroyed, in times of great public danger, and when the public safety demands it; and in the latter case Governments do not admit a legal obligation on their part to compensate the owner.

The temporary occupation of, injuries to, and destruction of property caused by actual and necessary military operations are generally considered to fall within the last-mentioned principle, and if a Government makes compensation under such circumstances it is a matter of bounty rather than of strict legal right. If it be deemed proper to make compensation for such losses, I renew my recommendation that provision be made by general legislation for all similar cases.

U. S. GRANT.

The veto message was read, and it was ordered that the bill, with the message, be referred to the Committee on Claims, and that the message be printed.

ULYSSES S. GRANT.—XIII.

January 6, 1873.

To the House of Representatives :

I return herewith, for the further consideration of Congress, House bill No. 2291, entitled "An act for the relief of Edmund Jussen," to which I have not appended my approval for the following reasons :

The bill directs the accounting officers to transfer from Mr. Jussen's account to that of his successor all indebtedness arising from the loss or destruction or non-taking of warehouse bonds on certain spirits destroyed by fire. This provision would be wholly ineffective in so far as it proposes to increase the liability of Mr. Jussen's successor, he having been appointed subsequently to the destruction of the spirits. It might operate to relieve Mr. Jussen, but it seems probable that he is already relieved by the act of May 27, 1872, passed since the introduction of this bill. That act provides for the rebatement of taxes on distilled spirits destroyed by fire, except in cases where the owners of such spirits may be indemnified against tax by a valid claim of insurance. The relief of the tax-payers of course includes the relief of collectors from liability caused by failure to take bonds. It does not appear whether there was any insurance in this case. If not, the applicant is already relieved. But if there was an insurance, the effect of this bill, if it became a law, might be to except Mr. Jussen from the operation of the general rule established by the proviso of the act of May 27, 1872. If such exception be proper it should not be confined to an individual case, but extended to all. If there was an insurance this

bill would relieve Mr. Jussen from the liability with which it is very doubtful if his successor could be legally charged, or with which he ought to be charged.

U. S. GRANT.

The veto message was read, and it was ordered that it be laid on the table and printed.

ULYSSES S. GRANT.—XIV.

January 22, 1873.

To the Speaker of the House of Representatives :

SIR : I herewith return to the House of Representatives, in which it originated, H. R. No. 630, entitled "An act in relation to new trials in Court of Claims," without my approval.

The object of the bill is to reduce from two years to six months the time in which a new trial, upon motion of the United States, may be granted in the Court of Claims.

Great difficulties are now experienced in contesting fraudulent and unjust claims against the Government prosecuted in said court, and the effect of this bill, if it becomes a law, will be to increase those difficulties. Persons sue in this court generally with the advantage of a personal knowledge of the circumstances of the case, and are prompted by personal interest to activity in its preparation for trial, which consists sometimes in the production of false testimony and the suppression of the truth, while the United States are dependent for defense upon such inquiries as the officers of the Government, generally strangers to the transaction, are enabled to make, not infrequently in remote parts of the country, and among those not averse to depredations upon the national Treasury. Instances have occurred where the existing opportunities for a new trial have enabled the Government to discover and defeat claims that ought not to have been allowed, after judgments thereon had been rendered by the Court of Claims.

By referring to the act which it is proposed to modify it will be seen that the payment of judgments recovered is not necessarily suspended for two years. But where the proofs are doubtful or suspicious, the Government may appeal to the Supreme Court, and in the mean time may avail itself of any discovery or revelation of new evidence touching the facts of the case.

I fail to see the necessity or advantages of the proposed change in the law, and whatever may be the purposes of the bill, its effect, if passed, I am apprehensive, will be to facilitate the prosecution of fraudulent claims against the United States. Believing that justice can and will be done to honest claimants, in the Court of Claims as the

law now stands, and believing also that the proposed change in the law will remove a valuable safeguard to the Treasury, I must, for these reasons, respectfully withhold my assent to the bill.

U. S. GRANT.

The veto message having been read, it was ordered that it be referred to the Committee on the Judiciary, and printed.

ULYSSES S. GRANT.—XV.

February 8, 1873.

To the House of Representatives :

I have the honor to return herewith House bill (H. R. 2852) entitled "An act for the relief of James A. McCullah, late collector of the fifth district of Missouri," without my approval, for the following reasons :

It is provided in section thirty-four of the act of June 30, 1864, as amended by the act of July 13, 1866, that it shall be proved to the satisfaction of the Commissioner of Internal Revenue that due diligence was used by the collector, who shall certify the facts to the First Comptroller. This bill, should it become a law, clearly excuses Mr. McCullah, late collector, from showing that he used due diligence for the collection of the tax in question while the lists remained in his hands.

U. S. GRANT.

The veto message was read, and it was ordered that it be referred to the Committee on Ways and Means and be printed.

ULYSSES S. GRANT.—XVI.

April 10, 1874.

To the House of Representatives :

I have the honor to return you, without my approval, House bill No. 1224, entitled "An act for the relief of William H. Denniston, late an acting second lieutenant, Seventieth New York Volunteers," for reasons set forth in the accompanying letter of the Secretary of War.

U. S. GRANT.

WAR DEPARTMENT,
Washington City, April 8, 1874.

SIR: I have the honor to return House bill No. 1224, "for the relief of William H. Denniston, late an acting second lieutenant Seventieth New York Volunteers," with the remark that the name of William H. Denniston as an officer or private is not borne on any rolls of the Seventieth New York Volunteers on file in the Department. Of this fact the Committee on Military Affairs of the House of Representatives was

informed by letter from the Adjutant-General's Office, dated December 19, 1873.

No vacancy existed in Company D (the company claimed) of this regiment for a second lieutenant during the period claimed, Second Lieutenant J. B. Ziegler having filled that position to May 2, 1862, and Second Lieutenant James Stevenson from that date to June 25, 1862. On regimental return for July, 1862, Edward Shields is reported promoted second lieutenant June 15, 1862.

There is no evidence in the Department that he actually served as a second lieutenant for the time covered by the bill herewith, and it is therefore respectfully recommended that the bill be returned to the House of Representatives without approval.

When the records of the War Department, prepared under laws and regulations having in view the establishment and preservation of data necessary to the protection of the public interests as well as that of the claimants, fail to show service, it is a subject of importance to legalize a claim wherein the Military Department of the Government has not seen the order under which the alleged service may have been claimed. A precedent of the kind is, beyond doubt, an injury to the public interest, and will tend to other special acts of relief under which thousands of muster-rolls certified at the date, under the Articles of War, as exhibiting the true state of the command will be invalidated, and large appropriations of money will be required to settle claims, the justness of which cannot always be determined at a date so remote from their origin.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

The PRESIDENT.

The veto message was read on the 14th of April, and it was ordered that the message and accompanying letter be referred to the Committee on Military Affairs and printed.

ULYSSES S. GRANT.—XVII.

April 22, 1874.

To the Senate of the United States:

Herewith I return Senate bill No. 617, entitled "An act to fix the amount of United States notes and the circulation of national banks, and for other purposes," without my approval.

In doing so, I must express my regret at not being able to give my assent to a measure which has received the sanction of a majority of the legislators chosen by the people to make laws for their guidance, and I have studiously sought to find sufficient arguments to justify such assent, but unsuccessfully.

Practically, it is a question whether the measure under discussion would give an additional dollar to the irredeemable paper currency of the country or not, and whether by requiring three-fourths of the reserves to be retained by the banks, and prohibiting interest to be received on the balance, it might not prove a contraction. But the fact

cannot be concealed that theoretically the bill increases the paper circulation \$100,000,000, less only the amount of reserves restrained from circulation by the provision of the second section. The measure has been supported on the theory that it would give increased circulation. It is a fair inference, therefore, that if, in practice, the measure should fail to create the abundance of circulation expected of it, the friends of the measure, particularly those out of Congress, would clamor for such inflation as would give the expected relief.

The theory, in my belief, is a departure from the true principles of finance, national interest, national obligations to creditors, Congressional promises, party pledges—on the part of both political parties—and of personal views and promises made by me in every annual message sent to Congress, and in each inaugural address.

In my annual message to Congress, in December 1869, the following passages appear:

"Among the evils growing out of the rebellion, and not yet referred to, is that of an irredeemable currency. It is an evil which I hope will receive your most earnest attention. It is a duty, and one of the highest duties of Government to secure to the citizen a medium of exchange of fixed, unvarying value. This implies a return to a specie basis, and no substitute for it can be devised. It should be commenced now, and reached at the earliest practicable moment consistent with a fair regard to the interest of the debtor class. Immediate resumption, if practicable, would not be desirable. It would compel the debtor class to pay beyond their contracts the premium on gold at the date of their purchase, and would bring bankruptcy and ruin to thousands. Fluctuations, however, in the paper value of the measure of all values (gold) is detrimental to the interests of trade. It makes the man of business an involuntary gambler; for in all sales where future payment is to be made both parties speculate as to what will be the value of the currency to be paid and received. I earnestly recommend to you, then, such legislation as will insure a gradual return to specie payments and put an immediate stop to fluctuations in the value of currency."

I still adhere to the views then expressed.

As early as December 4, 1865, the House of Representatives passed a resolution, by a vote of 144 yeas to 6 nays, concurring "in the views of the Secretary of the Treasury in relation to the necessity of a contraction of the currency, with a view to as early a resumption of specie payments as the business interests of the country will permit," and pledging "co-operative action to this end as speedily as possible."

The first act passed by the Forty-first Congress on the 18th day of March, 1869, was as follows:

"An Act to strengthen the public credit of the United States.

"*Be it enacted, &c.,* That in order to remove any doubt as to the purpose of the Government to discharge all its obligations to the public creditors, and to settle conflicting questions and interpretations of the law, by virtue of which such obligations have been contracted, it is hereby provided and declared that the faith of the United States is solemnly pledged to the payment in coin, or its equivalent, of all the obligations of the United States, and of all the interest-bearing obliga-

tions, except in cases where the law authorizing the issue of any such obligations has expressly provided that the same may be paid in lawful money, or in other currency than gold and silver, but none of the said interest-bearing obligations not already due shall be redeemed or paid before maturity, unless at such times as the United States notes shall be convertible into coin at the option of the holder, or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be redeemed can be sold at *par* in coin. And the United States also solemnly pledges its faith to make provision at the earliest practicable period for the redemption of the United States notes in coin."

This act still remains as a continuing pledge of the faith of the United States "to make provision at the earliest practicable moment for the redemption of the United States notes in coin."

A declaration contained in the act of June 30, 1864, created an obligation that the total amount of United States notes issued, or to be issued, should never exceed \$400,000,000. The amount in actual circulation was actually reduced to \$356,000,000, at which point Congress passed the act of February 4, 1868, suspending the further reduction of the currency. The forty-four millions have ever been regarded as a reserve, to be used only in case of emergency, such as has occurred on several occasions, and must occur when, from any cause, revenues suddenly fall below expenditures; and such a reserve is necessary, because the fractional currency, amounting to fifty millions, is redeemable in legal-tenders on call.

It may be said that such a return of fractional currency for redemption is impossible. But let steps be taken for a return to a specie basis, and it will be found that silver will take the place of fractional currency as rapidly as it can be supplied, when the premium on gold reaches a sufficiently low point. With the amount of United States notes to be issued permanently fixed within proper limits, and the Treasury so strengthened as to be able to redeem them in coin on demand, it will then be safe to inaugurate a system of free banking with such provisions as to make compulsory redemption of the circulating notes of the banks in coin, or in United States notes, themselves redeemable and made equivalent to coin.

As a measure preparatory to free banking, or for placing the Government in a condition to redeem its own notes in coin, "at the earliest practicable moment," the revenues of the country should be increased so as to pay current expenses, provide for the sinking fund required by law, and also a surplus to be retained in the Treasury in gold.

I am not a believer in any artificial method of making paper money equal to coin when the coin is not owned or held ready to redeem the promises to pay; for paper money is nothing more than promises to pay, and is valuable exactly in proportion to the amount of coin that it can be converted into. While coin is not used as a circulating medium, or the currency of the country is not convertible into it at *par*, it becomes

an article of commerce as much as any other product. The surplus will seek a foreign market as will any other surplus. The balance of trade has nothing to do with the question. Duties on imports being required in coin creates a limited demand for gold. About enough to satisfy that demand remains in the country. To increase this supply I see no way open but by the Government hoarding through the means above given, and possibly by requiring the national banks to aid.

It is claimed by the advocates of the measure herewith returned that there is an unequal distribution of the banking capital of the country. I was disposed to give great weight to this view of the question at first; but, on reflection, it will be remembered that there still remains \$4,000,000 of authorized bank-note circulation assigned to States having less than their quota not yet taken. In addition to this the States having less than their quota of bank circulation have the option of twenty-five millions more to be taken from those States having more than their proportion. When this is all taken up, or when specie payments are fully restored, or are in rapid process of restoration, will be the time to consider the question of "more currency."

U. S. GRANT.

The veto message was read, and it was ordered that the bill and accompanying message lie on the table and be printed. On the 28th of April the Senate proceeded to reconsider the bill, and it was determined in the affirmative by a vote of 34 yeas against 30 nays, 8 Senators not voting. Two-thirds of the Senators present not having voted in the affirmative, the Senate refused to pass the bill.

ULYSSES S. GRANT.—XVIII.

May 12, 1874.

To the House of Representatives:

I return herewith, without my signature, House bill 1331, entitled "An act for the relief of Joab Spenser and James R. Mead for supplies furnished the Kansas tribe of Indians." I withheld my approval of said bill for reasons which satisfy me the claim should not be allowed for the entire amount stated in the bill, and which are set forth in the letter of the Secretary of the Interior of the 7th instant, a copy of which, with the accompanying papers, is herewith transmitted.

U. S. GRANT.

The veto message was read, and was, with the accompanying documents, referred to the Committee on Indian Affairs, and ordered to be printed.

ULYSSES S. GRANT.—XIX.

*January 30, 1875.**To the House of Representatives :*

I have the honor to return herewith House bill No. 4462, entitled "An act for the relief of Alexander Burtch," from which I withhold my approval for the reasons given in the accompanying letter of the Secretary of War.

U. S. GRANT.

WAR DEPARTMENT,
Washington City, January 28, 1875.

SIR: I have the honor to return House bill No. 4462, for the relief of Alexander Burtch.

It appears from the records of this office that Alexander Burtch, Company H, First Indiana Artillery, enlisted July 24, 1861, for three years, re-enlisted as a veteran January 1, 1864, and deserted at Fort Gaines, Alabama, September 25, 1865, and was a deserter at large at date of muster-out of his company, January 10, 1866.

This Department emphatically objects to this bill becoming a law upon the ground of its great injustice to every soldier who served honorably until his services were no longer required by the Government.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

To the PRESIDENT.

The veto message was read and referred to the Committee on Military Affairs, and ordered to be printed.

ULYSSES S. GRANT.—XX.

*February 12, 1875.**To the House of Representatives :*

I have the honor to return herewith House bill 2352, entitled "An act granting a pension to Lewis Hinely," from which I withhold my approval for the reasons given in the accompanying letter of the Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, February 11, 1875.

SIR: I have the honor to return herewith House bill No. 2352, granting a pension to Lewis Hinely.

I am informed by the Commissioner of Pensions that the act does not designate the person for whose benefit it was passed. His true name, as verified by his own signature to papers on file in the Pension Office,

is Louis Heinlig, and, as there were several soldiers in the company and regiment named in the act whose names are similar to that specified therein, a correction appears to be necessary, in order that the beneficiary of the act may be properly identified should the bill become a law.

I have the honor to be, very respectfully, your obedient servant,

C. DELANO,
Secretary.

The veto message was read on the 16th of February, and was, with the accompanying documents, referred to the House Committee on Invalid Pensions and ordered to be printed.

ULYSSES S. GRANT.—XXI.

February 3, 1876.

To the House of Representatives :

I have the honor to return herewith, without my approval, House bill No. 1561, entitled "An act transferring the custody of certain Indian trust funds from the Secretary of the Interior to the Treasurer of the United States," for the reasons set forth in the accompanying communication from the Secretary of the Interior.

U. S. GRANT.

DEPARTMENT OF THE INTERIOR,
Washington, February 2, 1876.

SIR: I acknowledge the receipt of your communication of the 29th ultimo, transmitting H. R. bill No. 1561, and requesting this Department to report whether any objections to its becoming a law are known to exist. In reply I have the honor to state that I am fearful the act is not sufficiently definite in terms to accomplish the end desired, namely, the mere transfer of the custody of said trust fund, enabling this Department to receive the interest from the custodian and apply it as heretofore without the intervention of Congress.

The nature of the guardianship and control over the Indians exercised by me as Secretary and trustee is such as to require this Department to keep an account of the funds to their credit or held in trust for them, and to receive this interest on their trust funds promptly when due. I am fearful that this bill may not allow me to do so; and to guard against any danger of embarrassment in the transaction of this business I inclose a draught of a bill which, if substituted for the one already passed, will, it is believed, obviate the difficulties which may arise if the present bill should become a law.

Very respectfully, your obedient servant,

Z. CHANDLER,
Secretary.

The veto message was read and referred, with the accompanying documents, to the Committee on Appropriations and ordered to be printed.

ULYSSES S. GRANT.—XXII.

March 27, 1876.

To the House of Representatives :

I have the honor to return herewith, without my approval, the bill (H. R. No. 83) entitled "An act for the relief of James A. Hile, of Lewis County, Missouri," for the reasons set forth in the accompanying communication of the Secretary of War.

WAR DEPARTMENT,
Washington City, March 25, 1876.

SIR : I have the honor to return act H. R. 83, with the following report from the Adjutant-General:

"It appears from the records of this office that James A. Hile, private Company F, Twenty-first Missouri Volunteers, enlisted July 15, 1861; deserted June 14, 1862; returned August 2, 1862; was restored to duty by Special Order No. 38, headquarters District of Columbia, Department of Tennessee, dated Columbus, Ky., February 26, 1863. He re-enlisted February 28, 1864, as a veteran volunteer; was tried by general court-martial for absence without leave from November 25, 1864, to December 13, 1864, and sentenced to forfeit all pay and allowances for time absent, by General Order No. 48, headquarters Second Division, Sixteenth Army Corps, dated May 22, 1865.

"On the muster-out roll of company dated April 19, 1866, he is reported, 'Deserted March 1, 1866, at Bladen Springs Ala.'

"This man in his application to this office for discharge, stated under oath (affidavit dated July 27, 1870) that he left his command without leave and returned to his home February 28, 1866, having previously applied for a furlough, which was refused.

"This man, according to his own statement under oath, did desert as reported, and, if this bill becomes a law, it will be an injustice to every soldier who served honorably with his command until his services were no longer required by the Government, in addition to falsifying the record, as the bill directs the record shall be made to show he is *no deserter*.

"This is only one of many similar cases."

The remarks of the Adjutant-General adverse to the passage of the bill are concurred in.

Very respectfully, your obedient servant,

ALPHONSO TAFT,
Secretary of War.

The veto message was read, referred to the Committee on Military Affairs, and ordered to be printed.

ULYSSES S. GRANT.—XXIII.

*March 31, 1876.**To the Senate of the United States :*

For the reasons set forth in the accompanying communication from the Secretary of the Treasury, I have the honor to return herewith, without my approval, Senate bill No. 489, entitled "An act for the relief of G. B. Tyler and E. H. Lockett, assignees of William T. Cheatham."

U. S. GRANT.

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TREASURY DEPARTMENT, *March 30, 1876.**To the President :*

Referring to the letter of the 25th instant, written by your direction, transmitting Senate bill No. 489, for the relief of G. B. Tyler and E. H. Lockett, assignees of William T. Cheatham, and requesting my opinion as to the propriety of its approval by you, I have to say that there are no data on file in the Department, so far as I can learn, which indicate that the amount it is proposed by this bill to refund to the assignees of Mr. Cheatham was wrongfully collected, or that the amount should be refunded.

The Commissioner of Internal Revenue, in his report to me in reference to the matter, says :

"The reimbursement to the United States by said Cheatham of the salary paid to this storekeeper by the collector of internal revenue for the months of December, 1869, and January, 1870, was in accordance with the provisions of joint resolution of March 29, 1869 (volume 16, Statutes at Large, page 52), and there appears to be no reason for the refunding by the United States to the assignees of said Cheatham the salary of this storekeeper that would not apply with equal force to similar payments by all other distillers who were operating their distilleries or had spirits in their warehouse at that time."

The facts above stated are considered by this office valid, and serious objections to the approval of this bill, and they would have been communicated to the Congressional committees before the passage of the bill had they called the attention of this office to the subject.

The bill is herewith returned.

I have the honor to be, very respectfully, your obedient servant,

B. H. BRISTOW,
Secretary.

The veto message and accompanying communication was read. Before the question on the passage of the bill was put, it was ordered that the message be referred to the Committee on Claims and be printed. On the 20th of May the Senate resumed the consideration of the bill, and the question, "Shall the bill pass, the objections of the President to the contrary notwithstanding?" was determined in the affirmative by a vote of 46 yeas against no yeas, 27 Senators being absent. Two-thirds of the Senate having voted in the affirmative, the bill was passed. The House of Representatives referred the bill to the Committee on Claims, which reported it on the 26th of May, with the recommendation "That it do pass, notwithstanding the objections of the President." When the question was taken, it was decided in the affirmative by a vote of 181 yeas against 14 nays, 94 Representatives not voting. So, two-thirds of the Representatives having voted in the affirmative, the bill was passed, notwithstanding the objections of the President.

ULYSSES S. GRANT.—XXIV.

*April 18, 1876.**To the Senate of the United States :*

Herewith I return Senate bill No. 172, entitled "An act fixing the salary of the President of the United States," without my approval.

I am constrained to this course from a sense of duty to my successors in office, to myself, and to what is due to the dignity of the position of Chief Magistrate of a nation of more than forty millions of people.

When the salary of the President of the United States pursuant to the Constitution was fixed at \$25,000 per annum we were a nation of but three millions of people, poor from a long and exhaustive war, without commerce or manufactories, with but few wants and those cheaply supplied. The salary must then have been deemed small for the responsibilities and dignity of the position, but justifiably so from the impoverished condition of the Treasury and the simplicity it was desired to cultivate in the Republic.

The salary of Congressmen under the Constitution was first fixed at \$6 per day for the time actually in session—an average of about one hundred and twenty days to each session—or \$720 per year, or less than one-thirtieth of the salary of the President.

Congress have legislated upon their own salaries from time to time since, until finally it reached \$5,000 per annum, or one-fifth that of the President before the salary of the latter was increased.

No one having a knowledge of the cost of living at the national capital will contend that the present salary of Congressmen is too high, unless it is the intention to make the office one entirely of honor, when the salary should be abolished—a proposition repugnant to our republican ideas and institutions.

I do not believe the citizens of this Republic desire their public servants to serve them without a fair compensation for their services.

Twenty-five thousand dollars does not defray the expenses of the Executive for one year, or has not in my experience. It is not now one-fifth in value what it was at the time of the adoption of the Constitution in supplying demands and wants.

Having no personal interest in this matter, I have felt myself free to return this bill to the house in which it originated with my objections, believing that in doing so I meet the wishes and judgment of the great majority of those who indirectly pay all the salaries and other expenses of Government.

U. S. GRANT.

The veto message was read, referred to the Committee on Civil Service and Retrenchment, and ordered to be printed.

ULYSSES S. GRANT.—XXV.

*May 26, 1876.**To the House of Representatives :*

I return herewith, without my approval, House bill No. 1922, entitled "An act providing for the recording of deeds, mortgages, and other conveyances affecting real estate in the District of Columbia.

The objection to affixing my signature to this bill may be found in the communication addressed to me by the Attorney-General, and which accompanies this message.

U. S. GRANT.

DEPARTMENT OF JUSTICE,
Washington, May 23, 1876.

SIR: In reply to your note of the 19th instant, in which you request me to report whether there are objections to your approval of "An act providing for the recording of deeds, mortgages, and other conveyances affecting real estate in the District of Columbia," being House bill No. 1922, I have the honor to state that the bill seems to me objectionable because of indefiniteness and uncertainty as to the time which it purports to fix when deeds of trust, mortgages, &c., shall take effect and be valid as to creditors and subsequent purchasers for valuable consideration without notice.

Although there is no constitutional objection to the act, yet for the reason above stated I hesitate to advise its approval.

Very respectfully, your obedient servant,

EDWARDS PIERREPONT,
Attorney-General.

The veto message was read, referred to the Committee on the Judiciary and ordered to be printed.

ULYSSES S. GRANT.—XXVI.

*June 9, 1876.**To the Senate of the United States :*

I return herewith, without my approval, Senate bill No. 165, entitled "An act for the relief of Michael W. Brock, of Meigs County, Tennessee, late a private in Company D, Tenth Tennessee Volunteers."

The objection to affixing my signature to this bill may be found in the indorsement (which accompanies this message) by the Adjutant-General of the Army.

U. S. GRANT.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington June 8, 1876.

Respectfully returned to the Secretary of War.

The records of this Office show that Michael W. Brock, Company D, Tenth Tennessee Volunteers, deserted November 24, 1864, due the United States for horse and horse-equipments, carbine, saber, and pistol, all complete.

He presented satisfactory evidence of his having left the service by proper authority, and the charge of desertion has been removed and the soldier furnished an honorable discharge.

No evidence has been presented to this Office to establish that he was erroneously charged with Government property.

If satisfactory evidence is furnished showing conclusively that this soldier was erroneously charged with Government property taken at the time of his reported desertion, the charge will be removed; and in that case the inclosed act for his relief will be necessary.

E. D. TOWNSEND,
Adjutant-General.

The veto message was received on the 12th of June, read, referred to the Committee on Military Affairs, and ordered to be printed.

ULYSSES S. GRANT.—XXVII.

July 11, 1876.

To the House of Representatives :

For the reasons set forth in the accompanying report of the Secretary of War, I have the honor to return herewith without my approval House bill No. 1337, entitled "An act for the relief of Nelson Tiffany."

U. S. GRANT.

WAR DEPARTMENT,
Washington City, June 7, 1876.

SIR: I have the honor to return House bill 1337, for the relief of Nelson Tiffany.

The Adjutant-General, to whom the bill was referred, reports as follows:

"Nelson Tiffany, private Company A, Twenty-fifth Massachusetts Volunteers, deserted October 10, 1864, and remained absent until April 25, 1865, when he surrendered under the President's proclamation, thereby acknowledging his desertion.

"If this bill becomes a law, it will not only falsify the records of this Department but will be an injustice to every man who served honorably during the war of the rebellion."

I inclose the report (No. 402) of the Senate Committee on Military Affairs in the case.

Very respectfully, your obedient servant,

J. D. CAMERON,
Secretary of War.

[Senate report No. 402, Forty-fourth Congress, first session.]

JUNE 20, 1876.—Ordered to be printed.

Mr. Clayton submitted the following report, to accompany bill H. R. No. 1337:

The Committee on Military Affairs, having had under consideration the bill (H. R. No. 1337) for the relief of Nelson Tiffany, submit the following report:

We find that Nelson Tiffany was enlisted in Company A, Twenty-fifth Massachusetts Volunteers, on the 16th September, 1861, and was honorably discharged on May 15, 1865. He was severely wounded on May 9, 1864, and was sent to hospital at Bermuda Hundreds, thence to Fortress Monroe, and finally to hospital at New Haven, Conn., from which place he received a furlough from June 17 for thirty days, which was extended to August 7, 1864, and at its expiration he reported to medical director at Boston, and by him sent to Readville, Mass., on 10th October, being directed to report back to New Haven, Conn. He, being in a worn-out and broken-down condition from wounds and sickness, believed he would never recover. He returned to his home at Auburn, Mass., and then reported to the provost-marshal at Worcester, Mass., and was by him sent to Fort Independence, and there remained till his discharge, on May 15, 1865. The records show that Tiffany was a faithful soldier, and he is believed now to be upon his death-bed from wounds received in the war. The committee believe, from all the evidence in the case, that Nelson Tiffany never intended to desert, and they recommend the passage of the accompanying bill.

The veto message was read, referred to the Committee on Military Affairs, and ordered to be printed. The committee reported back the bill on the 20th of July, with recommendation that it be passed, and on the 28th of July the House proceeded to its consideration. The question being put, "Will the House, on reconsideration, agree to pass the bill?" it was decided in the affirmative by a vote of 178 yeas against 1 nay, 106 Representatives not voting. So the bill was passed by the House, the objection of the President to the contrary notwithstanding, and the Senate agreed to the same on the 31st of July, by a vote of 40 yeas against no nays. So the bill was passed, two-thirds of the Senators present having voted in the affirmative.

ULYSSES S. GRANT.—XXVIII.

July 13, 1876.

To the House of Representatives :

For the reasons stated in the accompanying report by the Commissioner of Pensions to the Secretary of the Interior, I have the honor to return without my approval House bill No. 11, entitled "An act granting a pension to Eliza Jane Blumer.

U. S. GRANT.

DEPARTMENT OF THE INTERIOR,
Washington, July 8, 1876.

SIR: I have the honor to return herewith a bill (H. R. No. 11) entitled "An act granting a pension to Eliza Jane Blumer," and to invite your

attention to the inclosed copy of a communication addressed to me on the 7th instant by the Commissioner of Pensions relating to said bill.

In the opinion of this Department the misdescription of the soldier in the bill is of such a character as would render it difficult if not impossible to carry the provisions of the bill into effect should it become a law.

I have the honor to be, with great respect, your obedient servant,

CHAS. T. GORHAM,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 7, 1876.

SIR: I have the honor to return herewith engrossed House bill No. 11, giving to Eliza Jane Blumer a pension as the widow of Henry A. Blumer, private of Company A, Forty-seventh Pennsylvania Volunteers, with the suggestion that if the bill is intended to pension Eliza Blumer, whose application, No. 46382, on file in this office, has been rejected, it should designate the soldier as of Company B of said regiment, it failing to appear from the records of the War Department that he served in any other company than that last named.

I am, sir, very respectfully, your obedient servant,

J. A. BENTLEY,
Commissioner.

The veto message was read, referred to the Committee on Invalid Pensions, and ordered to be printed.

ULYSSES S. GRANT.—XXIX.

July 20, 1876.

To the House of Representatives:

I have the honor to return herewith without my approval House bill No. 2684, entitled "An act to amend sections 3496, 3951, and 3954 of the Revised Statutes." It is the judgment of the Postmaster-General, whose report accompanies this message, that if this bill should become a law in its present form it would fail to give effect to its provisions. The remedial suggestions in his report are respectfully recommended to your attention.

U. S. GRANT.

POST-OFFICE DEPARTMENT,
Washington, D. C., July 19, 1876.

SIR: I have the honor to return herewith House bill No. 2684, to amend sections 3946, 3951, and 3954 of the Revised Statutes, with the following objections thereto:

The sections of the Revised Statutes which this bill proposes to amend were substantially repealed by the twelfth section of the act entitled "An act making appropriations for the service of the Post-Office Department, for the fiscal year ending June 30, 1875, and for other purposes,"

approved June 23, 1874. The sections of the Revised Statutes numbered as indicated in the bill were enacted as sections 246 and 251 of the act to revise, consolidate, and amend the statutes relating to the Post-Office Department, approved June 8, 1872. These sections were subsequently embodied in the revision of the statutes.

If the accompanying bill should become a law in its present form, it would, in my judgment, fail to give effect to its provisions. The bill is a very important one for the service of the Post-Office Department. Efforts have been made for four or five years past to induce Congress to pass just such a law. To break up the vicious system of straw-bidding, this bill would be very valuable, and I regret exceedingly that a mistake should have been made in the title and enacting clause which will render its provisions inoperative.

I therefore suggest that the attention of the house in which it originated shall be called to the defects in the bill explained above, and to enable that body to understand very fully what, in my judgment, would be required to perfect it, I would suggest that the title should read, "A bill to amend subsections 246 and 251 of section 12, of an act entitled 'An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1875, and for other purposes,' approved June 23, 1874, and also to amend section 3954 of the Revised Statutes;" and that the enacting clause of the bill should be changed in conformity therewith.

I have the honor to be, with great respect, your obedient servant,
 JAS. N. TYNER,
Postmaster-General.

The veto message and accompanying document were referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

ULYSSES S. GRANT.—XXX.

August 14, 1876.

To the House of Representatives:

In affixing my signature to the river and harbor bill, No. 3822, I deem it my duty to announce to the House of Representatives my objections to some features of the bill, and the reason I sign it. If it was obligatory upon the Executive to expend all the money appropriated by Congress, I should return the river and harbor bill with my objections, notwithstanding the great inconvenience to the public interests resulting therefrom and the loss of expenditures from previous Congresses upon incompleting works. Without enumerating, many appropriations are made for works of purely private or local interest, in no sense national. I cannot give my sanction to these, and will take care that during my term of office no public money shall be expended upon them.

There is very great necessity for economy of expenditures at this time, growing out of the loss of revenue likely to arise from a deficiency of appropriations to insure a thorough collection of the same. The reduction of revenue districts, diminution of special agents, and total abolition

of supervisors may result in great falling off of the revenue. It may be a question to consider whether any expenditure can be authorized under the river and harbor appropriation further than to protect works already done and paid for. Under no circumstances will I allow expenditures upon works not clearly national.

U. S. GRANT.

The message was read, referred to the Committee on Commerce, and ordered to be printed.

ULYSSES S. GRANT.—XXXI.

August 14, 1876.

To the House of Representatives :

For the reason stated in the accompanying communications submitted to me by the Secretary of War, I have the honor to return herewith without my approval House bill No. 36, entitled "An act to restore the name of Captain Edward S. Meyer to the active list of the Army."

U. S. GRANT.

WAR DEPARTMENT,
Washington, D. C., August 4, 1876.

SIR : I have the honor to return House bill 36, to restore the name of Capt. Edward S. Meyer to the active list of the Army, and beg to invite your attention to the inclosed report of the Adjutant-General of this date, stating objections to the approval of the bill.

Very respectfully, your obedient servant,

J. D. CAMERON.
Secretary of War.

· ADJUTANT-GENERAL'S OFFICE,
August 4, 1876.

Respectfully returned to the Secretary of War.

Edward S. Meyer served as a private in the Fourth Ohio Volunteers (three months) from May 4, 1861, to August 18, 1861. He again enlisted as private Nineteenth Ohio Volunteers, September 10, 1861; was promoted first lieutenant November 1, 1861, and resigned September 27, 1862. He was commissioned captain One hundred and seventh Ohio Volunteers November 11, 1862; was wounded at Chancellorsville, Virginia, May 2, 1863, and discharged for physical disability January 1, 1865. He was again mustered into service February 8, 1865, as major Fifth United States Veteran Volunteers (Hancock's Corps), and mustered out March 20, 1866. Was brevetted lieutenant-colonel, colonel, and brigadier-general of volunteers March 13, 1865.

He was appointed captain Thirty-fifth United States Infantry July 28, 1866; became unassigned August 12, 1869; assigned to Nineteenth Infantry August 5, 1870, and transferred to Ninth Cavalry January 1, 1871. Retired August 24, 1872.

July 8, 1869, Captain Meyer applied for retirement on account of wounds received at Chancellorsville May 2, 1863, by which he was in-

capacitated for active service. No action was then had on the request, pending action by Congress reducing the Army.

October 6, 1869, he asked to be placed on waiting orders, being unfit for duty, and no possibility of improvement without going north. He was accordingly relieved from duty and ordered home to await orders.

December 18, 1869, he called on the Secretary of War and asked to be assigned to duty.

January 4, 1870, he again applied to be assigned to duty with some regiment on the frontier, stating that his wound had healed, &c., and asking to withdraw his previous request for retirement. This was accompanied by a similar request from his father, Mr. S. Meyer, of Ohio.

July 20, 1870, he applied the third time to withdraw application for retirement and to be assigned to duty. On January 1, 1871, in accordance with his repeated requests to be assigned to duty, he was assigned to the Ninth Cavalry, serving in Texas. He joined the regiment, and on March 4, 1872, he renewed his former request to be ordered before a retiring board, stating that he found his injuries would not allow him to remain on duty on the frontier; that his disability was constantly increasing, &c. The medical director of the department approved the request, and added that Captain Meyer's wounds certainly unfitted him for service on the frontier.

April 13, 1872, Senator Sherman joined in requesting retirement of Captain Meyer. He was ordered before the retiring board and on August 20, 1872, was examined.

The board found Captain Meyer "incapacitated for active service, and that said incapacity results from a gunshot wound received in his lower jaw at the battle of Chancellorsville, Virginia, May 3, 1863" (when captain One hundred and seventh Ohio Volunteers). He was retired in accordance with the finding.

March 21 and December 6, 1873, Captain Meyer asked restoration to active service and reappointment as a captain of cavalry, which application was disapproved by the General of the Army.

Pending the action on the bill before Congress no reports were called for as to the official facts of record in the War Department, and no evidence has been filed in this office showing that he has sufficiently recovered.

The absence of such evidence and the fact that after one assignment to active duty he has failed to be sufficiently recovered are submitted as objections why the bill should not be approved.

E. D. TOWNSEND,
Adjutant-General.

The veto message having been read, it was ordered by the House that it be referred to the Committee on Military Affairs and printed.

ULYSSES S. GRANT.—XXXII.

August 14, 1876.

To the House of Representatives :

I herewith return House bill No. 4085 without my approval. The repeal of the clause in the original bill for paving Pennsylvania avenue fixing the time for the completion of the work by December 1, 1876, is

objectionable in this, that it fixes no date when the work is to be completed.

Experience shows that where contractors have unlimited time to complete any given work they consult their own convenience and not the public good. Should Congress deem it proper to amend the present bill in such manner as to fix the date for the completion of the work to be done by any date between December 1 and the close of my official term, it will receive my approval.

U. S. GRANT.

The veto message having been read, it was ordered that it be referred to the Committee for the District of Columbia, and printed.

ULYSSES S. GRANT.—XXXIII.

August 14, 1876.

To the House of Representatives :

In announcing as I do that I have attached my signature of official approval to the "Act making appropriations for the consular and diplomatic services of the Government for the year ending June 30, 1877, and for other purposes," it is my duty to call attention to a provision in the act directing that notice be sent to certain of the diplomatic and consular officers of the Government "to close their offices."

In the literal sense of this direction it would be an invasion of the constitutional prerogatives and duty of the Executive.

By the Constitution the President "shall have power, by and with the advise and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and, he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls," &c.

It is within the power of Congress to grant or withhold appropriation of money for the payment of salaries and expenses of the foreign representatives of the Government.

In the early days of the Government a sum in gross was appropriated, leaving it to the Executive to determine the grade of the officers and the countries to which they should be sent.

Latterly, for very many years, specific sums have been appropriated for designated missions or employments, and, as a rule, the omission by Congress to make an appropriation for any specific post has heretofore been accepted as an indication of a wish on the part of Congress which the executive branch of the Government respected and complied with.

In calling attention to the passage which I have indicated, I assume that the intention of the provision is only to exercise the constitutional prerogative of Congress over the expenditures of the Government and to fix a time at which the compensation of certain diplomatic and con-

sular officers shall cease; and not to invade the constitutional rights of the Executive, which I should be compelled to resist; and my present object is not to discuss or dispute the wisdom of failing to appropriate for several offices, but to guard against the construction that might possibly be placed on the language used as implying a right in the legislative branch to direct the closing or discontinuing of any of the diplomatic or consular offices of the Government.

U. S. GRANT.

The message having been read, it was referred to the Committee on Appropriations and ordered to be printed.

ULYSSES S. GRANT—XXXIV.

August 15, 1876.

To the Senate of the United States:

For the reasons stated in the accompanying communication submitted to me by the Acting Secretary of the Interior, I have the honor to return herewith, without my approval, Senate bill No. 779, entitled "An act to provide for the sale of a portion of the reservation of the confederated Otoe and Missouri and the Sacs and Foxes of the Missouri tribes of Indians, in the States of Kansas and Nebraska."

U. S. GRANT.

Before the Senate had taken any action on this message a second message was received from the President requesting that the bill might be returned in order that he might approve it, as follows:

To the Senate of the United States:

Upon further investigation I am convinced that my message of this date, withholding my signature from Senate bill No. 779, entitled "An act to provide for the sale of a portion of the reservation of the confederated Otoe and Missouri and the Sacs and Foxes of the Missouri tribes of Indians, in the States of Kansas and Nebraska," was premature; and I request, therefore, that the bill may be returned, in order that I may affix my signature to it.

U. S. GRANT.

The two messages were read, and a debate ensued as to whether, under the Constitution, the President having returned a bill to the Senate with his veto, and the Constitution saying that it should be voted on, it could be transmitted to him again. It was determined that the Senate should proceed to act upon the bill, the second message having no effect except as it impressed the minds of the Senators who were to vote with the fact that there was no such objection found by one part of the legislative power as the previous message apprised them had been found. The question concurring on the passage of the bill, the objections of the President to the contrary notwithstanding, it was determined in the affirmative by a vote of 36 yeas against no nays. So it was resolved, two-thirds of the Senators concurring therein, that the bill

do pass. The House, on reconsideration, just prior to its final adjournment, agreed to the passage of the bill by a vote of 120 yeas against 18 nays, 148 Representatives not voting. The Speaker *pro tempore* announced that no point of order being made that a quorum of members had not voted, the bill was passed, two-thirds voting in favor thereof.

ULYSSES S. GRANT.—XXXV.

August 15, 1876.

To the Senate of the United States :

For the reasons presented in the accompanying communications, submitted by the Secretary of War, I have the honor to return herewith, without my approval, Senate bill No. 561, entitled "An act for the relief of Major Junius T. Turner."

U. S. GRANT.

The veto message was read, and the Senate ordered that it be referred to the Committee on Military Affairs.

On the 12th of January following, the President sent the following message to the Senate :

To the Senate of the United States :

On the eve of the adjournment of the last session of Congress I returned to the Senate bill No. 561, entitled "An act for the relief of Major Junius T. Turner," with my objections to its becoming a law. I now desire to withdraw those objections, as I am satisfied they were made under a misapprehension of the facts.

U. S. GRANT.

The message was read, and the Senate ordered that it be referred to the Committee on Military Affairs.

On the 13th of February, 1877, Senator Logan, from the Committee on Military Affairs, to whom was referred the bill (S. 561) for the relief of Major Junius T. Turner, together with a message of the President of the United States, returning the said bill with his objections thereto in writing, reported a recommendation that the bill do pass, the objection of the President to the contrary notwithstanding. No action was had on it.

ULYSSES S. GRANT.—XXXVI.

January 15, 1877.

To the House of Representatives :

The joint resolution authorizing the Secretary of War to supply blankets to the Reform School in the District of Columbia is before me.

I am in entire sympathy with the purpose of the resolution, but before taking any action upon it I deem it my duty to submit for your consideration the accompanying letter, received from the Secretary of

War, embodying a report made in anticipation of the passage of the resolution by the Quartermaster-General of the Army, in which, among other facts, it is stated that "the appropriation for clothing for the Army for this fiscal year is much smaller than usual, and the supply of blankets which it will allow us to purchase is so small, that none can properly be spared for other purposes than the supply of the Army :

"If it be thought by Congress worth while to cause the supply of blankets for the institution referred to to be procured through the War Department, it is respectfully suggested that provision to meet the expense be made by special appropriation."

U. S. GRANT.

The veto message was read, and it was ordered that the message and accompanying paper be referred to the Committee on Military Affairs and printed. On the 6th of February, the Committee on Military Affairs was discharged from the further consideration of the veto message, and the same was referred to the Committee on Appropriations.

ULYSSES S. GRANT.—XXXVII

January 15, 1877.

To the House of Representatives :

For the reasons set forth in the accompanying communication addressed to the Secretary of the Interior by the Commissioner of the General Land Office, I have the honor to return herewith, without my signature, the bill (H. R. 2041) entitled "An act to amend section 2291 of the Revised Statutes of the United States, in relation to proof required in homestead entries."

U. S. GRANT.

The veto message was read, and ordered to be referred to the Committee on Public Lands, and to be printed.

ULYSSES S. GRANT.—XXXVIII.

January 23, 1877.

To the House of Representatives :

I return herewith House bill (No. 4350) to abolish the board of commissioners of the Metropolitan police of the District of Columbia and to transfer its duties to the Commissioners of the District of Columbia, without my approval.

It is my judgment that the police commissioners, while appointed by the Executive, should report to and receive instructions from the District Commissioners. Under other circumstances than those existing at present I would have no objection to the entire abolition of the board and seeing the duties devolved directly upon the District Commission-

ers. The latter should, in my opinion, have supervision and control over the acts of the police commissioners under any circumstances. But, as recent events have shown that gross violations of law have existed in this District for years directly under the eyes of the police, it is highly desirable that the board of police commissioners should be continued, in some form, until the evil complained of is eradicated and until the police force is put on a footing to prevent, if possible, a recurrence of the evil. The board of police commissioners have recently been charged with the direct object of accomplishing this end.

U. S. GRANT.

The veto message was read, and the question put, "Shall the bill pass, the objections of the President to the contrary notwithstanding?" which was determined in the affirmative by a vote of 159 yeas against 78 nays, 53 Representatives not voting. So the bill was passed by the House, two-thirds voting in favor thereof. The bill reached the Senate on the 6th of February, and without discussion a vote was taken on its passage, notwithstanding the objections of the President of the United States, which resulted, yeas 33, against nays 22, 20 Senators not voting. Two-thirds of the Senators not voting for the bill, it was not passed.

ULYSSES S. GRANT.—XXXIX.

January 26, 1877.

To the House of Representatives :

I return to the House of Representatives, in which they originated, two joint resolutions, the one entitled "Joint resolution relating to congratulations from the Argentine Republic," the other entitled "Joint resolution in reference to congratulations from the Republic of Pretoria, South Africa."

The former of these resolutions purports to direct the Secretary of State to acknowledge a dispatch of congratulation from the Argentine Republic and the high appreciation of Congress of the compliment thus conveyed, the other directs the Secretary of State to communicate to the republic of Petoria the high appreciation of Congress of the complimentary terms in which said Republic has referred to the first centennial of our National Independence.

Sympathizing as I do in the spirit of courtesy and friendly recognition which has prompted the passage of these resolutions, I cannot escape the conviction that their adoption has inadvertently involved the exercise of a power which infringes upon the constitutional rights of the Executive.

The usage of Governments generally confines their correspondence and interchange of opinion and of sentiments of congratulation as well as of discussion to one certain established agency. To allow correspondence or interchange between states to be conducted by or with more than one such agency would necessarily lead to confusion, and pos-

sibly to contradictory presentation of views and to international complications.

The Constitution of the United States, following the established usage of nations, has indicated the President as the agent to represent the national sovereignty in its intercourse with foreign powers, and to receive all official communications from them. It gives him the power, by and with the advice and consent of the Senate, to make treaties and to appoint ambassadors and other public ministers; it intrusts to him solely "to receive ambassadors and other public ministers," thus vesting in him the origination of negotiations and the reception and conduct of all correspondence with foreign states; making him, in the language of one of the most eminent writers on constitutional law, "the constitutional organ of communication with foreign states."

No copy of the addresses which it is proposed to acknowledge is furnished. I have no knowledge of their tone, language, or purport. From the tenor of the two joint resolutions it is to be inferred that these communications are probably purely congratulatory. Friendly and kindly intentioned as they may be, the presentation by a foreign state of any communication to a branch of the Government not contemplated by the Constitution for the reception of communications from foreign states might, if allowed to pass without notice, become a precedent for the address by foreigners or by foreign states of communications of a different nature and with wicked designs.

If Congress can direct the correspondence of the Secretary of State with foreign Governments, a case very different from that now under consideration might arise, when that officer might be directed to present to the same foreign Government entirely different and antagonistic views or statements.

By the act of Congress establishing what is now the Department of State, then known as the Department of Foreign Affairs, the Secretary is to "perform and execute such duties as shall from time to time be enjoined or intrusted to him by the President of the United States, agreeable to the Constitution, relative to correspondence, commissions, or instructions to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to said Department; and furthermore, that the said principal officer (the Secretary of State) shall conduct the business of the said Department in such manner as the President of the United States shall from time to time order or instruct."

This law, which remains substantially unchanged, confirms the view that the whole correspondence of the Government with and from foreign states is intrusted to the President; that the Secretary of State conducts such correspondence exclusively under the orders and instruc-

tions of the President; and that no communications or correspondence from foreigners or from a foreign state can properly be addressed to any branch or Department of the Government except that to which such correspondence has been committed by the Constitution and the laws.

I therefore feel it my duty to return the joint resolutions without my approval to the House of Representatives, in which they originated.

In addition to the reasons already stated for withholding my constitutional approval from these resolutions is the fact that no information is furnished as to the terms or purport of the communications to which acknowledgments are desired, no copy of the communications accompanies the resolutions, nor is the name even of the officer or of the body to whom an acknowledgment could be addressed given; it is not known whether these congratulatory addresses proceed from the head of the state or from legislative bodies; and as regards the resolution relating to the Republic of Pretoria, I cannot learn that any state or Government of that name exists.

U. S. GRANT.

The veto message was read, and ordered to be referred to the Committee on Foreign Affairs, and be printed.

ULYSSES S. GRANT.—XL.

January 26, 1877.

To the Senate of the United States:

I have the honor to return herewith, without my approval, Senate bill No. 685, entitled "An act to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry."

The reasons for withholding my signature to this bill may be found in the accompanying report received from the Secretary of War.

U. S. GRANT.

Accompanying paper.

WAR DEPARTMENT, *January 24, 1877.*

SIR: I have the honor to return herewith Senate bill 685, "to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry," with the report of the Adjutant-General, as follows:

"The inclosed act directs the Secretary of War to place the name of Daniel H. Kelly upon the muster-roll of Company F, Second Tennessee Infantry, to date December 1, 1861. There is no record of the enlistment, service, or death of this man on file in this office, and if this act becomes a law, as it now reads, it will be of no benefit to the heirs."

I have the honor to be, sir, with great respect, your obedient servant,

J. D. CAMERON,
Secretary of War.

The veto message was read, and it was ordered that it be referred to the Committee on Military Affairs.

ULYSSES S. GRANT.—XLI.

*February 14, 1877.**To the House of Representatives:*

I have the honor to return herewith, without my approval, House bill No. 3367, entitled "An act to remove the charge of desertion from the military record of Alfred Rowland."

The reasons for withholding my signature may be found in the accompanying report received from the Secretary of War.*

U. S. GRANT.

The veto message was read, and was referred, with the accompanying document, to the Committee on Military Affairs and printed.

ULYSSES S. GRANT.—XLII.

*February 14, 1877.**To the House of Representatives:*

I return the House bill No. 3155, entitled "An act to perfect the revision of the Statutes of the United States," without my approval. My objection is to the single provision which amends section 3823 of the Revised Statutes.

That section is as follows:

SEC. 3823. The Clerk of the House of Representatives shall select in Virginia, South Carolina, North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas, one or more newspapers, not exceeding the number allowed by law, in which such treaties and laws of the United States as may be ordered for publication in newspapers according to law shall be published, and in some one or more of which so selected all such advertisements as may be ordered for publication in said districts by any United States court or judge thereof, or by any officer of such courts, or by any executive officer of the United States, shall be published, the compensation for which, and other terms of publication, shall be fixed by said Clerk at a rate not exceeding \$2 per page for the publication of treaties and laws, and not exceeding \$1 per square of eight lines of space, for the publication of advertisements, the accounts for which shall be adjusted by the proper accounting officers, and paid in the manner now authorized by law in the like cases.

The bill proposes to amend this section as follows:

By striking out all after the word "in" in the first line to the word "one" in the third line, and inserting therefore the words "each State and Territory of the United States."

Prior to 1867 the advertising of the Executive departments had been subject to the direction of the heads of those departments, and had

* Report of Secretary of War not given.

been published in newspapers selected by them, and on terms fixed by them. In the year 1867 (14 United States Statutes at Large, pages 466, 467), while the ten States above named were yet unrestricted, and when there existed a radical difference of opinion between the executive and legislative departments as to the administration of the Government in those States, this provision was enacted. Subsequently, during the same year (15 United States Statutes at Large, page 8), so much of this provision "as relates to the publication of the laws and treaties of the United States" was extended to all the States and Territories, leaving the advertisements ordered by Congress and by the Executive departments unaffected thereby. The continuance of this provision after the reconstruction acts had taken effect and the bringing it forward into the Revised Statutes were probably through inadvertence.

The existence of this section 3823 of the Revised Statutes seems to have been ignored by Congress itself in the adoption of section 3941, authorizing the Postmaster-General to advertise in such newspapers as he may choose. But the present act, if it should go into effect, would compel him and the other heads of the Executive departments, as well as all the courts, to publish all their advertisements in newspapers selected by the Clerk of the House of Representatives. It would make general in its operation a provision which was exceptional and temporary in its origin and character. This, in my judgment, would be unwise, if not also an actual encroachment upon the constitutional rights of the executive branch of the Government. The person who should be appointed by law to select all the newspapers throughout the country to which the patronage of all branches of the Government of the United States should be given, if not an officer of the United States under article 2, section 2, clause 2, of the Constitution, would certainly have powers and duties which have hitherto been regarded as official.

But without reference to the question of its constitutionality, I am satisfied that this provision would not operate usefully or fairly. I am constrained, therefore, to withhold from it my approval. I regret that my objection to this one clause of the act cannot be made available without withholding my approval from the entire act, which is otherwise unobjectionable.

U. S. GRANT.

The veto message was read, and after debate the question was put, "Will the House, on reconsideration, agree to pass the bill?" the negative vote sustaining the veto. There were 1 yea against 211 nays, 78 Representatives not voting. So the bill was not passed, two-thirds not voting in favor thereof.

The chairman of the House Committee on the Revision of the Laws, immediately after the above vote was taken, reported back a bill to perfect the revision of the Statutes of the United States precisely like the old one, with the exception of the omission vetoed by the President. This bill was immediately ordered to be engrossed read a third time, and passed.

RUTHERFORD B. HAYES.—I.

*February 28, 1878.**To the House of Representatives :*

After a very careful consideration of the House bill No. 1093, entitled "An act to authorize the coinage of the standard silver dollar and to restore its legal-tender character," I feel compelled to return it to the House of Representatives, in which it originated, with my objections to its passage.

Holding the opinion which I expressed in my annual message, that "neither the interests of the Government nor of the people of the United States would be promoted by disparaging silver as one of the two precious metals which furnish the coinage of the world, and that legislation which looks to maintaining the volume of intrinsic money to as full a measure of both metals as their relative commercial values will permit would be neither unjust nor inexpedient," it has been my earnest desire to concur with Congress in the adoption of such measures to increase the silver coinage of the country as would not impair the obligation of contracts, either public or private, nor injuriously affect the public credit. It is only upon the conviction that this bill does not meet these essential requirements that I feel it my duty to withhold from it my approval.

My present official duty as to this bill permits only an attention to the specific objections to its passage which seem to me so important as to justify me in asking from the wisdom and duty of Congress that further consideration of the bill for which the Constitution has, in such cases, provided.

The bill provides for the coinage of silver dollars of the weight of 412½ grains each, of standard silver, to be a legal tender at their nominal value for all debts and dues, public and private, except where otherwise expressly stipulated in the contract. It is well known that the market value of that number of grains of standard silver during the past year has been from ninety to ninety-two cents as compared with the standard gold dollar. Thus the silver dollar authorized by this bill is worth 8 to 10 per cent. less than it purports to be worth, and is made a legal tender for debts contracted when the law did not recognize such coins as lawful money.

The right to pay duties in silver or in certificates for silver deposits will, when they are issued in sufficient amount to circulate, put an end to the receipt of revenue in gold, and thus compel the payment of silver for both the principal and interest of the public debt. One billion one hundred and forty-three million four hundred and ninety-three thousand four hundred dollars of the bonded debt, now outstanding, was issued prior to February, 1873, when the silver dollar was unknown in circulation in this country, and was only a convenient form of silver

bullion for exportation; \$583,440,350 of the funded debt has been issued since February, 1873, when gold alone was the coin for which the bonds were sold, and gold alone was the coin in which both parties to the contract understood that the bonds would be paid. These bonds entered into the markets of the world. They were paid for in gold when silver had greatly depreciated, and when no one would have bought them if it had been understood that they would be paid in silver. The sum of \$225,000,000 of these bonds has been sold during my administration for gold coin, and the United States received the benefit of these sales by a reduction of the rate of interest to 4 per cent. During the progress of these sales a doubt was suggested as to the coin in which payment of these bonds would be made. The public announcement was thereupon authorized that it was "not to be anticipated that any future legislation of Congress or any action of any department of the Government would sanction or tolerate the redemption of the principal of these bonds or the payment of the interest thereon in coin of less value than the coin authorized by law at the time of the issue of the bonds, being the coin exacted by the Government in exchange for the same."

In view of these facts it will be justly regarded as a grave breach of the public faith to undertake to pay these bonds, principal or interest, in silver coin worth in the market less than the coin received for them. It is said that the silver dollar made a legal tender by this bill will under its operation be equivalent in value to the gold dollar. Many supporters of the bill believe this, and would not justify an attempt to pay debts, either public or private, in coin of inferior value to the money of the world. The capital defect of the bill is that it contains no provision protecting from its operation pre-existing debts in case the coinage which it creates shall continue to be of less value than that which was the sole legal tender when they were contracted. If it is now proposed for the purpose of taking advantage of the depreciation of silver in the payment of debts to coin and make a legal tender a silver dollar of less commercial value than any dollar, whether of gold or paper, which is now lawful money in this country, such measure, it will hardly be questioned, will, in the judgment of mankind, be an act of bad faith. As to all debts heretofore contracted, the silver dollar should be made a legal tender only at its market value. The standard of value should not be changed without the consent of both parties to the contract. National promises should be kept with unflinching fidelity. There is no power to compel a nation to pay its just debts. Its credit depends on its honor. The nation owes what it has led or allowed its creditors to expect. I cannot approve a bill which in my judgment authorizes the violation of sacred obligations. The obligation of the public faith transcends all questions of profit or public advantage. Its unquestionable maintenance is the dictate as well of the highest expediency as of the most necessary duty, and should ever be carefully guarded by the Executive, by Congress, and by the people.

It is my firm conviction that if the country is to be benefited by a silver coinage, it can be done only by the issue of silver dollars of full value, which will defraud no man. A currency worth less than it purports to be worth will in the end defraud not only creditors, but all who are engaged in legitimate business, and none more surely than those who are dependent on their daily labor for their daily bread.

R. B. HAYES.

The veto message was read in the Senate, and, after debate, a vote was taken on its passage, which resulted in a vote of 46 yeas against 19 nays, 11 Senators being absent. Two-thirds of the Senators having voted in its favor, the bill was passed. In the House, when the question was taken, there were 196 yeas against 73 nays, 23 Representatives not voting. Two-thirds of the Representatives having voted for the passage of the bill, upon reconsideration, it was passed, the objections of the President to the contrary notwithstanding.

RUTHERFORD B. HAYES.—II.

March 6, 1878.

To the House of Representatives:

I return herewith House bill No. 3072, entitled "An act to authorize a special term of the circuit court of the United States for the southern district of Mississippi, to be held at Scranton, in Jackson County," with the following objections to its becoming a law:

The act provides that a special term of the circuit court of the United States for the southern district of Mississippi shall be held at Scranton, in Jackson County, Mississippi, to begin on the second Monday in March, 1878, and directs the clerk of said court to "cause notice of said special term of said court to be published in a newspaper in Jackson, Mississippi, and also in a newspaper in Scranton at least ten days before the beginning thereof."

The act cannot be executed inasmuch as there is not sufficient time to give the notice of the holding of the special term, which Congress thought proper to require.

The number of suits to be tried at the special term in which the United States is interested is forty-nine, and the amount involved exceeds \$200,000. The Government cannot prepare for trial at said special term because no fund appropriated by Congress can be made available for that purpose. If, therefore, the Government is compelled to go to trial at the special term provided for by this bill, the United States must be defeated for want of time and means to make preparation for the proper vindication of its rights.

The bill is therefore returned for the further consideration of Congress.

R. B. HAYES.

The veto message was read in the House, and, after debate, was referred to the Committee on the Judiciary.

RUTHERFORD B. HAYES.—III.

*March 1, 1879.**To the House of Representatives :*

After a very careful consideration of House bill No. 2423, entitled "An act to restrict the immigration of Chinese to the United States," I herewith return it to the House of Representatives, in which it originated, with my objections to its passage.

The bill, as it was sent to the Senate from the House of Representatives, was confined in its provisions to the object named in its title, which is that of "An act to restrict the immigration of Chinese to the United States." The only means adopted to secure the proposed object was the limitation on the number of Chinese passengers which might be brought to this country by any one vessel to fifteen, and as this number was not fixed in any proportion to the size or tonnage of the vessel or by any consideration of the safety or accommodation of these passengers, the simple purpose and effect of the enactment were to repress this immigration to an extent falling but little short of its absolute exclusion.

The bill, as amended in the Senate and now presented to me, includes an independent and additional provision which aims at, and in terms requires, the abrogation by this Government of articles 5 and 6 of the treaty with China, commonly called the Burlingame treaty, through the action of the Executive enjoined by this provision of the act.

The Burlingame treaty, of which the ratifications were exchanged at Peking, November 23, 1869, recites as the occasion and motive of its negotiation by the two Governments that "since the conclusion of the treaty between the United States of America and the Ta Tsing Empire (China) of the 18th of June, 1858, circumstances have arisen showing the necessity of additional articles thereto," and proceeds to an agreement as to said additional articles. These negotiations, therefore, ending by the signature of the additional articles July 28, 1868, had for their object the completion of our treaty rights and obligations toward the Government of China by the incorporation of these new articles as, thenceforth, parts of the principal treaty to which they are made supplemental. Upon the settled rules of interpretation applicable to such supplemental negotiations the text of the principal treaty and of these "additional articles thereto" constitute one treaty, from the conclusion of the new negotiations, in all parts of equal and concurrent force and obligation between the two Governments, and to all intents and purposes as if embraced in one instrument.

The principal treaty, of which the ratifications were exchanged August 16, 1859, recites that "the United States of America and the Ta Tsing Empire desiring to maintain firm, lasting, and sincere friendship have resolved to renew, in a manner clear and positive, by means of a

treaty or general convention of peace, amity, and commerce, the rules of which shall in future be mutually observed in the intercourse of their respective countries," and proceeds, in its thirty articles, to lay out a careful and comprehensive system for the commercial relations of our people with China. The main substance of all the provisions of this treaty is to define and secure the rights of our people in respect of access to, residence and protection in, and trade with China. The actual provisions in our favor, in these respects, were framed to be, and have been found to be, adequate and appropriate to the interests of our commerce, and by the concluding article we receive the important guarantee, "that should at any time the Ta Tsing Empire grant to any nation, or the merchants or citizens of any nation, any right, privilege, or favor connected either with navigation, commerce, political or other intercourse which is not conferred by this treaty, such right, privilege, and favor shall at once freely inure to the benefit of the United States, its public officers, merchants, and citizens." Against this body of stipulations in our favor, and this permanent engagement of equality in respect of all future concessions to foreign nations, the general promise of permanent peace and good offices on our part seems to be the only equivalent. For this the first article undertakes as follows:

There shall be, as there have always been, peace and friendship between the United States of America and the Ta Tsing Empire, and between their people respectively. They shall not insult or oppress each other for any trifling cause, so as to produce an estrangement between them; and if any other nation should act unjustly or oppressively, the United States will exert their good offices, on being informed of the case, to bring about an amicable arrangement of the question, thus showing their friendly feelings.

At the date of the negotiation of this treaty our Pacific possessions had attracted a considerable Chinese emigration, and the advantages and the inconveniences felt or feared therefrom had become more or less manifest, but they dictated no stipulations on the subject to be incorporated in the treaty. The year 1868 was marked by the striking event of a spontaneous embassy from the Chinese Empire, headed by an American citizen, Anson Burlingame, who had relinquished his diplomatic representation of his own country in China to assume that of the Chinese Empire to the United States and the European nations. By this time the facts of the Chinese immigration and its nature and influences, present and prospective, had become more noticeable and were more observed by the population immediately affected and by this Government. The principal feature of the Burlingame treaty was its attention to and its treatment of the Chinese immigration and the Chinese as forming, or as they should form, a part of our population. Up to this time our uncovenanted hospitality to immigration, our fearless liberality of citizenship, our equal and comprehensive justice to all inhabitants, whether they abjured their foreign nationality or not, our civil freedom and our religious toleration had made all comers welcome,

and under these protections the Chinese in considerable numbers had made their lodgment upon our soil. The Burlingame treaty undertakes to deal with this situation, and its fifth and sixth articles embrace its most important provisions in this regard and the main stipulations in which the Chinese Government has secured an obligatory protection of its subjects within our Territory. They read as follows:

ARTICLE V. The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other for the purpose of curiosity, of trade, or as permanent residents. The high contracting parties, therefore, join in reprobating any other than an entirely voluntary emigration for these purposes. They consequently agree to pass laws making it a penal offense for a citizen of the United States or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country, or for a Chinese subject or citizen of the United States to take citizens of the United States to China or to any other foreign country without their free and voluntary consent, respectively.

ART. VI. Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities, or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation; and, reciprocally, Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States.

An examination of these two articles in the light of the experience then influential in suggesting their "necessity" will show that the fifth article was framed in hostility to what seemed the principal mischief to be guarded against, to wit, the introduction of Chinese laborers by methods which should have the character of a forced and servile importation, and not of a voluntary emigration of freemen seeking our shores upon motives and in a manner consonant with the system of our institutions and approved by the experience of the nation. Unquestionably the adhesion of the Government of China to these liberal principles of freedom in emigration, with which we were so familiar and with which we were so well satisfied, was a great advance toward opening that Empire to our civilization and religion, and gave promise in the future of greater and greater practical results in the diffusion throughout that great population of our arts and industries, our manufactures, our material improvements, and the sentiments of government and religion which seem to us so important to the welfare of mankind. The first clause of this article secures this acceptance by China of the American doctrines of free migration to and fro among the peoples and races of the earth.

The second clause, however, in its reprobation of "any other than entirely voluntary emigration" by both the high contracting parties,

and in the reciprocal obligations whereby we secured the solemn and unqualified engagement on the part of the Government of China "to pass laws making it a penal offense for a citizen of the United States or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country without their free and voluntary consent," constitutes the great force and value of this article. Its importance both in principle and in its practical service toward our protection against servile importation in the guise of immigration cannot be overestimated. It commits the Chinese Government to active and efficient measures to suppress this iniquitous system where those measures are most necessary and can be most effectual. It gives to this Government the footing of a treaty right to such measures and the means and opportunity of insisting upon their adoption and of complaint and resentment at their neglect. The fifth article, therefore, if it fall short of what the pressure of the later experience of our Pacific States may urge upon the attention of this Government as essential to the public welfare, seems to be in the right direction and to contain important advantages which once relinquished cannot be easily recovered.

The second topic which interested the two Governments under the actual condition of things which prompted the Burlingame treaty was adequate protection under the solemn and definite guarantees of a treaty of the Chinese already in this country and those who should seek our shores. This was the object, and forms the subject of the sixth article, by whose reciprocal engagement the citizens and subjects of the two Governments, respectively, visiting or residing in the country of the other are secured the same privileges, immunities, or exemptions there enjoyed by the citizens or subjects of the most favored nations. The treaty of 1858, to which these articles are made supplemental, provides for a great amount of privilege and protection, both of person and property, to American citizens in China, but it is upon this sixth article that the main body of the treaty rights and securities of the Chinese already in this country depends. Its abrogation, were the rest of the treaty left in force, would leave them to such treatment as we should voluntarily accord them by our laws and customs. Any treaty obligation would be wanting to restrain our liberty of action toward them, or to measure or sustain the right of the Chinese Government to complaint or redress in their behalf.

The lapse of ten years since the negotiation of the Burlingame treaty has exhibited to the notice of the Chinese Government, as well as to our own people, the working of this experiment of immigration in great numbers of Chinese laborers to this country, and their maintenance here of all the traits of race, religion, manners, and customs, habitations, mode of life, and segregation here, and the keeping up of the ties of their original home, which stamp them as strangers and sojourners, and not as incorporated elements of our national life and growth. This experience may naturally suggest the reconsideration of the subject,

as dealt with by the Burlingame treaty, and may properly become the occasion of more direct and circumspect recognition, in renewed negotiations, of the difficulties surrounding this political and social problem. It may well be that, to the apprehension of the Chinese Government no less than our own, the simple provisions of the Burlingame treaty may need to be replaced by more careful methods, securing the Chinese and ourselves against a larger and more rapid infusion of this foreign race than our system of industry and society can take up and assimilate with ease and safety. This ancient Government, ruling a polite and sensitive people, distinguished by a high sense of national pride, may properly desire an adjustment of their relations with us, which would in all things confirm, and in no degree endanger, the permanent peace and amity and the growing commerce and prosperity, which it has been the object and the effect of our existing treaties to cherish and perpetuate.

I regard the very grave discontents of the people of the Pacific States with the present working of the Chinese immigration, and their still graver apprehensions therefrom in the future, as deserving the most serious attention of the people of the whole country and a solicitous interest on the part of Congress and the Executive. If this were not my own judgment, the passage of this bill by both houses of Congress would impress upon me the seriousness of the situation, when a majority of the representatives of the people of the whole country had thought fit to justify so serious a measure of relief.

The authority of Congress to terminate a treaty with a foreign power by expressing the will of the nation no longer to adhere to it, is as free from controversy under our Constitution as is the further proposition that the power of making new treaties or modifying existing treaties is not lodged by the Constitution in Congress, but in the President, by and with the advice and consent of the Senate, as shown by the concurrence of two-thirds of that body. A denunciation of a treaty by any Government is, confessedly, justifiable only upon some reason both of the highest justice and of the highest necessity. The action of Congress in the matter of the French treaties, in 1798, if it be regarded as an abrogation by this nation of a subsisting treaty, strongly illustrates the character and degree of justification which was then thought suitable to such a proceeding. The preamble of the act recites that the "treaties concluded between the United States and France have been repeatedly violated on the part of the French Government, and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity;" and that "under authority of the French Government there is yet pursued against the United States a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation,"

The enactment, as a logical consequence of these recited facts, declares "that the United States are of right freed and exonerated from the stipulations of the treaties and of the consular convention heretofore concluded between the United States and France, and that the same shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States."

The history of the Government shows no other instance of an abrogation of a treaty by Congress.

Instances have sometimes occurred where the ordinary legislation of Congress has, by its conflict with some treaty obligation of the Government toward a foreign power, taken effect as an infraction of the treaty, and been judicially declared to be operative to that result. But neither such legislation nor such judicial sanction of the same has been regarded as an abrogation, even for the moment, of the treaty. On the contrary, the treaty in such case still subsists between the Governments, and the casual infraction is repaired by appropriate satisfaction in maintenance of the treaty.

The bill before me does not enjoin upon the President the abrogation of the entire Burlingame treaty, much less of the principal treaty of which it is made the supplement. As the power of modifying an existing treaty, whether by adding or striking out provisions, is a part of the treaty-making power under the Constitution, its exercise is not competent for Congress, nor would the assent of China to this partial abrogation of the treaty make the action of Congress, in thus procuring an amendment of a treaty, a competent exercise of authority under the Constitution. The importance, however, of this special consideration seems superseded by the principle that a denunciation of a part of a treaty, not made by the terms of the treaty itself separable from the rest, is a denunciation of the whole treaty. As the other high contracting party has entered into no treaty obligations except such as include the part denounced, the denunciation by one party of the part necessarily liberates the other party from the whole treaty.

I am convinced that, whatever urgency might in any quarter or by any interest be supposed to require an instant suppression of further immigration from China, no reasons can require the immediate withdrawal of our treaty protection of the Chinese already in this country, and no circumstances can tolerate an exposure of our citizens in China, merchants or missionaries, to the consequences of so sudden an abrogation of their treaty protections. Fortunately, however, the actual recession in the flow of the emigration from China to the Pacific coast, shown by trustworthy statistics, relieves us from any apprehension that the treatment of the subject in the proper course of diplomatic negotiations will introduce any new features of discontent or disturbance among the communities directly affected. Were such delay fraught with more inconveniences than have ever been suggested by the interests most earnest in promoting this legislation, I cannot but regard the

summary disturbance of our existing treaties with China as greatly more inconvenient to much wider and more permanent interests of the country.

I have no occasion to insist upon the more general considerations of interest and duty which sacredly guard the faith of the nation in whatever form of obligation it may have been given. These sentiments animate the deliberations of Congress and pervade the minds of our whole people. Our history gives little occasion for any reproach in this regard, and in asking the renewed attention of Congress to this bill I am persuaded that their action will maintain the public duty and the public honor.

R. B. HAYES.

The veto message was read, and the question, "Will the House, on reconsideration, agree to pass the bill?" was decided in the negative by a vote of 110 yeas against 96 nays, 84 Representatives not voting. So the House, on reconsideration, refused to pass the bill, two-thirds not voting in favor thereof.

RUTHERFORD B. HAYES.—IV.

May 12, 1879.

To the House of Representatives:

After a careful consideration of the bill entitled "An act to prohibit military interference at elections," I return it to the House of Representatives, in which it originated, with the following objections to its approval:

In the communication sent to the House of Representatives on the 29th of last month, returning to the house without my approval the bill entitled "An act making appropriations for the support of the Army for the fiscal year ending June 30, 1880, and for other purposes," I endeavored to show by quotations from the statutes of the United States now in force, and by a brief statement of facts in regard to recent elections in the several States, that no additional legislation was necessary to prevent interference with the elections by the military or naval forces of the United States. The fact was presented in that communication that at the time of the passage of the act of June 18, 1878, in relation to the employment of the Army as a *posse comitatus* or otherwise, it was maintained by its friends that it would establish a vital and fundamental principle, which would secure to the people protection against a standing army. The fact was also referred to that, since the passage of this act, Congressional, State, and municipal elections have been held throughout the Union, and that in no instance has complaint been made of the presence of United States soldiers at the polls.

Holding as I do the opinion that any military interference whatever at the polls is contrary to the spirit of our institutions, and would tend

to destroy the freedom of elections, and sincerely desiring to concur with Congress in all of its measures, it is with very great regret that I am forced to the conclusion that the bill before me is not only unnecessary to prevent such interference, but is a dangerous departure from long-settled and important constitutional principles.

The true rule as to the employment of military force at the elections is not doubtful. No intimidation or coercion should be allowed to control or influence citizens in the exercise of their right to vote, whether it appears in the shape of combinations of evil-disposed persons, or of armed bodies of the militia of a State, or of the military force of the United States.

The elections should be free from all forcible interference, and, as far as practicable, from all apprehensions of such interference. No soldiers, either of the Union or of the State militia, should be present at the polls to take the place or to perform the duties of the ordinary civil police force. There has been and will be no violation of this rule under orders from me during this administration. But there should be no denial of the right of the National Government to employ its military force on any day and at any place in case such employment is necessary to enforce the Constitution and laws of the United States.

The bill before me is as follows :

Be it enacted, &c., That it shall not be lawful to bring to, or employ at, any place where a general or special election is being held in a State, any part of the Army or Navy of the United States, unless such force be necessary to repel the armed enemies of the United States, or to enforce section 4, article 4, of the Constitution of the United States, and the laws made in pursuance thereof, on application of the legislature or executive of the State where such force is to be used ; and so much of all laws as is inconsistent herewith is hereby repealed.

It will be observed that the bill exempts from the general prohibition against the employment of military force at the polls two specified cases. These exceptions recognize and concede the soundness of the principle that military force may properly and constitutionally be used at the place of elections, when such use is necessary to enforce the Constitution and the laws. But the excepted cases leave the prohibition so extensive and far-reaching, that its adoption will seriously impair the efficiency of the Executive department of the Government.

The first act expressly authorizing the use of military power to execute the laws was passed almost as early as the organization of the Government under the Constitution, and was approved by President Washington May 2, 1792. It is as follows :

SEC. 2. *And be it further enacted,* That whenever the laws of the United States shall be opposed, or the execution thereof obstructed, in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by this act, the same being notified to the President of the United States by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia of such

State to suppress such combinations, and to cause the laws to be duly executed. And if the militia of a State where such combination may happen shall refuse, or be insufficient to suppress the same, it shall be lawful for the President, if the Legislature of the United States be not in session, to call forth and employ such numbers of the militia of any other State or States most convenient thereto as may be necessary; and the use of militia so to be called forth, may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session.

In 1795 this provision was substantially re-enacted in a law which repealed the act of 1792. In 1807 the following act became the law by the approval of President Jefferson :

That in all cases of insurrection or obstruction to the laws, either of the United States or of any individual State or Territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection, or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States as shall be judged necessary, having first observed all the prerequisites of the law in that respect.

By this act it will be seen that the scope of the law of 1795 was extended so as to authorize the National Government to use not only the militia but the Army and Navy of the United States in "causing the laws to be duly executed."

The important provision of the acts of 1792, 1795, and 1807 modified in its terms from time to time to adapt it to the existing emergency, remained in force until, by an act approved by President Lincoln, July 29, 1861, it was re-enacted substantially in the same language in which it is now found in the Revised Statutes, viz:

SEC. 5298. Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.

This ancient and fundamental law has been in force from the foundation of the Government. It is now proposed to abrogate it on certain days and at certain places. In my judgment no fact has been produced which tends to show that it ought to be repealed or suspended for a single hour at any place in any of the States or Territories of the Union. All the teachings of experience in the course of our history are in favor of sustaining its efficiency unimpaired. On every occasion when the supremacy of the Constitution has been resisted, and the perpetuity of our institutions imperiled, the principle of this statute, enacted by the

fathers, has enabled the Government of the Union to maintain its authority and to preserve the integrity of the nation.

At the most critical periods of our history, my predecessors in the executive office have relied on this great principle. It was on this principle that President Washington suppressed the whisky rebellion in Pennsylvania in 1794.

In 1806, on the same principle, President Jefferson broke up the Burr conspiracy by issuing "orders for the employment of such force either of the regulars or of the militia, and by such proceedings of the civil authorities, * * * as might enable them to suppress effectually the further progress of the enterprise." And it was under the same authority that President Jackson crushed nullification in South Carolina, and that President Lincoln issued his call for troops to save the Union in 1861. On numerous other occasions of less significance, under probably every administration, and certainly under the present, this power has been usefully exerted to enforce the laws, without objection by any party in the country, and almost without attracting public attention.

The great elementary constitutional principle which was the foundation of the original statute of 1792, and which has been its essence in the various forms it has assumed since its first adoption, is that the Government of the United States possesses under the Constitution, in full measure, the power of self-protection by its own agencies, altogether independent of State authority, and, if need be, against the hostility of State governments. It should remain embodied in our statutes unimpaired, as it has been from the very origin of the Government. It should be regarded as hardly less valuable or less sacred than a provision of the Constitution itself.

There are many other important statutes containing provisions that are liable to be suspended or annulled at the times and places of holding elections, if the bill before me should become a law. I do not undertake to furnish a list of them. Many of them—perhaps the most of them—have been set forth in the debates on this measure. They relate to extradition, to crimes against the election laws, to quarantine regulations, to neutrality, to Indian reservations, to the civil rights of citizens, and to other subjects. In regard to them all, it may be safely said that the meaning and effect of this bill is to take from the General Government an important part of its power to enforce the laws.

Another grave objection to the bill is its discrimination in favor of the State and against the national authority. The presence or employment of the Army or Navy of the United States is lawful under the terms of this bill at the place where an election is being held in a State to uphold the authority of a State government then and there in need of such military intervention, but unlawful to uphold the authority of the Government of the United States then and there in need of such military intervention. Under this bill the presence or employment of the Army or Navy of the United States would be lawful and might be necessary

to maintain the conduct of a State election against the domestic violence that would overthrow it, but would be unlawful to maintain the conduct of a national election against the same local violence that would overthrow it. This discrimination has never been attempted in any previous legislation by Congress, and is no more compatible with sound principles of the Constitution or the necessary maxims and methods of our system of government on occasions of elections than at other times. In the early legislation of 1792 and of 1795, by which the militia of the States was the only military power resorted to for the execution of the constitutional powers in support of State or national authority, both functions of the Government were put upon the same footing. By the act of 1807 the employment of the Army and Navy was authorized for the performance of both constitutional duties in the same terms.

In all later statutes on the same subject-matter the same measure of authority to the Government has been accorded for the performance of both these duties. No precedent has been found in any previous legislation, and no sufficient reason has been given for the discrimination in favor of the State and against the national authority which this bill contains.

Under the sweeping terms of the bill the National Government is effectually shut out from the exercise of the right and from the discharge of the imperative duty to use its whole executive power whenever and wherever required for the enforcement of its laws at the places and times when and where its elections are held. The employment of its organized armed forces for any such purpose would be an offense against the law unless called for by, and, therefore, upon permission of, the authorities of the State in which the occasion arises. What is this but the substitution of the discretion of the State governments for the discretion of the Government of the United States as to the performance of its own duties? In my judgment this is an abandonment of its obligations by the National Government; a subordination of national authority and an intrusion of State supervision over national duties which amounts, in spirit and tendency, to State supremacy.

Though I believe that the existing statutes are abundantly adequate to completely prevent military interference with the elections in the sense in which the phrase is used in the title of this bill and is employed by the people of this country, I shall find no difficulty in concurring in any additional legislation limited to that object which does not interfere with the indispensable exercise of the powers of the Government under the Constitution and laws.

RUTHERFORD B. HAYES.

The veto message was read, and its consideration postponed until the next day. The vote was then taken, "Will the House, on reconsideration, agree to pass the bill," and it was decided in the negative by a vote of 128 yeas against 97 nays, 60 Representatives not voting. Two-thirds not having voted in favor thereof, the bill was lost, and the message was referred to the Committee on the Judiciary. Reported June 11, 1879. Recommitted June 21, 1879.

RUTHERFORD B. HAYES.—V.

*May 29, 1879.**To the House of Representatives :*

After mature consideration of the bill entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty, and for other purposes," I herewith return it to the House of Representatives, in which it originated, with the following objections to its approval:

The main purpose of the bill is to appropriate the money required to support, during the next fiscal year, the several civil departments of the Government. The amount appropriated exceeds in the aggregate eighteen millions of dollars.

This money is needed to keep in operation the essential functions of all the great departments of the Government—legislative, executive, and judicial. If the bill contained no other provisions no objection to its approval would be made. It embraces, however, a number of clauses relating to subjects of great general interest, which are wholly unconnected with the appropriations which it provides for. The objections to the practice of tacking general legislation to appropriation bills, especially when the object is to deprive a co-ordinate branch of the Government of its right to the free exercise of its own discretion and judgment touching such general legislation, were set forth in the special message in relation to House bill number one, which was returned to the House of Representatives on the 29th of last month. I regret that the objections which were then expressed to this method of legislation have not seemed to Congress of sufficient weight to dissuade from this renewed incorporation of general enactments in an appropriation bill, and that my constitutional duty in respect of the general legislation thus placed before me cannot be discharged without seeming to delay, however briefly, the necessary appropriations by Congress for the support of the Government. Without repeating these objections, I respectfully refer to that message for a statement of my views on the principle maintained in debate by the advocates of this bill, viz, that "to withhold appropriations is a constitutional means for the redress" of what the majority of the House of Representatives may regard as "a grievance."

The bill contains the following clauses, viz:

And provided further, That the following sections of the Revised Statutes of the United States, namely, sections two thousand and sixteen, two thousand and eighteen, and two thousand and twenty, and all of the succeeding sections of said statutes down to and including section two thousand and twenty-seven, and also section fifty-five hundred and twenty-two, be, and the same are hereby, repealed ; * * * and

that all the other sections of the Revised Statutes, and all laws and parts of laws authorizing the appointment of chief supervisors of elections, special deputy marshals of elections or general deputy marshals having any duties to perform in respect to any election and prescribing their duties and powers and allowing them compensation, be, and the same are hereby repealed.

It also contains clauses amending sections 2017, 2019, 2028, and 2031 of the Revised Statutes.

The sections of the Revised Statutes which the bill, if approved, would repeal or amend are part of an act approved May 30, 1870, and amended February 28, 1871, entitled "An act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes." All of the provisions of the above-named acts which it is proposed in this bill to repeal or modify relate to the Congressional elections. The remaining portion of the law, which will continue in force after the enactment of this measure, is that which provides for the appointment, by a judge of the circuit court of the United States, of two supervisors of election in each election district, at any Congressional election, on due applications of citizens who desire, in the language of the law, "to have such election *guarded* and *scrutinized*." The duties of the supervisors will be to attend at the polls at all Congressional elections, and to remain after the polls are open until every vote cast has been counted, but they will "have no authority to make arrests or to perform other duties than to be in the immediate presence of the officers holding the election, and to witness all their proceedings, including the counting of the votes, and the making of a return thereof." The part of the election law which will be repealed by the approval of this bill includes those sections which give authority to the supervisors of election "to personally scrutinize, count, and canvass each ballot," and all the sections which confer authority upon the United States marshals and deputy marshals, in connection with the Congressional elections. The enactment of this bill will also repeal section 5522 of the criminal statutes of the United States, which was enacted for the protection of United States officers engaged in the discharge of their duties at the Congressional elections. This section protects supervisors and marshals in the performance of their duties, by making the obstruction or the assaulting of these officers, or any interference with them, by bribery, or solicitation, or otherwise, crimes against the United States.

The true meaning and effect of the proposed legislation are plain. The supervisors, with the authority to observe and witness the proceedings at the Congressional elections, will be left; but there will be no power to protect them, or to prevent interference with their duties, or to punish any violation of the law from which their powers are derived. If this bill is approved, only the shadow of the authority of the United States at the national elections will remain; the substance will be gone. The supervision of the elections will be reduced to a mere inspection,

without authority on the part of the supervisors to do any act whatever to make the election a fair one. All that will be left to the supervisors is the permission to have such oversight of the elections as political parties are in the habit of exercising without any authority of law, in order to prevent their opponents from obtaining unfair advantages. The object of the bill is to destroy any control whatever by the United States over the Congressional elections.

The passage of this bill has been urged upon the ground that the election of members of Congress is a matter which concerns the States alone; that these elections should be controlled exclusively by the States; that there are and can be no such elections as national elections; and that the existing law of the United States regulating the Congressional elections is without warrant in the Constitution.

It is evident, however, that the framers of the Constitution regarded the election of members of Congress in every State and in every district as, in a very important sense, justly a matter of political interest and concern to the whole country. The original provision of the Constitution on this subject is as follows (section 4, article 1):

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

A further provision has been since added, which is embraced in the fifteenth amendment. It is as follows:

SEC. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Under the general provision of the Constitution (section 4, article 1), Congress, in 1866, passed a comprehensive law, which prescribed full and detailed regulations for the election of Senators by the legislatures of the several States. This law has been in force almost thirteen years. In pursuance of it all the members of the present Senate of the United States hold their seats. Its constitutionality is not called in question. It is confidently believed that no sound argument can be made in support of the constitutionality of national regulation of Senatorial elections which will not show that the elections of members of the House of Representatives may also be constitutionally regulated by the national authority.

The bill before me itself recognizes the principle that the Congressional elections are not State elections, but national elections. It leaves in full force the existing statute, under which supervisors are still to be appointed by national authority, to "observe and witness" the Congressional elections whenever due application is made by citizens who desire said elections to be "guarded and scrutinized." If the power to super-

vise, in any respect whatever, the Congressional elections exists, under section 4, article 1, of the Constitution, it is a power which, like every other power belonging to the Government of the United States, is paramount and supreme, and includes the right to employ the necessary means to carry it into effect.

The statutes of the United States which regulate the election of members of the House of Representatives, an essential part of which it is proposed to repeal by this bill, have been in force about eight years. Four Congressional elections have been held under them, two of which were at the Presidential elections of 1872 and 1876. Numerous prosecutions, trials, and convictions have been had in the courts of the United States in all parts of the Union for violations of these laws. In no reported case has their constitutionality been called in question by any judge of the courts of the United States. The validity of these laws is sustained by the uniform course of judicial action and opinion.

If it is urged that the United States election laws are not necessary, an ample reply is furnished by the history of their origin and of their results. They were especially prompted by the investigation and exposure of the frauds committed in the city and State of New York at the elections of 1868. Committees representing both of the leading political parties of the country have submitted reports to the House of Representatives on the extent of those frauds. A committee of the Fortieth Congress, after a full investigation, reached the conclusion that the number of fraudulent votes cast in the city of New York alone in 1868 was not less than twenty-five thousand. A committee of the Forty-fourth Congress, in their report, submitted in 1877, adopted the opinion that for every one hundred actual voters of the city of New York in 1868 one hundred and eight votes, were cast, when, in fact, the number of lawful votes cast could not have exceeded eighty-eight per cent. of the actual voters of the city. By this statement the number of fraudulent votes at that election, in the city of New York alone, was between thirty and forty thousand. These frauds completely reversed the result of the election in the State of New York, both as to the choice of governor and State officers, and as to the choice of electors of President and Vice-President of the United States. They attracted the attention of the whole country. It was plain that if they could be continued and repeated with impunity free government was impossible. A distinguished Senator, in opposing the passage of the election laws, declared that he had "for a long time believed that our form of Government was a comparative failure in the larger cities." To meet these evils and to prevent these crimes the United States laws regulating Congressional elections were enacted.

The framers of these laws have not been disappointed in their results. In the large cities, under their provisions, the elections have been comparatively peaceable, orderly, and honest. Even the opponents of these

laws have borne testimony to their value and efficiency and to the necessity for their enactment. The committee of the Forty-fourth Congress, composed of members a majority of whom were opposed to these laws, in their report on the New York election of 1876, said :

The committee would commend to other portions of the country and to other cities this remarkable system, developed through the agency of both local and Federal authorities acting in harmony for an honest purpose. In no portion of the world, and in no era of time, where there has been an expression of the popular will through the forms of law, has there been a more complete and thorough illustration of republican institutions. Whatever may have been the previous habit or conduct of elections in those cities, or howsoever they may conduct themselves in the future, this election of 1876 will stand as a monument of what good faith, honest endeavor, legal forms, and just authority may do for the protection of the electoral franchise.

This bill recognizes the authority and duty of the United States to appoint supervisors to guard and scrutinize the Congressional elections, but it denies to the Government of the United States all power to make its supervision effectual. The great body of the people of all parties want free and fair elections. They do not think that a free election means freedom from the wholesome restraints of law, or that the place of election should be a sanctuary for lawlessness and crime. On the day of an election peace and good order are more necessary than on any other day of the year. On that day the humblest and feeblest citizens, the aged and the infirm, should be, and should have reason to feel that they are, safe in the exercise of their most responsible duty and their most sacred right as members of society—their duty and their right to vote. The Constitutional authority to regulate the Congressional elections, which belongs to the Government of the United States, and which it is necessary to exert to secure the right to vote to every citizen possessing the requisite qualifications, ought to be enforced by appropriate legislation. So far from public opinion in any part of the country favoring any relaxation of the authority of the Government in the protection of elections from violence and corruption, I believe it demands greater vigor both in the enactment and in the execution of the laws framed for that purpose. Any oppression, any partisan partiality, which experience may have shown in the working of existing laws, may well engage the careful attention both of Congress and of the Executive, in their respective spheres of duty, for the correction of these mischiefs. As no Congressional elections occur until after the regular session of Congress will have been held, there seems to be no public exigency that would preclude a seasonable consideration at that session of any administrative details that might improve the present methods designed for the protection of all citizens in the complete and equal exercise of the right and power of the suffrage at such elections. But with my views, both of the constitutionality and of the value of the existing laws, I cannot approve any measure for their repeal, except in connection with the

enactment of other legislation which may reasonably be expected to afford wiser and more efficient safeguards for free and honest Congressional elections.

RUTHERFORD B. HAYES.

The veto message having been read, the question was stated "Will the House, on reconsideration, agree to pass the bill?" and it was decided in the negative by a vote of 114 yeas against 93 nays, 78 Representatives not voting. So the House, on reconsideration, refused to pass the bill. The veto message was ordered to be printed and referred to the Committee on the Judiciary, with leave to report thereon at any time, by bill or otherwise.

RUTHERFORD B. HAYES.—VI.

June 23, 1879.

To the House of Representatives :

After careful examination of the bill entitled "An act making appropriations for certain judicial expenses," I return it herewith to the House of Representatives, in which it originated, with the following objections to its approval:

The general purpose of the bill is to provide for certain judicial expenses of the Government for the fiscal year ending June 30, 1880, for which the sum of \$2,690,000 is appropriated. These appropriations are required to keep in operation the general functions of the judicial department of the Government, and if this part of the bill stood alone there would be no objection to its approval. It contains, however, other provisions, to which I desire respectfully to ask your attention.

At the present session of Congress a majority of both houses favoring a repeal of the Congressional election laws embraced in title 26 of the Revised Statutes, passed a measure for that purpose, as part of a bill entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1880, and for other purposes." Unable to concur with Congress in that measure, on the 29th of May last I returned the bill to the House of Representatives, in which it originated, without my approval, for that further consideration for which the Constitution provides. On reconsideration the bill was approved by less than two-thirds of the House and failed to become a law. The election laws, therefore, remain valid enactments, and the supreme law of the land, binding not only upon all private citizens, but also alike and equally binding upon all who are charged with the duties and responsibilities of the legislative, the executive, and the judicial departments of the Government.

It is not sought by the bill before me to repeal the election laws. Its

object is to defeat their enforcement. The last clause of the first section is as follows:

And no part of the money hereby appropriated is appropriated to pay any salaries, compensation, fees, or expenses under or in virtue of title 26 of the Revised Statutes, or of any provision of said title.

Title 26 of the Revised Statutes, referred to in the foregoing clause, relates to the elective franchise, and contains the laws now in force regulating the Congressional elections.

The second section of the bill reaches much further. It is as follows:

SEC. 2. That the sums appropriated in this act for the persons and public service embraced in its provisions are in full for such persons and public service for the fiscal year ending June 30, 1880, and no Department or officer of the Government shall, during said fiscal year, make any contract or incur any liability for the future payment of money under any of the provisions of title 26 of the Revised Statutes of the United States authorizing the appointment or payment of general or special deputy marshals for service in connection with elections or on election day, until an appropriation sufficient to meet such contract or pay such liability shall have first been made by law.

This section of the bill is intended to make an extensive and essential change in the existing laws. The following are the provisions of the statutes on the same subject, which are now in force:

SEC. 3679. No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations.

SEC. 3732. No contract or purchase on behalf of the United States shall be made unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

The object of these sections of the Revised Statutes is plain. It is, first, to prevent any money from being expended unless appropriations have been made therefor; and, second, to prevent the Government from being bound by any contract not previously authorized by law, except for certain necessary purposes in the War and Navy Departments.

Under the existing laws the failure of Congress to make the appropriations required for the execution of the provisions of the election laws would not prevent their enforcement. The right and duty to appoint the general and special deputy marshals which they provide for would still remain, and the executive department of the Government would also be empowered to incur the requisite liability for their compensation. But the second section of this bill contains a prohibition not found in any previous legislation. Its design is to render the election laws inoperative and a dead letter during the next fiscal year. It is sought to accomplish this by omitting to appropriate money for their enforcement and by expressly prohibiting any Department or officer of

the Government from incurring any liability under any of the provisions of title 26 of the Revised Statutes authorizing the appointment or payment of general or special deputy marshals for service on election days until an appropriation sufficient to pay such liability shall have first been made.

The President is called upon to give his affirmative approval to positive enactments which in effect deprive him of the ordinary and necessary means of executing laws still left in the statute-book, and embraced within his constitutional duty to see that the laws are executed. If he approves the bill, and thus gives to such positive enactments the authority of law, he participates in the curtailment of his means of seeing that the law is faithfully executed while the obligation of the law and of his constitutional duty remains unimpaired.

The appointment of special deputy marshals is not made by the statute a spontaneous act of authority on the part of any executive or judicial officer of the Government, but is accorded as a popular right of the citizens to call into operation this agency for securing the purity and freedom of elections in any city or town having twenty thousand inhabitants or upward. Section 2021 of the Revised Statutes puts it in the power of any two citizens of such city or town to require of the marshal of the district the appointment of these special deputy marshals. Thereupon the duty of the marshal becomes imperative, and its non-performance would expose him to judicial mandate or punishment, or to removal from office by the President, as the circumstances of his conduct might require. The bill now before me neither revokes this popular right of the citizens nor relieves the marshal of the duty imposed by law, nor the President of his duty to see that this law is faithfully executed.

I forbear to enter again upon any general discussion of the wisdom and necessity of the election laws or of the dangerous and unconstitutional principle of this bill, that the power vested in Congress to originate appropriations involves the right to compel the Executive to approve any legislation which Congress may see fit to attach to such bills, under the penalty of refusing the means needed to carry on essential functions of the Government. My views on these subjects have been sufficiently presented in the special messages sent by me to the House of Representatives during their present session. What was said in those messages I regard as conclusive as to my duty in respect to the bill before me. The arguments urged in those communications against the repeal of the election laws and against the right of Congress to deprive the Executive of that separate and independent discretion and judgment which the Constitution confers and requires are equally cogent in opposition to this bill. This measure leaves the powers and duties of the supervisors of elections untouched. The compensation of those officers is provided for under permanent laws, and no liability for which an appropriation is now required would therefore be incurred by their appointment. But the powers of the national Government to protect them in the discharge

of their duty at the polls would be taken away. The State may employ both civil and military power at the elections, but by this bill even the civil authority to protect Congressional elections is denied to the United States. The object is to prevent any adequate control by the United States over the national elections by forbidding the payment of deputy marshals, the officers who are clothed with authority to enforce the election laws.

The fact that these laws are deemed objectionable by a majority of both houses of Congress is urged as a sufficient warrant for this legislation.

There are two lawful ways to overturn legislative enactments. One is their repeal; the other is the decision of a competent tribunal against their validity. The effect of this bill is to deprive the executive department of the Government of the means to execute laws which are not repealed, which have not been declared invalid, and which it is therefore the duty of the executive and of every other department of Government to obey and to enforce.

I have in my former message on this subject expressed a willingness to concur in suitable amendments for the improvement of the election laws; but I cannot consent to their absolute and entire repeal, and I cannot approve legislation which seeks to prevent their enforcement.

RUTHERFORD B. HAYES.

The veto message having been read, the question was put, "Will the House, on reconsideration, agree to the passage of the said bill?" and it was decided in the negative by a vote of 102 yeas against 78 nays, 106 Representatives not voting. So the House, on reconsideration, refused to pass the bill.

RUTHERFORD B. HAYES.—VII.

June 27, 1879.

To the Senate of the United States:

I return without approval Senate bill No. 595, with the following objection to its becoming a law:

Doubts have arisen, upon consideration of the bill, as to whether Major Collins will be required under it to refund to the United States the pay and allowances received by him at the time he was 'mustered out of the service. Believing that it was not the intention of Congress to require such repayment, the bill is returned without my signature to the house in which it originated.

R. B. HAYES.

The veto message was read, referred to the Committee on Military Affairs, and ordered to be printed.

RUTHERFORD B. HAYES.—VIII.

*June 30, 1879.**To the Senate and House of Representatives:*

The bill making provision for the payment of the fees of United States marshals and their general deputies, which I have this day returned to the House of Representatives, in which it originated, with my objections, having upon its reconsideration by that body failed to become a law, I respectfully call your attention to the immediate necessity of making some adequate provision for the due and efficient execution by the marshals and deputy marshals of the United States of the constant and important duties enjoined by them upon the existing laws. All appropriations to provide for the performance of these indispensable duties expire to-day. Under the laws prohibiting public officers from involving the Government in contract liabilities beyond actual appropriations, it is apparent that the means at the disposal of the Executive department for executing the laws through the regular ministerial officers will after to-day be left inadequate. The suspension of these necessary functions in the orderly administration of the first duties of Government for the shortest period is inconsistent with the public interests, and at any moment may prove inconsistent with the public safety.

It is impossible for me to look without grave concern upon a state of things which will leave the public service thus unprovided for and the public interests thus unprotected, and I earnestly urge upon your attention the necessity of making immediate appropriations for the maintenance of the service of the marshals and deputy marshals for the fiscal year which commences to-morrow.

RUTHERFORD B. HAYES.

The veto message was read, referred to the Committee on Appropriations, and ordered to be printed.

RUTHERFORD B. HAYES.—IX.

*June 30, 1879.**To the House of Representatives:*

I return to the House of Representatives, in which it originated, the bill entitled "An act making appropriations to pay fees of United States marshals and their general deputies," with the following objections to its becoming a law:

The bill appropriates the sum of \$600,000 for the payment, during the fiscal year ending June 30, 1880, of United States marshals and their general deputies. The offices thus provided for are essential to the faithful execution of the laws. They were created and their powers and duties defined by Congress at its first session after the adoption of the Constitution in the judiciary act, which was approved September 24, 1789. Their general duties, as defined in the act which originally es-

tablished them, were substantially the same as those prescribed in the statutes now in force.

The principal provision on the subject in the Revised Statutes is as follows :

SEC. 787. It shall be the duty of the marshal of each district to attend the district and circuit courts, when sitting therein, and to execute throughout the district all lawful precepts directed to him, and issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty.

The original act was amended February 28, 1795, and the amendment is now found in the Revised Statutes in the following form :

SEC. 788. The marshals and their deputies shall have in each State the same powers in executing the laws of the United States as the sheriffs and their deputies in such State may have by law in executing the laws thereof.

By subsequent statutes additional duties have been from time to time imposed upon the marshals and their deputies, the due and regular performance of which are required for the efficiency of almost every branch of the public service. Without these officers there would be no means of executing the warrants, decrees, or other process of the courts, and the judicial system of the country would be fatally defective. The criminal jurisdiction of the courts of the United States is very extensive. The crimes committed within the maritime jurisdiction of the United States are all cognizable only in the courts of the United States. Crimes against public justice; crimes against the operations of the Government, such as forging or counterfeiting the money or securities of the United States; crimes against the postal laws; offenses against the elective franchise, against the civil rights of citizens, against the existence of the Government; crimes against the internal-revenue laws, the customs laws, the neutrality laws; crimes against laws for the protection of Indians, and of the public lands—all of these crimes, and many others, can be punished only under United States laws—laws which, taken together, constitute a body of jurisprudence which is vital to the welfare of the whole country, and which can be enforced only by means of the marshals and deputy marshals of the United States. In the District of Columbia all of the process of the courts is executed by the officers in question. In short, the execution of the criminal laws of the United States, the service of all civil process in cases in which the United States is a party, and the execution of the revenue laws, the neutrality laws, and many other laws of large importance, depend on the maintenance of the marshals and their deputies. They are in effect the only police of the United States Government. Officers with corresponding powers and duties are found in every State of the Union and in every country which has a jurisprudence which is worthy of the name. To deprive the national Government of these officers would be as disastrous to society as to abolish the sheriffs, constables, and police officers in the several States. It would be a denial to the United States of the right to execute its laws—

a denial of all authority which requires the use of civil force. The law entitles these officers to be paid. The funds needed for the purpose have been collected from the people and are now in the Treasury. No objection is therefore made to that part of the bill before me which appropriates money for the support of the marshals and deputy marshals of the United States.

The bill contains, however, other provisions which are identical in tenor and effect with the second section of the bill entitled "An act making appropriations for certain judicial expenses," which, on the 23d of the present month, was returned to the House of Representatives with my objections to its approval. The provisions referred to are as follows:

SEC. 2. That the sums appropriated in this act for the persons and public service embraced in its provisions are in full for such persons and public service for the fiscal year ending June thirtieth, eighteen hundred and eighty, and no Department or officer of the Government shall, during said fiscal year, make any contract or incur any liability for the future payment of money under any of the provisions of title twenty-six, mentioned in section one of this act, until an appropriation sufficient to meet such contract or pay such liability shall have first been made by law.

Upon a reconsideration in the House of Representatives of the bill which contained these provisions it lacked a constitutional majority, and therefore failed to become a law. In order to secure its enactment, the same measure is again presented for my approval, coupled in the bill before me with appropriations for the support of marshals and their deputies during the next fiscal year. The object, manifestly, is to place before the Executive this alternative: Either to allow necessary functions of the public service to be crippled or suspended for want of the appropriations required to keep them in operation, or to approve legislation which in official communications to Congress he has declared would be a violation of his constitutional duty. Thus in this bill the principle is clearly embodied that, by virtue of the provision of the Constitution which requires that "all bills for raising revenue shall originate in the House of Representatives," a bare majority of the House of Representatives has the right to withhold appropriations for the support of the Government unless the Executive consents to approve any legislation which may be attached to appropriation bills. I respectfully refer to the communications on this subject which I have sent to Congress during its present session for a statement of the grounds of my conclusions, and desire here merely to repeat that, in my judgment to establish the principle of this bill is to make a radical, dangerous, and unconstitutional change in the character of our institutions.

RUTHERFORD B. HAYES.

The veto message was read, and the question, "Will the House, on reconsideration, agree to pass the bill?" was decided in the negative, by a vote of 85 yeas against 63 nays, 138 Representatives not voting. So the House, on reconsideration, refused to pass the bill.

RUTHERFORD B. HAYES.—X.

*May 4, 1880.**To the House of Representatives :*

After mature consideration of the bill entitled "An act making appropriations to supply certain deficiencies in the appropriations for the service of the Government for the fiscal year ending June 30, 1880, and for other purposes," I return it to the House of Representatives, in which it originated, with my objections to its passage.

The bill appropriates about \$8,000,000, of which over \$600,000 is for the payment of the fees of United States marshals, and of the general and special deputy marshals, earned during the current fiscal year, and their incidental expenses. The appropriations made in the bill are needed to carry on the operations of the Government and to fulfill its obligations for the payment of money long since due to its officers for services and expenses essential to the execution of their duties under the laws of the United States. The necessity for these appropriations is so urgent, and they have been already so long delayed, that if the bill before me contained no permanent or general legislation unconnected with these appropriations it would receive my prompt approval. It contains, however, provisions which materially change, and by implication repeal, important parts of the laws for the regulation of the United States elections. These laws have for several years past been the subject of vehement political controversy and have been denounced as unnecessary, oppressive, and unconstitutional. On the other hand, it has been maintained with equal zeal and earnestness that the election laws are indispensable to fair and lawful elections, and are clearly warranted by the Constitution. Under these circumstances to attempt in an appropriation bill the modification or repeal of these laws is to annex a condition to the passage of needed and proper appropriations which tends to deprive the Executive of that equal and independent exercise of discretion and judgment which the Constitution contemplates.

The objection to the bill, therefore, to which I respectfully ask your attention, is that it gives a marked and deliberate sanction, attended by no circumstances of pressing necessity, to the questionable and, as I am clearly of opinion, the dangerous practice of tacking upon appropriation bills general and permanent legislation. This practice opens a wide door to hasty, inconsiderate, and sinister legislation. It invites attacks upon the independence and constitutional powers of the Executive by providing an easy and effective way of constraining Executive discretion. Although of late this practice has been resorted to by all political parties, when clothed with power, it did not prevail until forty years after the adoption of the Constitution, and it is confidently believed that it is condemned by the enlightened judgment of

the country. The States which have adopted new constitutions during the last quarter of a century have generally provided remedies for the evil. Many of them have enacted that no law shall contain more than one subject, which shall be plainly expressed in its title. The constitutions of more than half of the States contain substantially this provision, or some other of like intent and meaning. The public welfare will be promoted in many ways by a return to the early practice of the Government and to the true rule of legislation, which is that every measure should stand upon its own merits.

I am firmly convinced that appropriation bills ought not to contain any legislation not relevant to the application or expenditure of the money thereby appropriated, and that by a strict adherence to this principle an important and much-needed reform will be accomplished.

Placing my objection to the bill on this feature of its frame, I forbear any comment upon the important general and permanent legislation which it contains, as matter for specific and independent consideration.

RUTHERFORD B. HAYES.

The veto message was read, and after debate, referred to the Committee on Appropriations, and the bill ordered to lie on the Speaker's table.

RUTHERFORD B. HAYES.—XI.

June 15, 1880.

To the Senate of the United States :

After mature consideration of the bill entitled "An act regulating the pay and appointment of deputy marshals," I am constrained to withhold from it my approval, and to return it to the Senate, in which it originated, with my objections to its passage.

The laws now in force on the subject of the bill before me are contained in the following sections of the Revised Statutes :

SEC. 2021. Whenever an election at which Representatives or Delegates in Congress are to be chosen is held in any city or town of twenty thousand inhabitants or upward, the marshal for the district in which the city or town is situated shall, on the application in writing of at least two citizens residing in such city or town, appoint special deputy marshals, whose duty it shall be, when required thereto, to aid and assist the supervisors of election in the verification of any list of persons who may have registered or voted ; to attend in each election district or voting precinct at the times and places fixed for the registration of voters, and at all times and places when and where the registration may by law be scrutinized, and the names of registered voters be marked for challenge ; and also to attend, at all times for holding elections, the polls in such district or precinct.

SEC. 2022. The marshal and his general deputies, and such special deputies, shall keep the peace and support and protect the supervisors

of election in the discharge of their duties, preserve order at such places of registration and at such polls, prevent fraudulent registration and fraudulent voting thereat, or fraudulent conduct on the part of any officer of election, and immediately, either at the place of registration or polling place, or elsewhere, and either before or after registering or voting, to arrest and take into custody, with or without process, any person who commits, or attempts or offers to commit, any of the acts or offenses prohibited herein, or who commits any offense against the laws of the United States; but no person shall be arrested without process for any offense not committed in the presence of the marshal or his general or special deputies, or either of them, or of the supervisors of election, or either of them; and for the purposes of arrest or the preservation of the peace the supervisors of election shall, in the absence of the marshal's deputies, or if required to assist such deputies, have the same duties and powers as deputy marshals; nor shall any person, on the day of such election, be arrested without process for any offense committed on the day of registration.

SEC. 2023. Whenever any arrest is made under any provision of this title, the person so arrested shall forthwith be brought before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

SEC. 2024. The marshal or his general deputies, or such special deputies as are thereto specially empowered by him, in writing, and under his hand and seal, whenever he or either or any of them is forcibly resisted in executing their duties under this title, or shall by violence, threats, or menaces, be prevented from executing such duties, or from arresting any person who has committed any offense for which the marshal or his general or his special deputies are authorized to make such arrest, are, and each of them is, empowered to summon and call to his aid the bystanders or *posse comitatus* of his district.

SEC. 2028. No person shall be appointed a supervisor of election or a deputy marshal, under the preceding provisions, who is not, at the time of his appointment, a qualified voter of the city, town, county, parish, election district, or voting precinct in which his duties are to be performed.

SEC. 5521. If any person be appointed a supervisor of election or a special deputy marshal under the provisions of Title *The Elective Franchise*, and has taken the oath of office as such supervisor of election or such special deputy marshal, and thereafter neglects or refuses, without good and lawful excuse, to perform and discharge fully the duties, obligations, and requirements of such office until the expiration of the term for which he was appointed, he shall not only be subject to removal from office with loss of all pay or emoluments, but shall be punished by imprisonment for not less than six months nor more than one year, or by a fine of not less than two hundred dollars and not more than five hundred dollars, or by both fine and imprisonment, and shall pay the cost of prosecution.

SEC. 5522. Every person, whether with or without any authority, power, or process, or pretended authority, power, or process of any State, Territory, or municipality, who obstructs, hinders, assaults, or by bribery, solicitation, or otherwise interferes with or prevents the supervisors of election, or either of them, or the marshal or his general or special deputies, or either of them, in the performance of any duty required of them, or either of them, or which he or they, or either of

them, may be authorized to perform by any law of the United States, in the execution of process or otherwise, or who by any of the means before mentioned hinders or prevents the free attendance and presence at such places of registration, or at such polls of election, or full and free access and egress to and from any such place of registration or poll of election, or in going to and from any such place of registration or poll of election, or to and from any room where any such registration or election or canvass of votes, or of making any returns or certificates thereof may be had, or who molests, interferes with, removes, or ejects from any such place of registration or poll of election, or of canvassing votes cast thereat, or of making returns or certificates thereof, any supervisor of election, the marshal or his general or special deputies, or either of them, or who threatens, or attempts, or offers so to do, or refuses or neglects to aid and assist any supervisor of election, or the marshal or his general or special deputies, or either of them, in the performance of his or their duties, when required by him or them, or either of them, to give such aid and assistance, shall be liable to instant arrest without process, and shall be punished by imprisonment not more than two years, or by a fine of not more than three thousand dollars, or by both such fine and imprisonment, and shall pay the costs of the prosecution.

The Supreme Court of the United States, in the recent case of *Ex parte Siebold* and others, decided at the October term, 1879, on the question raised in the case as to the constitutionality of the sections of the Revised Statutes above quoted, uses the following language:

These portions of the Revised Statutes are taken from the act commonly known as the Enforcement Act, approved May 31, 1870, and entitled "An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes"; and from the supplement to that act, approved February 28, 1871. They relate to elections of members of the House of Representatives, and were an assertion on the part of Congress of a power to pass laws for regulating and superintending said elections, and for securing the purity thereof, and the rights of citizens to vote thereat peaceably and without molestation.

It must be conceded to be a most important power, and of a fundamental character. In the light of recent history, and of the violence, fraud, corruption, and irregularity which have frequently prevailed at such elections, it may easily be conceived that the exertion of the power, if it exists, may be necessary to the stability of our form of government.

The greatest difficulty in coming to a just conclusion arises from mistaken notions with regard to the relations which subsist between the State and National Governments. * * *

It seems to be often overlooked that a National Constitution has been adopted in this country, establishing a real Government therein, operating upon persons and territory and things, and which, moreover, is, or should be, as dear to every American citizen as his State government is. Whenever the true conception of the nature of this Government is once conceded no real difficulty will arise in the just interpretation of its powers; but if we allow ourselves to regard it as a hostile organization, opposed to the proper sovereignty and dignity of the State governments, we shall continue to be vexed with difficulties as to its jurisdiction and authority. No greater jealousy is required to be exercised towards this Government in reference to the preservation of our liberties than is proper to be exercised towards the State governments. Its pow-

ers are limited in number and clearly defined, and its action within the scope of those powers is restrained by a sufficiently rigid bill of rights for the protection of its citizens from oppression. The true interests of the people of this country require that both the National and State governments should be allowed, without jealous interference on either side, to exercise all the powers which respectively belong to them according to a fair and practical construction of the Constitution. State rights and the rights of the United States should be equally respected. Both are essential to the preservation of our liberties and the perpetuity of our institutions. But in endeavoring to vindicate the one we should not allow our zeal to nullify or impair the other. * * *

The true doctrine, as we conceive, is this—that while the States are really sovereign as to all matters which have not been granted to the jurisdiction and control of the United States, the Constitution and constitutional laws of the latter are, as we have already said, the supreme law of the land; and when they conflict with the laws of the States they are of paramount authority and obligation. This is the fundamental principal on which the authority of the Constitution is based, and unless it be conceded in practice, as well as theory, the fabric of our institutions, as it was contemplated by its founders, cannot stand. The questions involved have respect not more to the autonomy and existence of the States, than to the continued existence of the United States as a Government to which every American citizen may look for security and protection in every part of the land. * * *

Why do we have marshals at all if they cannot physically lay their hands on persons and things in the performance of their proper duties? What functions can they perform if they cannot use force? In executing the process of the courts must they call on the nearest constable for protection? Must they rely on him to use the requisite compulsion and to keep the peace while they are soliciting and entreating the parties and bystanders to allow the law to take its course? This is the necessary consequence of the positions that are assumed. If we indulge in such impracticable views as these, and keep on refining and re-refining, we shall drive the National Government out of the United States, and relegate it to the District of Columbia, or perhaps to some foreign soil. We shall bring it back to a condition of greater helplessness than that of the old Confederation.

The argument is based on a strained and impracticable view of the nature and powers of the National Government. It must execute its powers or it is no Government. It must execute them on the land as well as on the sea, on things as well as on persons. And to do this it must necessarily have power to command obedience, preserve order, and keep the peace; and no person or power in this land has the right to resist or question its authority so long as it keeps within the bounds of its jurisdiction.

I have deemed it fitting and proper to quote thus largely from an important and elaborate opinion of the Supreme Court because the bill before me proceeds upon a construction of the Constitution as to the powers of the National Government which is in direct conflict with the judgment of the highest judicial tribunal of our country.

Under the sections of the present law, above quoted, officers of the United States are authorized, and it is their duty in the case of Congressional elections, to keep the peace at the polls and at the places of registration; to arrest immediately any person who is guilty of crimes

against the United States election laws; to protect all officers of elections in the performance of their duties; and whenever an arrest is made to bring the person so arrested before a commissioner, judge, or court of the United States for examination of the offenses alleged against him. "Such special deputy marshals as are specially empowered thereto by the marshal in writing," if forcibly resisted, may call to their aid the bystanders or *posse comitatus*. It is made a crime punishable with fine or imprisonment to hinder, assault, or otherwise interfere with the marshal or "his special deputies," or to threaten or to attempt so to do. If any person appointed such special deputy marshal has taken the oath of office and thereafter neglects or refuses to fully discharge the duties of such office he is punishable not only by removal from office, but by fine and imprisonment. The functions of the special deputy marshals now provided for by law being executive, they are placed under the authority of the well-known chief executive officer of the courts of the United States. They are in fact, and not merely in name, the deputies of the marshal, and he and his bondsmen are responsible for them. A civil force for the execution of the law is thus instituted in accordance with long-established and familiar usage, which is simple, effective, and under a responsible head. The necessity for the possession of these powers by appropriate officers will not be called in question by intelligent citizens who appreciate the importance of peaceable, orderly, and lawful elections. Similar powers are conferred and exercised under State laws with respect to State elections. The executive officers of the United States under the existing laws have no other or greater power to supervise and control the conduct of the Congressional elections than the State executive officers exercise in regard to State elections.

The bill before me changes completely the present law by substituting for the special deputy marshals of the existing statutes new officers hitherto unknown to the law, and who lack the power, responsibility, and protection which are essential to enable them to act efficiently as executive officers.

The bill under consideration is as follows :

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act the pay of all deputy marshals for services in reference to any election shall be five dollars for each day of actual service, and no more.

SEC. 2. That all deputy marshals to serve in reference to any election shall be appointed by the circuit court of the United States for the district in which such marshals are to perform their duties in each year; and the judges of the several circuit courts of the United States are hereby authorized to open their respective courts at any time for that purpose, and in case the circuit courts shall not be open for that purpose at least ten days prior to a registration, if there be one, or if no registration be required, then at least ten days before such election, the judges of the district courts of the United States are hereby respectively

authorized to cause their courts to be opened for the purpose of appointing such deputy marshals, who shall be appointed by the said district courts; and the officers so appointed shall be in equal numbers from the different political parties, and shall be well-known citizens, of good moral character, and actual residents of the voting precincts in which their duties are to be performed, and shall not be candidates for any office at such election; and all laws and parts of laws inconsistent with this act are hereby repealed: *Provided*, That the marshals of the United States for whom deputies shall be appointed by the court under this act shall not be liable for any of the acts of such deputies.

It will be observed that the deputy marshals proposed by the bill before me are distinctly different officers from the special deputies of the marshal, as such officers are now provided for in the statutes. This bill does not connect the new officers with the existing laws relating to special deputy marshals so as to invest the proposed deputy marshals with the same powers, to impose upon them the same duties, and to give them the same protection by means of the criminal laws. When new officers are created, distinct in character, and appointed by different authority, although similar in name to officers already provided for, such officers are not held by similar responsibilities to the criminal law, do not possess the same powers, and are not similarly protected unless it is expressly so provided by legislation.

The so-called deputy marshals provided for in this bill will have no executive head. The marshal can neither appoint nor remove them. He cannot control them and he is not responsible for them. They will have no authority to call to their aid, if resisted, the *posse comitatus*. They are protected by no criminal statutes in the performance of their duties. An assault upon one of these deputies with the intent to prevent a lawful election will be no more than an ordinary assault upon any other citizen. They cannot keep the peace. They cannot make arrests when crimes are committed in their presence. Whatever powers they have are confined to the precincts in which they reside. Outside of the precincts for which they are appointed the deputy marshals of this bill cannot keep the peace, make arrests, hold prisoners, take prisoners before a proper tribunal for hearing, nor perform any other duty. No oaths of office are required of them and they give no bond. They have no superior who is responsible for them, and they are not punishable for neglect of duty or misconduct in office. In all these respects this bill makes a radical change between the powers of the United States officers at national elections and the powers uniformly possessed and exercised by State officers at State elections. This discrimination against the authority of the United States is a departure from the usage of the Government established by precedents beginning with the earliest statutes on the subject and violates the true principles of the Constitution. The Supreme Court in the decision already referred to says:

It is argued that the preservation of peace and good order in society is not within the powers confided to the Government of the United

States, but belongs exclusively to the States. Here, again, we are met with the theory that the Government of the United States does not rest upon the soil and territory of the country. We think that this theory is founded on an entire misconception of the nature and powers of that Government. We hold it to be an incontrovertible principle that the Government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent.

This power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other except where both cannot be executed at the same time. In that case the words of the Constitution itself show which is to yield. "This Constitution and all laws which shall be made in pursuance thereof * * * shall be the supreme law of the land."

In conclusion it is proper to say that no objection would be made to the appointment of officers to act with reference to the elections by the courts of the United States, and that I am in favor of appointing officers to supervise and protect the elections without regard to party. But the bill before me, while it recognizes the power and duty of the United States to provide officers to guard and scrutinize the Congressional elections, fails to adapt its provisions to the existings laws so as to secure efficient supervision and protection. It is therefore returned to the Senate, in which it originated, for that further consideration which is contemplated by the Constitution.

RUTHERFORD B. HAYES.

The bill "regulating the pay and appointment of special marshals" was vetoed on the 15th of June, 1880, on which day it was ordered to lie on the table and be printed. An effort was made to have it considered the next day, but it failed, and a few hours afterward the Senate adjourned without day.

RUTHERFORD B. HAYES.—XII.

March 3, 1881.

To the House of Representatives :

Having considered the bill entitled "An act to facilitate the refunding of the national debt," I am constrained to return it to the House of Representatives, in which it originated, with the following statement of my objections to its passage:

The imperative necessity for prompt action and the pressure of public duties, in this closing week of my term of office, compel me to refrain from any attempt to make a full and satisfactory presentation of the objections to the bill.

The importance of the passage at the present session of Congress of a

suitable measure for the refunding of the national debt which is about to mature is generally recognized. It has been urged upon the attention of Congress by the Secretary of the Treasury and in my last annual message. If successfully accomplished, it will secure a large decrease in the annual interest payment of the nation, and I earnestly recommend, if the bill before me shall fail, that another measure for this purpose be adopted before the present Congress adjourns.

While, in my opinion, it would be wise to authorize the Secretary of the Treasury, in his discretion, to offer to the public bonds bearing three and a half per cent. interest in aid of refunding, I should not deem it my duty to interpose my constitutional objection to the passage of the present bill if it did not contain, in its fifth section, provisions which, in my judgment, seriously impair the value and tend to the destruction of the present national banking system of the country. This system has now been in operation almost twenty years. No safer or more beneficial banking system was ever established. Its advantages as a business are free to all who have the necessary capital. It furnishes a currency to the public which, for convenience and security of the bill-holder, has probably never been equaled by that of any other banking system. Its notes are secured by the deposit with the Government of the interest-bearing bonds of the United States.

The section of the bill before me which relates to the national-banking system, and to which objection is made, is not an essential part of a refunding measure. It is as follows:

SEC. 5. From and after the first day of July, eighteen hundred and eighty-one, the three per centum bonds authorized by the first section of this act shall be the only bonds receivable as security for national-bank circulation, or as security for the safe keeping and prompt payment of the public money deposited with such banks; but when any such bonds deposited for the purpose aforesaid shall be designated for purchase or redemption by the Secretary of the Treasury, the banking association depositing the same shall have the right to substitute other issues of the bonds of the United States in lieu thereof: *Provided*, That no bond upon which interest has ceased shall be accepted or shall be continued on deposit as security for circulation or for the safe keeping of the public money; and in case bonds so deposited shall not be withdrawn, as provided by law, within thirty days after the interest has ceased thereon, the banking association depositing the same shall be subject to the liabilities and proceedings on the part of the Comptroller provided for in section fifty-two hundred and thirty-four of the Revised Statutes of the United States: *And provided further*, That section four of the act of June twentieth, eighteen hundred and seventy-four, entitled "An act fixing the amount of United States notes, providing for a redistribution of the national-bank currency, and for other purposes," be, and the same is hereby, repealed; and sections fifty-one hundred and fifty-nine and fifty-one hundred and sixty of the Revised Statutes of the United States be, and the same are hereby, re-enacted.

Under this section it is obvious that no additional banks will hereafter be organized, except possibly in a few cities or localities where the

prevailing rates of interest in ordinary business are extremely low. No new banks can be organized and no increase of the capital of existing banks can be obtained except by the purchase and deposit of 3 per cent. bonds. No other bonds of the United States can be used for the purpose. The one thousand millions of other bonds recently issued by the United States and bearing a higher rate of interest than 3 per cent., and therefore a better security for the bill-holder, cannot, after the 1st of July next, be received as security for bank circulation. This is a radical change in the banking law. It takes from the banks the right they have heretofore had under the law to purchase and deposit as security for their circulation any of the bonds issued by the United States, and deprives the bill-holder of the best security which the banks are able to give by requiring them to deposit bonds having the least value of any bonds issued by the Government.

The average rate of taxation of capital employed in banking is more than double the rate of taxation upon capital employed in other legitimate business. Under these circumstances, to amend the banking law so as to deprive the banks of the privilege of securing their notes by the most valuable bonds issued by the Government will, it is believed, in a large part of the country, be a practical prohibition of the organization of new banks, and prevent the existing banks from enlarging their capital. The national-banking system, if continued at all, will be a monopoly in the hands of those already engaged in it, who may purchase the Government bonds bearing a more favorable rate of interest than the 3 per cent. bonds prior to next July.

To prevent the further organization of banks is to put in jeopardy the whole system, by taking from it that feature which makes it, as it now is, a banking system free upon the same terms to all who wish to engage in it. Even the existing banks will be in danger of being driven from business by the additional disadvantages to which they will be subjected by this bill. In short, I cannot but regard the fifth section of the bill as a step in the direction of the destruction of the national-banking system.

Our country, after a long period of business depression, has just entered upon a career of unexampled prosperity.

The withdrawal of the currency from circulation of the national banks, and the enforced winding up of the banks in consequence, would inevitably bring serious embarrassment and disaster to the business of the country. Banks of issue are essential instruments of modern commerce. If the present efficient and admirable system of banking is broken down, it will inevitably be followed by a recurrence to other and inferior methods of banking. Any measure looking to such a result will be a disturbing element in our financial system. It will destroy confidence and surely check the growing prosperity of the country.

Believing that a measure for refunding the national debt is not necessarily connected with the national-banking law, and that any refund-

ing act would defeat its own object if it imperiled the national-banking system or seriously impaired its usefulness, and convinced that section five of the bill before me would, if it should become a law, work great harm, I herewith return the bill to the House of Representatives for that further consideration which is provided for in the Constitution.

RUTHERFORD B. HAYES.

The veto message was read, ordered to be printed and lie on the table, subject to to be called up at any future time for consideration. When the question was taken on postponement, there were 138 yeas against 116 nays, 36 Representatives not voting.

CHESTER A. ARTHUR.—I.

April 4, 1882.

To the Senate of the United States :

After careful consideration of Senate bill No. 71, entitled "An act to execute certain treaty stipulations relating to Chinese," I herewith return it to the Senate, in which it originated, with my objections to its passage.

A nation is justified in repudiating its treaty obligations only when they are in conflict with great paramount interests. Even then all possible reasonable means for modifying or changing those obligations by mutual agreement should be exhausted before resorting to the supreme right of refusal to comply with them.

These rules have governed the United States in their past intercourse with other powers as one of the family of nations. I am persuaded that if Congress can feel that this act violates the faith of the nation as pledged to China it will concur with me in rejecting this particular mode of regulating Chinese immigration, and will endeavor to find another which shall meet the expectations of the people of the United States without coming in conflict with the rights of China.

The present treaty relations between that power and the United States spring from an antagonism which arose between our paramount domestic interests and our previous relations.

The treaty commonly known as the Burlingame treaty conferred upon Chinese subjects the right of voluntary emigration to the United States for the purpose of curiosity or trade, or as permanent residents, and was in all respects reciprocal as to citizens of the United States in China. It gave to the voluntary emigrant coming to the United States the right to travel there or to reside there, with all the privileges, immunities, or exemptions enjoyed by the citizens or subjects of the most favored nation.

Under the operation of this treaty it was found that the institutions of the United States and the character of its people and their means of obtaining a livelihood might be seriously affected by the unrestricted in-

troduction of Chinese labor. Congress attempted to alleviate this condition by legislation, but the act which it passed proved to be in violation of our treaty obligations, and being returned by the President with his objections, failed to become a law.

Diplomatic relief was then sought. A new treaty was concluded with China. Without abrogating the Burlingame treaty it was agreed to modify it so far that the Government of the United States might regulate, limit, or suspend the coming of Chinese laborers to the United States or their residence therein, but that it should not absolutely prohibit them, and that the limitation or suspension should be reasonable and should apply only to Chinese who might go to the United States as laborers, other classes not being included in the limitations. This treaty is unilateral, not reciprocal. It is a concession from China to the United States in limitation of the rights which she was enjoying under the Burlingame treaty. It leaves us by our own act to determine when and how we will enforce those limitations. China may therefore fairly have a right to expect that in enforcing them we will take good care not to overstep the grant and take more than has been conceded to us.

It is but a year since this new treaty, under the operation of the Constitution, became part of the supreme law of the land; and the present act is the first attempt to exercise the more enlarged powers which it relinquishes to the United States.

In its first article the United States is empowered to decide whether the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect our interests, or to endanger good order either within the whole country or in any part of it. The act recites that "in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities thereof." But the act itself is much broader than the recital. It acts upon residence as well as immigration, and its provisions are effective throughout the United States. I think it may fairly be accepted as an expression of the opinion of Congress that the coming of such laborers to the United States, or their residence here, affects our interests and endangers good order throughout the country. On this point I should feel it my duty to accept the views of Congress.

The first article further confers the power upon this Government to regulate, limit, or suspend, but not actually to prohibit the coming of such laborers to or their residence in the United States. The negotiators of the treaty have recorded with unusual fullness their understanding of the sense and meaning with which these words were used.

As to the class of persons to be affected by the treaty, the Americans inserted in their draft a provision that the words "Chinese laborers" signify all immigration other than that for "teaching, trade, travel, study, and curiosity." The Chinese objected to this that it operated to include artisans in the class of laborers whose immigration might be forbidden. The Americans replied that they "could" not consent that

artisans shall be excluded from the class of Chinese laborers, for it is this very competition of skilled labor, in the cities where the Chinese labor immigration concentrates, which has caused the embarrassment and popular discontent. In the subsequent negotiations this definition dropped out, and does not appear in the treaty. Article II of the treaty confers the rights, privileges, immunities, and exemptions which are accorded to citizens and subjects of the most favored nation upon Chinese subjects proceeding to the United States as teachers, students, merchants, or from curiosity. The American commissioners report that the Chinese Government claimed that in this article they did, by exclusion, provide that nobody should be entitled to claim the benefit of the general provisions of the Burlingame treaty but those who might go to the United States in those capacities or for those purposes. I accept this as the definition of the word "laborers" as used in the treaty.

As to the power of legislating respecting this class of persons, the new treaty provides that we "may not absolutely prohibit" their coming or their residence. The Chinese commissioners gave notice in the outset that they would never agree to a prohibition of voluntary emigration. Notwithstanding this the United States commissioners submitted a draft in which it was provided that the United States might "regulate, limit, suspend, or prohibit" it. The Chinese refused to accept this. The Americans replied that they were "willing to consult the wishes of the Chinese Government in preserving the principle of free intercourse between the people of the two countries, as established by existing treaties, provided that the right of the United States Government to use its discretion in guarding against any possible evils of immigration of Chinese laborers is distinctly recognized. Therefore, if such concession removes all difficulty on the part of the Chinese commissioners (but only in that case), the United States commissioners will agree to remove the word "prohibit" from their article, and to use the words "regulate, limit, or suspend." The Chinese reply to this can only be inferred from the fact that in the place of an agreement, as proposed by our commissioners, that we might prohibit the coming or residence of Chinese laborers, there was inserted in the treaty an agreement that we might not do it.

The remaining words, "regulate, limit, and suspend," first appear in the American draft. When it was submitted to the Chinese they said, "We infer that of the phrases regulate, limit, suspend, or prohibit, the first is a general expression referring to the others. We are entirely ready to negotiate with your excellencies to the end that a limitation either in point of time or of numbers may be fixed upon the emigration of Chinese laborers to the United States." At a subsequent interview they said that "by limitation in number they meant, for example, that the United States having, as they supposed, a record of the number of immigrants in each year, as well as the total number of Chinese now there, that no more should be allowed to go in any one year in future

than either the greatest number which had gone in any year in the past, or that the total number should never be allowed to exceed the number now there. As to limitation of time, they meant, for example, that Chinese should be allowed to go in alternate years, or every third year, or, for example, that they should not be allowed to go for two, three, or five years." At a subsequent conference the Americans said, "The Chinese commissioners have in their project explicitly recognized the right of the United States to use some discretion, and have proposed a limitation as to time and number. This is the right to regulate, limit, or suspend."

In one of the conferences the Chinese asked the Americans whether they could give them any idea of the laws which would be passed to carry the powers into execution. The Americans answered that this could hardly be done, "that the United States Government might never deem it necessary to exercise this power. It would depend upon circumstances. If Chinese immigration concentrated in cities where it threatened public order, or if it confined itself to localities where it was an injury to the interests of the American people, the Government of the United States would undoubtedly take steps to prevent such accumulations of Chinese. If, on the contrary, there was no large immigration, or if there were sections of the country where such immigration was clearly beneficial, then the legislation of the United States, under this power, would be adapted to such circumstances. For example, there might be a demand for Chinese labor in the South and a surplus of such labor in California, and Congress might legislate in accordance with these facts. In general, the legislation would be in view of and depend upon the circumstances of the situation at the moment such legislation became necessary. The Chinese commissioners said this explanation was satisfactory; that they had not intended to ask for a draft of any special act, but for some general idea how the power would be exercised. What had just been said gave them the explanation which they wanted.

With this entire accord as to the meaning of the words they were about to employ, and the object of the legislation which might be had in consequence, the parties signed the treaty, in Article I of which "the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable, and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration."

The first section of the act provides that "from and after the expiration of sixty days next after the passage of this act, and until the expiration of twenty years next after the passage of this act, the coming

of Chinese laborers be, and the same is hereby, suspended, and during such suspension it shall not be lawful for any Chinese laborer to come, or having so come after the expiration of said sixty days, to remain within the United States."

The examination which I have made of the treaty, and of the declarations which its negotiators have left on record of the meaning of its language, leaves no doubt in my mind that neither contracting party in concluding the treaty of 1880 contemplated the passage of an act prohibiting immigration for twenty years, which is nearly a generation, or thought that such a period would be a reasonable suspension or limitation, or intended to change the provisions of the Burlingame treaty to that extent. I regard this provision of the act as a breach of our national faith; and being unable to bring myself in harmony with the views of Congress on this vital point, the honor of the country constrains me to return the act with this objection to its passage.

Deeply convinced of the necessity of some legislation on this subject, and concurring fully with Congress in many of the objects which are sought to be accomplished, I avail myself of the opportunity to point out some other features of the present act which, in my opinion, can be modified to advantage.

The classes of Chinese who still enjoy the protection of the Burlingame treaty are entitled to the privileges, immunities, and exemptions accorded to citizens and subjects of the most favored nation. We have treaties with many powers which permit their citizens and subjects to reside within the United States and carry on business under the same laws and regulations which are enforced against citizens of the United States. I think it may be doubted whether provisions requiring personal registration and the taking out of passports which are not imposed upon natives can be required of Chinese. Without expressing an opinion on that point, I may invite the attention of Congress to the fact that the system of personal registration and passports is undemocratic and hostile to the spirit of our institutions. I doubt the wisdom of putting an entering wedge of this kind into our laws. A nation like the United States, jealous of the liberties of its citizens, may well hesitate before it incorporates into its polity a system which is fast disappearing in Europe before the progress of liberal institutions. A wide experience has shown how futile such precautions are, and how easily passports may be borrowed, exchanged, or even forged by persons interested to do so.

If it is nevertheless thought that a passport is the most convenient way for identifying the Chinese entitled to the protection of the Burlingame treaty, it may still be doubted whether they ought to be required to register. It is certainly our duty under the Burlingame treaty to make their stay in the United States, in the operation of general laws upon them, as nearly like that of our own citizens as we can consistently with our right to shut out the laborers. No good purpose is served in requiring them to register.

My attention has been called by the Chinese minister to the fact that the bill as it stands makes no provision for the transit across the United States of Chinese subjects now residing in foreign countries. I think that this point may well claim the attention of Congress in legislating on this subject.

I have said that good faith requires us to suspend the immigration of Chinese laborers for a less period than twenty years; I now add that good policy points in the same direction.

Our intercourse with China is of recent date. Our first treaty with that power is not yet forty years old. It is only since we acquired California and established a great seat of commerce on the Pacific that we may be said to have broken down the barriers which fenced in that ancient monarchy. The Burlingame treaty naturally followed. Under the spirit which inspired it many thousand Chinese laborers came to the United States. No one can say that the country has not profited by their work. They were largely instrumental in constructing the railways which connect the Atlantic with the Pacific. The States of the Pacific slope are full of evidences of their industry. Enterprises profitable alike to the capitalist and to the laborer of Caucasian origin would have lain dormant but for them. A time has now come when it is supposed that they are not needed, and when it is thought by Congress and by those most acquainted with the subject that it is best to try to get along without them. There may, however, be other sections of the country where this species of labor may be advantageously employed without interfering with the laborers of our own race. In making the proposed experiment it may be the part of wisdom as well as of good faith to fix the length of the experimental period with reference to this fact.

Experience has shown that the trade of the East is the key to national wealth and influence. The opening of China to the commerce of the whole world has benefited no section of it more than the States of our own Pacific slope. The State of California, and its great maritime port especially, have reaped enormous advantages from this source. Blessed with an exceptional climate, enjoying an unrivaled harbor, with the riches of a great agricultural and mining State in its rear, and the wealth of the whole Union pouring into it over its lines of railway, San Francisco has before it an incalculable future if our friendly and amicable relations with Asia remain undisturbed. It needs no argument to show that the policy which we now propose to adopt must have a direct tendency to repel Oriental nations from us and to drive their trade and commerce into more friendly lands. It may be that the great and paramount interest of protecting our labor from Asiatic competition may justify us in a permanent adoption of this policy. But it is wiser, in the first place, to make a shorter experiment, with a view hereafter of maintaining permanently only such features as time and experience may commend.

I transmit herewith copies of the papers relating to the recent treaty with China which accompanied the confidential message of President Hayes to the Senate of the 10th of January, 1881, and also a copy of a memorandum respecting the act herewith returned, which was handed to the Secretary of State by the Chinese minister in Washington.

CHESTER A. ARTHUR.

The veto message was read, and, after debate, was ordered to be printed and to lie on the table. It was taken up the next day, and, after debate, the question was taken on its passage, the objections of the President to the contrary notwithstanding, which was decided in the negative by a vote of 29 yeas against 21 nays, 26 Senators not voting. So the bill was not passed, two-thirds of the Senators present not voting in the affirmative.

CHESTER A. ARTHUR.—II.

July 1, 1882.

To the House of Representatives of the United States :

Herewith I return House bill No. 2744, entitled "An act to regulate the carriage of passengers by sea," without my approval. In doing this I regret that I am not able to give my assent to an act which has received the sanction of the majority of both houses of Congress.

The object proposed to be secured by the act is meritorious and philanthropic. Some correct and accurate legislation upon this subject is undoubtedly necessary. Steamships that bring large bodies of emigrants must be subjected to strict legal enactments, so as to prevent the passengers from being exposed to hardship and suffering ; and such legislation should be made as will give them abundance of space and air and light, protecting their health by affording all reasonable comforts and conveniences, and by providing for the quantity and quality of the food to be furnished, and all of the other essentials of roomy, safe, and healthful accommodations in their passage across the sea.

A statute providing for all this is absolutely needed, and in the spirit of humane legislation must be enacted. The present act, by most of its provisions, will obtain and secure this protection for such passengers, and were it not for some serious errors contained in it would be most willingly approved by me.

My objections are these : in the first section, in lines from 13 to 24, inclusive, it is provided "that the compartments or spaces," &c., "shall be of sufficient dimensions to allow for each and any passenger," &c., "a hundred cubic feet, if the compartment or space is located on the first deck next below the uppermost deck of the vessel, &c., "or one hundred and twenty cubic feet for each passenger," &c., "if the compartment or space is located on the second deck below the uppermost deck of the vessels, &c. "It shall not be lawful to carry or bring passengers on any deck other than the two decks mentioned," &c.

Nearly all of the new and most of the improved ocean steamers have a spar-deck, which is above the main deck. The main deck was in the old style of steamers the only uppermost deck. The spar-deck is a comparatively new feature of the large and costly steamships, and is now practically the uppermost deck. Below this spar-deck is the main deck. Because of the misuse of the words "uppermost deck" instead of the use of the words "main deck," by this act the result will be to exclude nearly all of the large steamships from carrying passengers anywhere but on the main deck and on the deck below, which is the steerage deck, and to leave the orlop, or lower deck, heretofore used for passengers, useless and unoccupied by passengers. This objection, which is now presented in connection with others that will be presently explained, will, if this act is enforced, as it is now phrased, render useless for passenger traffic and expose to heavy loss all of the great ocean steam lines; and it will also hinder emigration, as there will not be ships enough that could accept these conditions to carry all who may now wish to come.

The use of the new and the hitherto unknown term "uppermost deck" creates this difficulty, and I cannot consent to have an abuse of terms like this to operate thus injuriously to these large fleets of ships. The passengers will not be benefited by such a statute, but emigration will be hindered, if not for a while almost prevented for many.

Again, the act in the first section, from line 31 to line 35 inclusive, provides: "And such passengers shall not be carried or brought in any between-decks, nor in any compartment," &c, "the clear height of which is less than seven feet." Between the decks of all ships are the beams; they are about a foot in width. The legal method of ascertaining tonnage for the purpose of taxation is to measure between the beams from the floor to the ceiling. If this becomes a law the space required would be eight feet from floor to ceiling, and this is impracticable, for in all ships the spaces between decks are adjusted in proportion to the dimensions of the ship; and if these spaces between decks are changed so as not to correspond in their proportions with the dimensions of the vessel the ship will not work well in the sea, her sailing qualities will be rendered unfit for service.

It is only in great ships of vast tonnage that the height between decks can be increased. All the ordinary sized ships are necessarily constructed with seven feet space in the interval between the beams from the floor to the ceiling. To adopt this act, with this provision, would be to drive out of the service of transporting passengers most of all the steamships now in such trade, and no practical good obtained by it; for really, with the exception of the narrow beam the space between the decks is now seven feet. The purpose of the space commanded by the act is to obtain sufficient air and ventilation, and that is actually now given to the passenger by the seven feet that exists in all of these vessels between floor and ceiling.

There is also another objection that I must suggest. In section 12, from line 14 to line 24, it is provided: "Before such vessel shall be cleared or may lawfully depart, &c., the master of said vessel shall furnish, &c., a correct list of all passengers who have been or are intended to be taken on board the vessel, and shall specify," &c. This provision would prevent the clearing of the vessel. Steam-vessels start at an appointed hour, and with punctuality. Down almost to the very hour of their departure, new passengers, other than those who have engaged their passage, constantly come on board. If this provision is to be the law they must be rejected, for the ship cannot, without incurring heavy penalties, take passengers whose names are not set forth on the list required before such vessel shall be cleared. They should be allowed to take such new passengers upon condition that they would furnish an additional list containing such persons' names. There are other points of objection of a minor character that might be presented for consideration if the bill could be reconsidered and amended; but the three that I have recited are conspicuous defects in a bill that ought to be a code for such a purpose, clear and explicit, free from all such objections. The practical result of this law would be to subject all of the competing lines of large ocean steamers to great losses. By restricting their carrying accommodations it would also stay the current of emigration that it is our policy to encourage as well as to protect. A good bill, correctly phrased, and expressing and naming in plain, well-known technical terms the proper and usual places and decks where passengers are and ought to be placed and carried, will receive my prompt and immediate assent as a public necessity.

CHESTER A. ARTHUR.

The veto message was read, and no quorum being present, it went over as unfinished business.

CHESTER A. ARTHUR.—III.

August 1, 1882.

To the House of Representatives:

Having watched with much interest the progress of House bill No. 6242, entitled "An act making appropriations for the construction, repair, and preservation of certain works on rivers and harbors, and for other purposes," and having, since it was received, carefully examined it, after mature consideration I am constrained to return it herewith to the House of Representatives, in which it originated, without my signature, and with my objections to its passage.

Many of the appropriations in the bill are clearly for the general welfare, and most beneficent in their character. Two of the objects for which provision is made were by me considered so important that I felt it my duty to direct to them the attention of Congress. In my annual

message, in December last, I urged the vital importance of legislation for the reclamation of the marshes, and for the establishment of the harbor lines along the Potomac front. In April last, by special message, I recommended an appropriation for the improvement of the Mississippi River. It is not necessary that I say that when my signature would make the bill appropriating for these and other valuable national objects a law, it is with great reluctance, and only under a sense of duty, that I withhold it.

My principal objection to the bill is that it contains appropriations for purposes not for the common defense or general welfare, and which do not promote commerce among the States. These provisions, on the contrary, are entirely for the benefit of the particular localities in which it is proposed to make the improvements. I regard such appropriation of the public money as beyond the powers given by the Constitution to Congress and the President.

I feel the more bound to withhold my signature from the bill because of the peculiar evils which manifestly result from this infraction of the Constitution. Appropriations of this nature, to be devoted purely to local objects, tend to an increase in number and in amount. As the citizens of one State find that money, to raise which they in common with the whole country are taxed, is to be expended for local improvements in another State, they demand similar benefits for themselves, and it is not unnatural that they should seek to indemnify themselves for such use of the public funds by securing appropriations for similar improvements in their own neighborhood. Thus as the bill becomes more objectionable it secures more support. This result is invariable and necessarily follows a neglect to observe the constitutional limitations imposed upon the law-making power.

The appropriations for river and harbor improvements have, under the influences to which I have alluded, increased year by year out of proportion to the progress of the country, great as that has been. In 1870 the aggregate appropriation was \$3,975,900; in 1875, \$6,648,517.50; in 1880, \$8,976,500; and in 1881, \$11,451,000, while by the present act there is appropriated \$18,743,875.

While feeling every disposition to leave to the legislature the responsibility of determining what amount should be appropriated for the purposes of the bill, so long as the appropriations are confined to objects indicated by the grant of power, I cannot escape the conclusion that, as a part of the law-making power of the Government, the duty devolves upon me to withhold my signature from a bill containing appropriations which, in my opinion, greatly exceed in amount the needs of the country for the present fiscal year. It being the usage to provide money for these purposes by annual appropriation bills, the President is in effect directed to expend so large an amount of money within so brief a period that the expenditure cannot be made economically and advantageously.

The extravagant expenditure of public money is an evil not to be measured by the value of that money to the people who are taxed for it. They sustain a greater injury in the demoralizing effect produced upon those who are intrusted with official duty through all the ramifications of Government.

These objections could be removed and every constitutional purpose readily attained, should Congress enact that one-half only of the aggregate amount provided for in the bill be appropriated for expenditure during the fiscal year, and that the sum so appropriated be expended only for such objects named in the bill as the Secretary of War, under the direction of the President, shall determine; provided that in no case shall the expenditure for any one purpose exceed the sum now designated by the bill for that purpose.

I feel authorized to make this suggestion because of the duty imposed upon the President by the Constitution "to recommend to the consideration of Congress such measures as he shall judge necessary and expedient," and because it is my earnest desire that the public works which are in progress shall suffer no injury. Congress will also convene again in four months, when this whole subject will be open for their consideration.

CHESTER A. ARTHUR.

The veto message was read, and the next day called up, and the previous question moved on its passage. A motion was made to refer the message and bill to the Committee on Commerce, but it was ruled out of order. The question was then put, "Will the House, on reconsideration, agree to pass the bill?" which was decided in the affirmative by a vote of 122 yeas against 59 nays, 108 Representatives not voting. So the House, on reconsideration, agreed to the passage of the bill. The Senate agreed to the same by a vote of 41 yeas against 16 nays; 19 Senators not voting. So the bill was passed.

CHESTER A. ARTHUR.—IV.

July 2, 1884.

To the House of Representatives:

After careful consideration of the bill entitled "An act for the relief of Fitz-John Porter," I herewith return it with my objections to that House of Congress in which it originated. Its enacting clause is in terms following: "That the President be, and he is hereby, authorized to nominate and, by and with the advice and consent of the Senate, to appoint Fitz-John Porter, late a major-general of the United States volunteers, and a brevet brigadier-general and colonel of the Army, to the position of colonel in the Army of the United States, of the same grade and rank held by him at the time of his dismissal from the Army by a sentence of court-martial, promulgated January 27, 1863," &c.

It is apparent that should this bill become a law it will create a new office, which can be filled by the appointment of the particular individual whom it specifies, and cannot be filled otherwise; or it may be said with perhaps greater precision of statement that it will create a new office upon

condition that the particular person designated shall be chosen to fill it. Such an act, as it seems to me, is either unnecessary and ineffective, or it involves an encroachment by the legislative branch of the Government upon the authority of the Executive. As the Congress has no power under the Constitution to nominate or appoint an officer, and cannot lawfully impose upon the President the duty of nominating or appointing to office any particular individual of its own selection, this bill, if it can fairly be construed as requiring the President to make the nomination and, by and with the advice and consent of the Senate, the appointment which it authorizes is in manifest violation of the Constitution. If such be not its just interpretation, it must be regarded as a mere enactment of advice and counsel, which lacks in the very nature of things the force of positive law, and can serve no useful purpose upon the statute-books.

There are other causes that deter me from giving this bill the sanction of my approval. The judgment of the court-martial by which more than twenty years since General Fitz-John Porter was tried and convicted was pronounced by a tribunal composed of nine general officers of distinguished character and ability. Its investigation of the charges of which it found the accused guilty was thorough and conscientious, and its findings and sentence were in due course of law approved by Abraham Lincoln, then President of the United States. Its legal competency, its jurisdiction of the accused and of the subject of the accusation and the substantial regularity of all of its proceedings, are matters which have never been brought into question. Its judgment, therefore, is final and conclusive in its character.

The Supreme Court of the United States has recently declared that a court-martial such as this was is the organism provided by law and clothed with the duty of administering justice in this class of cases. Its judgments, when approved, rest on the same basis and are surrounded by the same considerations which give conclusiveness to the judgments of other legal tribunals, including as well the lowest as the highest. It follows, accordingly, that when a lawfully constituted court-martial has duly declared its findings and its sentence, and the same have been duly approved, neither the President nor the Congress has any power to set them aside. The existence of such power is not openly asserted, nor perhaps is it necessarily implied, in the provisions of the bill which is before me, but when its enacting clauses are read in the light of the recitations of its preamble it will be seen that it seeks in effect the practical annulment of the findings and the sentence of a competent court-martial.

A conclusion at variance with these findings has been reached after investigation by a board consisting of three officers of the Army. This board was not created in pursuance of any statutory authority, and was powerless to compel the attendance of witnesses or to pronounce a judgment which could have been lawfully enforced. The officers who constituted it in their report to the Secretary of War, dated March 19,

1879, state that in their opinion "justice requires * * * such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him, such restoration to take effect from the date of his dismissal from the service."

The provisions of the bill now under consideration are avowedly based on the assumption that the findings of the court-martial have been discovered to be erroneous. But it will be borne in mind that the investigation which is claimed to have resulted in this discovery was made many years after the events to which that evidence related, and under circumstances that made it impossible to reproduce the evidence on which they were based.

It seems to me that the proposed legislation would establish a dangerous precedent, calculated to imperil in no small measure the binding force and effect of the judgments of the various tribunals established under our Constitution and laws.

I have already in the exercise of the pardoning power with which the President is vested by the Constitution remitted the continuing penalty which had made it impossible for Fitz-John Porter to hold any office of trust or profit under the Government of the United States. But I am unwilling to give my sanction to any legislation which shall practically annul and set at naught the solemn and deliberate conclusions of the tribunal by which he was convicted and of the President by whom its findings were examined and approved.

CHESTER A. ARTHUR.

The veto message was read, ordered to be entered at length upon the Journal, and—the bill having been read—the question was put: "Will the House, on reconsideration, agree to pass the bill?" which was decided in the affirmative, yeas 168, nays 78, not voting 78. So the House, on reconsideration, agreed to pass the bill. In the Senate, the question being "shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?" there were 27 yeas against 27 nays—22 Senators being absent or not voting. So two-thirds of the Senators present not having voted in the affirmative, the bill failed to become a law.

GROVER CLEVELAND.—I.

March 10, 1886.

To the Senate of the United States:

I have carefully considered Senate bill No. 193, entitled "An act for the relief of John Hollins McBlair," and hereby return the same without approval to the Senate, where it originated, with my objections to the same.

The object of this bill is to suspend the provisions of law regulating appointments to the Army by promotion so far as they affect John Hollins McBlair, and to authorize the President to nominate and, by and with the advice and consent of the Senate, appoint said McBlair a

first lieutenant in the Army, and to place him upon the retired list as of the date of April 8, 1864, with the pay of his rank from April 30, 1884.

The beneficiary named in this bill was appointed a first lieutenant in the Army from civil life in June, 1861, with rank from May 14, 1861.

It appears from his own testimony, afterward taken before a retiring board, that at the time he was commissioned he was but seventeen years of age.

In October, 1861, he was in the field for five days with his regiment, within which time he participated in no battle, skirmish, or engagement of any kind.

After five days spent in marching and camping he was taken sick, and after remaining in camp six or seven weeks, his illness still continuing, he was granted sick leave and came to Washington.

In June, 1862, he was put on duty in the Commissary Department at Washington, and remained there until August, 1863, when he was summoned before a retiring board, convened for the purpose of retiring disabled officers.

From testimony before this board it appears that the illness which caused him to leave his regiment was one not uncommon in the Army, and yielded to treatment, so that in April or May, 1862, he was completely cured.

About this time, however, he was attacked with convulsions, which were pronounced by the physicians examined before the board to be a form of epilepsy, and for this cause he was found to be incapacitated for active service.

The medical testimony, while it suggests various causes for this epileptic condition, negatives entirely any claim that these attacks were at all related to the illness which obliged this officer to abandon service with his regiment. He testifies himself that he had been told he had one or two convulsions in childhood, but there is no direct testimony that he was subject to epileptic attack before he entered the Army.

The retiring board determined upon the proof that this incapacity did not result from any incident of military service, and therefore Lieutenant McBlair was, in October, 1863, retired wholly from the service, with one year's pay and allowances, which is the usual action in such cases, and which was approved by the President.

But in April, 1864, the President, in a review of the case, made an order that, instead of this officer being wholly retired, he should be placed upon the retired list as of the date when the action of the retiring board was originally approved.

For about twenty years, and up to April 30, 1884, he remained upon the retired list and received the pay to which this position entitled him. Quite recently, in consequence of a claim of additional pay which he made upon the Government, his status was examined by the Court of Claims, which decided that the action of the President in April, 1864, by which he sought to change the original disposition of the case upon the findings of the retiring board, was nugatory, and that ever since

October, 1863, this officer had not been connected with the Army and had been receiving from the Government money to which he was not entitled.

If the bill herewith returned becomes a law it makes valid all payments made, and if its purpose is carried out causes such payments to be resumed.

The finding of the retiring board seems so satisfactory, and the merits of this case so slight in the light of the large sum already paid to the applicant, while the claims of thousands of wounded and disabled soldiers wait for justice at the hands of the Government, that I am constrained to interpose an objection to a measure which proposes to suspend general and wholesome laws for the purpose of granting what appears to me to be an undeserved gratuity.

GROVER CLEVELAND.

The message was read in the Senate, ordered to be printed, and referred to the Committee on Military Affairs.

GROVER CLEVELAND.

April 26, 1886.—II.

To the Senate of the United States:

I herewith return Senate bill No. 349, entitled "An act for the promotion of anatomical science and to prevent the desecration of graves," without my approval.

The purpose of this bill is to permit the delivery of certain dead bodies to the medical colleges located in the District of Columbia for dissection.

Such disposition of the bodies of unknown and pauper dead is only excused by the necessity of acquiring by this means proper and useful anatomical knowledge; and the laws by which it is permitted should, in deference to a decent and universal sentiment, carefully guard against abuse and needless offense.

The measure under consideration does not with sufficient care specify and limit the officers and the parties who it is proposed to invest with discretion in the disposition of dead bodies remaining in the institutions and places mentioned in the bill. The second section indicates an intention to prevent the use of said bodies for any other purpose than the promotion of anatomical and surgical knowledge within the District of Columbia, and to secure, after such use, the decent burial of the remains. It declares that a bond shall be given providing for the performance of these conditions. But instead of exacting the bond from the medical colleges, to which alone by the terms of the first section the bodies are to be delivered, such bond is required of "every physician or surgeon, before receiving such dead body."

The bill also provides that a relative by blood or marriage, or a friend, may, within forty-eight hours after death, demand that any body be buried, upon satisfying "the authorities of the relationship claimed to the deceased."

The "authorities" to be thus satisfied should be clearly defined; and the determination of a question so important should be left with those only who will perform this duty with proper care and consideration.

GROVER CLEVELAND.

The veto message was read in the Senate, and ordered to lie on the table and be printed. The bill was called up in the Senate on the 30th of April, and after debate, was passed in the negative by a vote of 6 yeas against 48 nays, 22 Senators being absent. Two-thirds of the Senate not having voted for the passage of the bill, the objections of the President to the contrary notwithstanding, it was not passed.

GROVER CLEVELAND.—III.

April 30, 1886.

To the Senate of the United States :

I herewith return without my approval Senate bill No. 141, entitled "An act to extend the provisions of the act of June 10, 1880, entitled 'An act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes,' to the port of Omaha, in the State of Nebraska."

The statute which was passed June 10, 1880, referred to in the title of this bill, permitted certain merchandise imported at specified ports, but which was consigned to certain other ports which were mentioned by name in the seventh section of said act, to be shipped immediately after entry at the port of arrival to such destination.

The seventh section of said act contained the names of more than seventy ports or places to which imported merchandise might be thus immediately shipped. One of the places thus named is "Omaha, in Nebraska."

But it was declared in a proviso which was made a part of this section that the privilege of immediate transportation contemplated by the act should "not extend to any place at which there are not the necessary officers for the appraisement of merchandise and the collection of duties."

Because there were no such officers at Omaha the privilege mentioned was withheld from that place by the Treasury Department.

The bill submitted to me for approval provides that these privileges conferred by the act of June 10, 1880, be "extended to the port of Omaha, in the State of Nebraska, as provided for as to the ports mentioned in section 7 of said act."

I cannot see that anything is gained by this legislation.

If the circumstances should warrant such a course, the authority which withholds such privileges from any of the places mentioned in

the law of 1880 can confer the same without the aid of a new statute. This position is sustained by an opinion of the Attorney-General dated in February, 1885.

If the legislation now proposed should become operative the privileges extended to the city of Omaha would still be subject to the proviso attached to the seventh section of the law of 1880; and such newly granted privileges would be liable to immediate withdrawal by the Secretary of the Treasury.

Thus, if the design of this bill is to restore to the city named the privileges permitted by the laws of 1880, it seems to be entirely unnecessary—since the power of such restoration is now fully vested in the Treasury Department. If the object sought is to bestow such privileges entirely free from the operation of the proviso above recited, the language of the bill does not accomplish that result.

I understand that the Government has not now at Omaha “the necessary officers for the appraisement of merchandise and the collection of duties,” which by such proviso are necessary in order to secure to any place the advantages of immediate transportation. In the absence of such officers the proposed legislation would be nugatory and inoperative.

GROVER CLEVELAND.

The veto message was read in the Senate, referred to the Committee on Commerce, and ordered to be printed.

GROVER CLEVELAND.—IV.

May 8, 1886.

To the House of Representatives:

I herewith return without approval a bill numbered 3019, entitled “An act to increase the pension of Abigail Smith,” which bill originated in the House of Representatives.

This proposed legislation does injustice to a very worthy pensioner who was on the pension-roll at the time of the passage of the law which took effect on the 19th day of March last, and by virtue of which all pensions of her class were increased from \$8 to \$12 per month. Under this law she became entitled to her increased pension from the date of its passage. The bill now returned allows her the same amount; but if it became a law I suppose it would supersede her claim under the previous statute, and postpone the receipt by her of the increase to the passage of the new law.

She would thus lose for nearly two months the increase of pension already secured to her.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—V.

*May 8, 1886.**To the House of Representatives :*

I return without my approval House bill No. 1471, entitled "An act increasing the pension of Andrew J. Hill."

This bill doubles the pension which the person named therein has been receiving for a number of years. It appears from the report of the committee to which the bill was referred that a claim made by him for increased pension has been lately rejected by the Pension Bureau "on the ground that the claimant is now receiving a pension commensurate with the degree of disability found to exist."

The policy of frequently reversing, by special enactment, the decisions of the Bureau invested by law with the examination of pension claims, fully equipped for such examination and which ought not to be suspected of any lack of liberality to our veteran soldiers, is exceedingly questionable. It may well be doubted if a committee of Congress has a better opportunity than such an agency to judge of the merits of these claims. If, however, there is any lack of power in the Pension Bureau for a full investigation it should be supplied; if the system adopted is inadequate to do full justice to claimants it should be corrected, and if there is a want of sympathy and consideration for the defenders of our Government the Bureau should be reorganized.

The disposition to concede the most generous treatment to the disabled, aged, and needy among our veterans ought not to be restrained; and it must be admitted that in some cases justice and equity cannot be done nor the charitable tendencies of the Government in favor of worthy objects of its care indulged under fixed rules. These conditions sometimes justify a resort to special legislation; but I am convinced that the interposition by special enactment in the granting of pensions should be rare and exceptional. In the nature of things if this is lightly done and upon slight occasion, an invitation is offered for the presentation of claims to Congress which upon their merits could not survive the test of an examination by the Pension Bureau, and whose only hope of success depends upon sympathy, often misdirected, instead of right and justice. The instrumentality organized by law for the determination of pension claims is thus often overruled and discredited, and there is danger that in the end popular prejudice will be created against those who are worthily entitled to the bounty of the Government.

There has lately been presented to me on the same day, for approval, nearly two hundred and forty special bills granting and increasing pensions and restoring to the pension-list the names of parties which for cause have been dropped. To aid Executive duty they were referred to the Pension Bureau for examination and report. After a delay absolutely necessary they have been returned to me within a few hours

of the limit constitutionally permitted for Executive action. Two hundred and thirty-two of these bills are thus classified :

Eighty-one cover cases in which favorable action by the Pension Bureau was denied by reason of the insufficiency of the testimony filed to prove the facts alleged.

These bills I have approved on the assumption that the claims were meritorious, and that by the passage of the bills the Government has waived full proof of the facts.

Twenty-six of the bills cover claims rejected by the Pension Bureau because the evidence produced tended to prove that the alleged disability existed before the claimants' enlistment; twenty-one cover claims which have been denied by such Bureau because the evidence tended to show that the disability, though contracted in the service, was not incurred in the line of duty; thirty-three cover claims which have been denied because the evidence tended to establish that the disability originated after the soldiers' discharge from the Army; forty-seven cover claims which have been denied because the general pension laws contain no provisions under which they could be allowed, and twenty-four of the claims have never been presented to the Pension Bureau.

I estimate the expenditure involved in these bills at more than \$35,000 annually.

Though my conception of public duty leads me to the conclusion, upon the slight examination which I have been able to give such of these bills as are not comprised in the first class above mentioned, that many of them should be disapproved, I am utterly unable to submit within the time allowed me for that purpose my objections to the same.

They will therefore become operative without my approval.

A sufficient reason for the return of the particular bill now under consideration is found in the fact that it provides that the name of Andrew J. Hill be placed upon the pension-roll, while the records in the Pension Bureau, as well as a medical certificate made a part of the committee's report, disclose that the correct name of the intended beneficiary is Alfred J. Hill.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—VI.

May 17, 1886.

To the Senate of the United States :

I return without approval Senate bill No. 1397, entitled "An act to establish a port of delivery at Springfield, in the State of Massachusetts."

It appears that the best reasons urged for the passage of this bill are that Springfield has a population of about 40,000; that the imports

to the section of country where the city is located, for the last year amounted in value to nearly \$3,000,000, and that the importers at this point labored under a disadvantage in being obliged to go to New York and Boston to clear their goods, which are frequently greatly delayed.

The Government is now subjected to great loss of revenue through the intricacies of the present system relating to the collection of customs dues and through the frauds and evasions which that system permits and invites. It is also the cause of much of the delay and vexation to which the honest importer is subjected. I am of the opinion that the reforms of present methods which have been lately earnestly pressed upon Congress should be inaugurated instead of increasing the number of ports where present evils may be further extended.

The bill now under consideration provides that a surveyor of customs shall be appointed to reside at said port who shall receive a salary of not to exceed \$1,000 per annum.

It is quite obvious that an experienced force of employes at the ports where goods for Springfield are entered would be much better qualified to adjust the duties upon the same than the person thus proposed to be added to the vast army of Federal officials.

There are many cities in the different States having larger populations than Springfield and fully as much entitled upon every ground presented to the advantages sought by this bill; and yet it is clear that the following of the precedent which the proposed legislation would establish could not fail to produce confusion and uncertainty in the adjustment of customs duties, leading to irritating discriminations and probable loss to the Government.

GROVER CLEVELAND.

The veto message was read in the Senate, ordered to lie on the table and be printed.

GROVER CLEVELAND.—VII.

May 21, 1886.

To the Senate:

I hereby return without approval Senate bill No. 1850, entitled "An act granting a pension to Mrs. Annie C. Owen."

The husband of the claimant was mustered into the service as second lieutenant December 14, 1861, and discharged October 16, 1862. It appears that he died in 1876 from neuralgia of the heart. In 1883, the present claimant filed her application for pension, alleging that her husband received two shell wounds, one in the calf of his left leg and one in his left side, on the 1st day of July, 1862, and claiming that they were in some way connected with the cause of his death.

On the records of his command there is no mention made of either wound; but it does appear that on the 8th day of July, seven days after the date of the alleged wounds, he was granted a leave of absence for

thirty days on account, as stated in a medical certificate, of "remittent fever and diarrhea." A medical certificate, dated August 5, 1862, while absent on leave, represents him to be at that time suffering from "chronic bronchitis and acute dysentery."

The application made for pension by the widow was rejected by the Pension Bureau February 1, 1886.

There is nothing before me showing that the husband of the claimant ever filed an application for pension, though he lived nearly fourteen years after his discharge; and his widow's claim was not made until twenty-one years after the alleged wounds, and seven years after the husband's death.

If the information furnished concerning this soldier's service is correct this claim for pension must be based upon a mistake. It is hardly possible that wounds such as are alleged should be received in battle by a second lieutenant and no record made of them; that he should seven days thereafter receive a leave of absence for other sickness with no mention of these wounds, and that a medical certificate should be made (probably with a view of prolonging his leave) stating still other ailments, but silent as to wounds. The further facts that he made no claim for pension and that the claim of his widow was long delayed are worthy of consideration. And if the wounds were received as described there is certainly no necessary connection between them and death fourteen years afterwards from neuralgia of the heart.

GROVER CLEVELAND.

The veto message was read in the Senate, ordered to lie on the table and be printed. It was subsequently referred to the Committee on Pensions, which reported it back on the 27th of July. A report was submitted thereon, recommending the passage of the bill, the President's objections to the contrary notwithstanding. The bill was placed, with the accompanying message, on the Calendar.

GROVER CLEVELAND.—VIII.

May 24, 1886.

To the Senate of the United States :

I herewith return without approval Senate bill No. 2186, entitled "An act granting a pension to Louis Melcher."

This claimant enlisted on the 25th day of May, 1861, and was discharged for disability on the 16th day of August, 1861, having been in the service less than three months.

The certificate of the surgeon of his regiment, made at the time of his discharge, stated his disability to be "lameness, caused by previous repeated and extensive ulcerations of his legs, extending deeply among

the muscles and impairing their powers and action by cicatrices, all existing before enlistment, and not mentioned to the mustering officers at the time."

Upon this certificate, given at the time of the claimant's discharge and while he was actually under the surgeon's observation, an application for a pension was rejected by the Pension Bureau.

In the absence of anything impeaching the ability and integrity of the surgeon of the regiment, his certificate should, in my opinion, be regarded as a true statement of the condition of the claimant at the time of his discharge, though the committee's report suggests that the surgeon's skill may have been at fault when he declared that the ulcers existed before enlistment. The cicatrices, showing beyond a doubt the previous existence of this difficulty, would be plainly apparent upon an examination by a surgeon, and their origin could hardly be mistaken. The term of the claimant's service was not sufficiently long to have developed and healed even imperfectly, in a location previously healthy, ulcers of the kind mentioned in the claimant's application.

My approval of this bill is therefore withheld upon the ground that I find nothing in my examination of the facts connected with the case which impeaches the value of the surgeon's certificate, upon which the adverse action of the Pension Bureau was predicated.

GROVER CLEVELAND.

The veto message was read in the Senate, laid on the table, and ordered to be printed. On the 29th it was taken from the table and referred to the Committee on Pensions. It was reported back from the Committee on Pensions on the 10th of January, and, after debate, recommitted. On the 20th of January it was reported back to the Senate, with reports thereon and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—IX.

May 24, 1886.

To the Senate of the United States :

A bill which originated in the Senate, entitled "An act granting a pension to Edward Ayres," and No. 363, is herewith returned without approval.

The person named in this bill enlisted October 3, 1861, in an Indiana regiment, and was mustered out of the service December 13, 1865. He represents that he was injured in the hip at the battle of Day's Gap, April 30, 1863, and for this a pension is provided for him by the bill under consideration. His application for a pension has been rejected by the Pension Bureau on the ground that it was proved on a special examination of the case that the claimant was injured by a fall when a boy, and that the injury complained of existed prior to his enlistment.

There is not a particle of proof or a fact stated either in the committee's report or the records in the Pension Bureau, so far as they are brought to my notice, tending to show that the claimant was in hospital or under medical care a single day during the whole term of his enlistment.

The report of the committee contains the following statement:

"The record evidence proves that he was in this engagement, but there is no proof from this source that he was wounded. By numerous comrades who were present it is proven that he was hurt by the explosion of a shell as claimed. It is also shown that he has been disabled ever since; and the examining surgeon specifically describes the wound, and twice verifies that he is permanently disabled. From the fact that a man was exceedingly liable to injury under the circumstances in which he was placed, and from the evidence of eye-witnesses, the committee are of opinion that he was wounded as alleged."

A wound from a shell causing the person injured to be "disabled ever since" usually results in hospital or medical treatment. Not only is there no such claim made in this case, but, on the contrary, it appears that the claimant served in his regiment two years and nearly eight months after the alleged injury, and until after he was mustered out.

It is represented to me by a report from the Pension Bureau that after his alleged wound, and in May or June, 1863, the claimant deserted, and in July of that year was arrested in the State of Indiana and returned to duty without trial. If this report is correct, the party now seeking a pension at the hands of the Government, for disability incurred in the service, seems to have been capable of considerable physical exertion, though not very creditable, within a few weeks after he claims to have received the injury upon which his application is based.

GROVER CLEVELAND.

The veto message was read in the Senate, laid on the table, and ordered to be printed. On the 29th it was taken from the table and referred to the Committee on Pensions. It was reported back from the Committee on Pensions on the 10th of July, and after debate recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—X.

May 24, 1886.

To the Senate of the United States :

I return without approval Senate bill No. 1630, entitled "An act granting a pension to James C. Chandler."

It appears from the report of the committee to whom this bill was referred, and from an examination of the official records, that the proposed beneficiary first enlisted on the 27th day of August, 1861, and about

nine months thereafter, on the 1st day of June, 1862, was discharged on account of disability arising from chronic bronchitis.

Notwithstanding the chronic character of his alleged disability, he enlisted again on the 3d day of January, 1864, seventeen months after such discharge.

No statement is presented of the bounty received by him upon either enlistment.

He was finally mustered out on the 19th day of September, 1865.

He first applied for a pension under the general law in May, 1869, alleging that in April, 1862, he was run over by a wagon and injured in his ankle. This accident occurred during his first enlistment; but instead of the injury having been then regarded a disability, he was discharged from such enlistment less than two months thereafter on account of chronic bronchitis.

It appears from the committee's report that his application was rejected, and that another was afterward made, alleging the claimant had been afflicted with typhoid fever contracted in May, 1862, resulting in "rheumatism and disease of the back in region of kidneys."

This application was also rejected, on the ground that any disability that might have arisen from the cause alleged "had not existed in a pensionable degree since the date of filing the claim therefor," which was February 10, 1885.

There still remained an appeal to Congress; and probably there were not wanting those who found their interests in advising such an appeal and who had at hand Congressional precedents which promised a favorable result. That the parties interested did not miscalculate the chances of success is demonstrated by the bill now before me, which, in direct opposition to the action of the Pension Bureau, grants a pension to a man who, though discharged from enlistment for a certain alleged disability, made two applications for a pension based upon two distinct causes, both claimed to exist within two months prior to such discharge, and both different from the one upon which he accepted the same; and notwithstanding the fact that the proposed beneficiary, after all these disabilities had occurred, passed an examination as to his physical fitness for re-enlistment, actually did re-enlist, and served till finally mustered out at the close of the war.

If any money is to be given this man from the public Treasury it should not be done under the guise of a pension.

GROVER CLEVELAND.

The veto message was read in the Senate, laid on the table, and ordered to be printed. On the 29th it was taken from the table and referred to the Senate Committee on Pensions. It was reported back on the 10th of July, debated, and recommended. Was reported back on the 28th of July, with a recommendation that it be passed, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XI.

*May 24, 1886.**To the Senate of the United States :*

I hereby return without approval Senate bill No. 857, entitled "An act granting a pension to Dudley B. Branch."

This claim is based upon the allegation, as appears by the committee's report, that the person named in the bill has a hernia, and that on the 9th day of June, 1862, while in the military service and in the line of duty "in getting over a fence he fell heavily, striking a stone or hard substance, and received the hernia in his left side."

In December, 1875, thirteen and a half years thereafter, he filed an application for a pension which was rejected by the Pension Bureau on the ground that there was no record of the alleged hernia and the claimant was unable to furnish satisfactory evidence of its origin in the service.

The fact is stated in the committee's report that late in the year 1863 this soldier was transferred to the Invalid Corps, and the records show that he was thus transferred for a disability entirely different from that upon which he now bases his claim. He was mustered out in September, 1864, at the end of his term of service.

I am convinced that the rejection of this claim by the Pension Bureau was correct, and think its action should not be reversed.

I suppose an injury of the description claimed, if caused by violence directly applied, is quite palpable, its effect usually immediate, and its existence easily proved. The long time which elapsed between the injury and the claimant's application for a pension may be fairly considered as bearing upon the merits of such application, while the fact that the claimant was transferred to the Invalid Corps more than a year after he alleges the injury occurred, for an entirely different disability, cannot be overlooked. In the committee's report the statement is found that the beneficiary named in the bill was in two different hospitals during the year 1863, and yet it is not claimed that the history of his hospital treatment furnishes any proof of the injury upon which his claim is now based.

GROVER CLEVELAND.

The message was read in the Senate, ordered to lie on the table and be printed. It was reported back on the 10th of July, debated, and recommitted. Was reported back on the 28th of July, with a recommendation that it be passed, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XII.

*May 25, 1886.**To the Senate of the United States :*

I return without approval Senate bill No. 1998, entitled "An act for the relief of John D. Ham," which grants a pension to the party named.

The claimant alleges that he enrolled in the Army in January, 1862, and was "sworn in at his own home;" that the next day he started on horseback to go to the regiment he was to join, and that on the way his horse fell upon his left ankle, whereby he sustained an injury which entitles him to a pension.

His name is not borne upon any of the rolls of the regiment he alleges he was on his way to join.

He filed his application for pension in the Pension Bureau October 17, 1879 (seventeen years after his alleged injury), which was rejected apparently on the ground that he was not in the military service when the disability claimed was incurred. He was drafted in 1863 and served until he was mustered out in 1865.

It is entirely clear that this claimant was not in the military service at the time he claims to have been injured; and his conduct in remaining at home until he was drafted, nearly two years afterward, furnishes proof that he did not regard himself as in the mean time owing any military duty.

These considerations, and the further facts that upon being drafted he was accepted as physically qualified for service, that he actually thereafter served a year and eight months, and that he waited seventeen years before claiming pension for his injury, in my mind present a case upon which the claimant is entitled to no relief even if charity, instead of just liberality, is invoked.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate with reports thereon and a recommendation that it be passed, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XIII.

*May 25, 1886.**To the Senate of the United States :*

I herewith return without approval Senate bill No. 1290, entitled "An act granting a pension to David W. Hamilton."

A claim for pension filed by him in November, 1879, was rejected by the Pension Bureau on the ground that his alleged disability existed prior to his enlistment.

An examination of the records in the Adjutant-General's Office and a statement from the Pension Bureau derived from the claimant's application there for pension, with a reference to the report of the committee to whom this bill was referred, disclose the following facts:

The claimant was mustered in the service as first lieutenant in September, 1861, and as captain June 12, 1862. He is reported as present with his company until the 30th of that month. For the six months immediately following the latter date he is reported as "absent sick," and for the ten months next succeeding and until October 27, 1863, as "absent on detached service." On the day last mentioned he tendered his resignation at Camp Morton, in the State of Indiana, to enable him to accept an appointment as captain in the Invalid Corps. He was thereupon so appointed upon account of "chronic enlargement of the spermatic cord, of several years' standing, consequent upon hydrocele." He remained in the Invalid Corps until July 12, 1864, when, upon the tender of his resignation, he was discharged.

Less than four months afterward, and on the 6th day of November, 1864, he was mustered in the service as a captain in another regiment of volunteers, and on the 17th day of November, 1865, again tendered his resignation, and was finally discharged.

Upon his application for pension under the general law, fourteen years thereafter, he admitted that he suffered from hydrocele as early as 1856, but claimed that an operation then performed for the same had given him permanent relief.

It will be seen that the claimant's term of service was liberally interspersed with sick leave, detached service, resignations, and membership in the Invalid Corps. He admits having the trouble which would naturally result in his alleged disability long before he entered the service; the surgeon upon whose certificate he was appointed to the Invalid Corps must have stated to him the character of his difficulty and that it was chronic; no application for pension was made until fourteen years after his discharge and just prior to the expiration of the time within which large arrearages might have been claimed. There is no hint of any medical testimony at all contradicting the certificate of the Army surgeon made in 1863; but it is stated in the report of the committee that he cannot procure medical testimony as to his soundness before entering the service because his family physician is dead. If he had filed his application earlier it would have appeared in better faith, and it may be that he could have secured the evidence of his family physician if it was of the character he desired.

After the Pension Bureau has been in operation for a score of years since the late civil war, equipped with thousands of employes charged with no other duty except the ascertainment and adjustment of the claims of our discharged soldiers and their surviving relatives, it seems to me that a stronger case than this should be presented to justify the passage of a special act, twenty-three years after an alleged disability,

granting a pension which has been refused by the bureau especially organized for the purpose of allowing the same under just and liberal laws.

I am by no means insensible to that influence which leads the judgment toward the allowance of every claim alleged to be founded upon patriotic service in the nation's cause. And yet I neither believe it to be a duty nor a kindness to the worthy citizens for whose benefit our scheme of pensions was provided, to permit the diversion of the nation's bounty to objects not within its scope and purpose.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XIV.

May 28, 1886.

To the Senate:

I hereby return without approval Senate bill 1253, entitled "An act granting a pension to J. D. Haworth."

It is proposed by this bill to grant a pension to the claimant for the alleged loss of sight in one eye and the impairment of the vision of the other.

From the information furnished me I am convinced that the difficulty alleged by this applicant had its origin in causes existing prior to his enlistment, and that his present condition of disability is not the result of his service in the Army.

GROVER CLEVELAND.

The veto message was read in the Senate, ordered to lie on the table, and be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XV.

May 28, 1886.

To the House of Representatives:

I return without approval a bill originating in the House of Representatives numbered 2145, and entitled "An act for the relief of Rebecca Eldridge."

This bill provides for the payment of a pension to the claimant as the widow of Wilber H. Eldridge, who was mustered into the service on

the 24th day of July, 1862, and discharged June 21, 1865. He was pensioned at the rate of \$2 per month for a slight wound in the calf of the left leg, received on the 25th day of March, 1865. There is no pretense that this wound was at all serious, and a surgeon who examined it in 1880 reported that in his opinion the wounded man "was not incapacitated from obtaining his subsistence by manual labor;" that the ball passed "rather superficially through the muscles," and that the party examined said there was no lameness "unless after long standing or walking a good deal."

On the 28th of January 1881, while working about a building, he fell backward from a ladder and fractured his skull, from which he died the same day.

Without a particle of proof, and with no fact established which connects the fatal accident in the remotest degree with the wound referred to, it is proposed to grant a pension to the widow of \$12 per month.

It is not a pleasant thing to interfere in such a case, but we are dealing with pensions and not with gratuities.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XVI.

May 28, 1886.

To the House of Representatives :

I hereby return without approval a bill which originated in the House of Representatives numbered 1582, and entitled "An act for the relief of Eleanor C. Bangham."

The claimant in this case is the widow of John S. Bangham, who was mustered into the service of the United States as a private on the 26th day of March, 1864, and was discharged by General Order June 23, 1865.

It appears that during his fifteen months of service he was sick a considerable part of the time, and the records in two of the hospitals to which he was admitted show that his sickness was epilepsy. There are no records showing the character of his illness in other hospitals.

His widow, the present claimant, filed an application for pension March 12, 1878, alleging that her husband committed suicide September 10, 1873, from the effects of chronic diarrhea and general debility contracted in the service. Upon the evidence then produced her claim was allowed at the rate of \$8 a month. She remained upon the rolls until July, 1885, when a special examination of the case was made, upon which it was developed and admitted by the pensioner that the deceased soldier had suffered from epilepsy from early childhood, and that during a despondent mood following an epileptic fit he committed suicide.

Upon these facts it was determined by the Pension Bureau that the

pension should not have been granted, and it was withdrawn. It was so satisfactorily proven that the disease which indirectly caused the death of the claimant's husband was not contracted in the service that, in my opinion, the conclusion arrived at on such examination should stand.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XVII.

May 28, 1886.

To the Senate and House of Representatives :

I hereby return without approval bill numbered 1406, which originated in the House of Representatives and is entitled "An act granting a pension to Simmons W. Harden."

The claimant mentioned in this bill enlisted as a private December 30, 1863, and was discharged May 17, 1865.

He filed an application for pension in 1866, in which he alleged that he was injured in the left side by a fall from a wagon while in the service.

In 1880 he filed another application, in which he claimed that he was afflicted with an enlargement of the lungs and heart from overexertion at a review. His record in the Army makes no mention of either of these troubles, but does show that he had at some time during his service dyspepsia and intermittent fever.

The fact that fourteen years elapsed after he claimed to have been injured by a fall from a wagon before he discovered that enlargement of the lungs and heart was his real difficulty is calculated to at least raise a doubt as to the validity of his claim.

The evidence as to his condition at the time of enlistment, as well as since, seems quite contradictory and unsatisfactory. The committee to which the bill was referred report that "the only question in the case is as to his condition at the time of enlistment, and the evidence is so flatly contradictory on that point that it is impossible to decide that question."

Notwithstanding this declaration, it is proposed to allow him a pension of \$16 a month, though he has survived all his ailments long enough to reach the age of seventy-two years.

I think upon the case presented the action of the Pension Bureau overruling his claim should not be reversed.

GROVER CLEVELAND.

The veto message was read, referred to the Committee on Invalid Pensions, and ordered to be printed. The Committee reported it back on the 9th of July, with a report, which was ordered to be printed and to lie over.

GROVER CLEVELAND.—XVIII.

*June 1, 1886.**To the Senate :*

I return herewith Senate bill No. 1441, entitled "An act granting a pension to M. Romahn."

The beneficiary named in this bill enlisted September 13, 1862, and was discharged May 24, 1865.

He filed his claim in the Pension Bureau December 5, 1882, alleging that in the winter of 1862, from being put on duty—standing guard excessively—he became afflicted with varicose veins. His army record shows no disability of any kind, though he served more than two years after the date at which he alleges his injury was incurred. His application was rejected on the ground that no record of his disability appeared, and that the evidence of the same filed upon such application was insufficient.

The claim now made to Congress for relief is the same as that made to the Pension Bureau, with the allegation added that in May, 1865, his breast and shoulder were injured by a railroad accident while he was on detail duty.

If the latter-described injury really existed it is exceeding strange that it found no place in his claim before the Pension Bureau; while the account given of the cause of his alleged varicose veins must surprise those who are at all familiar with the character of that difficulty, and the routine of army service. His continued performance of military duty after he incurred this infirmity, the fact that he made no claim for pension on that account until twenty years had passed, and the unsatisfactory evidence now produced to support his allegation, tend to induce the suspicion that the decision of the Pension Bureau was entirely just, and that this bill is not based upon substantial merits.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XIX.

*June 2, 1886.**To the Senate :*

Senate bill No. 789, entitled "An act granting a pension to John S. Williams," is herewith returned without approval.

This claimant enlisted in 1861. He alleges that his shoulder was dislocated in 1862 while ferrying troops across a river. The records of

the War Department fail to furnish any information as to the alleged injury. He served afterward until 1865 and was discharged. His claim for pension was rejected by the Pension Bureau in 1882, twenty years after the time he fixes as the date of his injury; and after such long delay he states as an excuse for the unsatisfactory nature of his proof that the doctors, surgeons, and officers who knew him are dead.

Considering that the injury complained of is merely a dislocation of the shoulder, and in view of the other facts developed in the case, I think the Pension Bureau arrived at a correct conclusion when this claim was rejected.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XX.

June 2, 1886.

To the Senate:

I return without approval Senate bill No. 327, entitled "An act granting a pension to James E. O'Shea."

From the report of the committee to whom this bill was referred I learn that the claimant enlisted in April, 1861, and was discharged in October, 1864.

He filed a claim in the Pension Bureau alleging that he received a saber wound in the head March 7, 1862, and a gunshot wound in the left leg in the autumn of the same year.

It appears, upon examination of his military record, that there is no mention of either disability, and that he served two years after the time he claims to have received these injuries. So far from being disabled, it is reported as an incident of his army life that in the year 1864 this soldier was found guilty of desertion and sentenced to forfeit all pay and allowances for the time he was absent.

The report of the committee, in apparent explanation of the lack of any official mention of the injuries alleged, declares that "the fact that the records of the War Department are often imperfect works great hardship to men who apply for pensions;" and his conviction of desertion and the lack of proof to sustain his allegations as to his injuries are disposed of as follows in the committee's report:

"The Adjutant-General's report shows that the man was under discipline for some irregularities, but, notwithstanding this and the lack of the required proof that he was wounded in the line of duty, the com-

mittee are of the opinion that, situated as he was, he was very liable to, and very probably did, receive the wound from which he has suffered and is still suffering."

I am convinced that there exists serious difficulty on the part of the claimant instead of in the record of the War Department, that the kind of irregularity for which he was under discipline is calculated to produce a lack of confidence in his merits as a pensioner and that the fact of his situation being such as to render him liable to receive a wound is hardly sufficient to establish his right to a soldier's pension which is only justified by injuries actually received and affirmatively proven.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and after debate recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XXI.

June 2, 1886.

To the Senate:

I return herewith without approval Senate bill No. 1726, entitled "An act granting a pension to Augustus Field Stevens."

It appears that this claimant enlisted August 21, 1861, and was discharged on the 3d day of October, 1861, after a service of less than two months, upon a medical certificate of disability which represented him as "incapable of performing the duties of a soldier because of general debility, advanced age—unfit for service before entering."

His claim is not based upon any wound or injury, but he alleges that he contracted chronic diarrhea or dysentery while in the service. The committee to whom the bill was referred by the Senate admit that "there is a quantity of contradictory testimony biased in about equal proportion for and against the claimant."

His claim was rejected by the Pension Bureau in 1882 and again in 1885, after a special examination concerning the facts, on the ground that the claimant had failed to show any pensionable disability contracted while he was in the service.

The medical certificate upon which he was discharged makes no mention of the disorders of which the applicant for pension now complains, but contains other statements which demonstrate that no allowance should be made to him by way of pension, unless such pension is to be openly and confessedly regarded as a mere charity, or unless the medical certificate made at the time of discharge, with the patient under observation, is to be, without any allegation to that effect impeached.

I am not prepared either to gratuitously set at naught two determi

nations of the Pension Bureau, one very lately made, after a special examination—and especially when the evidence produced before the committee to reverse the Bureau's action is admitted to be "contradictory" and "biased in about equal proportion for and against the claimant."

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND—XXII.

June 3, 1886.

To the House of Representatives:

I hereby return without approval House bill No. 6688, entitled "An act for the relief of William Bishop."

This claimant was enrolled as a substitute on the 25th day of March, 1865; he was admitted to a post hospital at Indianapolis on the 3d day of April, 1865, with the measles; was removed to the city general hospital, in Indianapolis, on the 5th day of May, 1865; was returned to duty May 8, 1865, and was mustered out with a detachment of unassigned men on the 11th day of May, 1865.

This is the military record of this soldier, who remained in the Army one month and seventeen days, having entered it as a substitute at a time when high bounties were paid.

Fifteen years after this brilliant service and this terrific encounter with the measles, and on the 28th day of June, 1880, the claimant discovered that his attack of the measles had some relation to his Army enrollment, and that this disease had "settled in his eyes, also affecting his spinal column."

This claim was rejected by the Pension Bureau, and I have no doubt of the correctness of its determination.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND—XXIII.

June 19, 1886.

To the Senate:

I return herewith Senate bill No. 226, entitled "An act granting a pension to Margaret D. Marchand," without approval.

The beneficiary named in this bill is the widow of John B. Marchand, who entered the United States Navy in 1828, who was promoted to the

rank of commodore in 1866, and who was placed upon the retired list in 1870. He died in August, 1875, of heart disease.

His widow filed an application for pension in 1883, claiming that his fatal disease was caused by exposure and exertion in the service during the war of the rebellion. The application was rejected because of the inability to furnish evidence to prove that the death had any relation to the naval service of the deceased.

I am unable to see how any other conclusion could have been reached. The information furnished by the report of the committee to whom this bill was referred, and derived from other data before me, absolutely fails to connect the death of Commodore Marchand with any incident of his naval service.

This officer was undoubtedly brave and efficient, rendering his country valuable service; but it does not appear to have been of so distinguished a character, nor are the circumstances of his widow alleged to be such, as to render a gratuity justifiable.

GROVER CLEVELAND.

The veto message was read on the 21st of June and ordered to lie on the table. On the 23d of June it was read, referred to the Committee on Pensions, and ordered to be printed. On the 9th of July it was reported back, with a recommendation that the bill be passed, the objections of the President to the contrary notwithstanding. It was reached on the Calendar on the 26th of July, and passed over. It was taken up on the 4th of August, and after some debate its consideration was postponed until the Wednesday after the first Monday of the next December. A House bill was then taken up granting a pension to Margaret D. Marchand at the regular rate. The bill was reported to the Senate, ordered to a third reading, read a third time, and passed.

GROVER CLEVELAND.—XXIV.

June 19, 1886.

To the Senate :

I hereby return without my approval Senate bill No. 183, entitled "An act for the relief of Thomas S. Hopkins, late of Company C, Sixteenth Maine Volunteers."

This soldier was enrolled in the Army June 2, 1862, and discharged June 30, 1865. He was sent to the Government hospital September 20, 1863, and thereupon transferred to the Invalid Corps.

He filed his declaration for a pension in November, 1880, alleging that while in the service he contracted malarial fever and chronic diarrhea, and was seized with convulsions, suffering from great general debility.

A pension of \$50 a month was granted to him in June, 1881, dating from the time of filing his application, which sum he has been receiving up to the present time.

This bill proposes to remove the limitation fixed by the law of 1879 prescribing the date prior to which an application for pension must be filed in order to entitle the claimant to draw the pension allowed from the time of his discharge from the service.

If this bill should become a law it would entitle the claimant to about \$9,000 of back pension. This is claimed upon the ground that the soldier was so sick from the time of the passage of the act creating the limitation up to the date allowed him to avail himself of the privileges of the act that he could not file his claim.

I think the limitation thus fixed a very wise one, and that it should not, in fairness to other claimants, be relaxed for causes not mentioned in the statute; nor should the door be opened to applications of this kind.

The beneficiary named in this bill had fifteen years after the accruing of his claim and before it is alleged that he was incapacitated within which he might have filed his application and entitled himself to the back pension now applied for.

The facts here presented come so far short of furnishing a satisfactory excuse for his delay that, in my judgment, the discrimination asked in his favor should not be granted.

GROVER CLEVELAND.

The veto message was received June 21, read, and ordered to lie on the table. On June 23, it was referred to the Senate Committee on Pensions, and ordered to be printed. On July 23 it was reported from the committee, with a recommendation that it be passed, the objections of the President to the contrary notwithstanding. On the 31st of July Senator Aldrich rose to a privileged motion, and moved to take up the vetoed bill, but objection was made, on the ground that it was not a privileged motion.

GROVER CLEVELAND.—XXV.

June 19, 1886.

To the Senate:

I return without approval Senate bill No. 763, entitled "An act for the erection of a public building at Sioux City, Iowa."

The report of the committee of the House of Representatives to whom this bill was referred states that by the census of 1880 the population of Sioux City was nearly 8,000, and that by other enumerations since made its population would seem to exceed 23,000. It is further stated in the report that, for the accommodation of this population, the city contains three hundred and ninety-three brick and two thousand nine hundred and eighty-four frame buildings.

It seems to me that in the consideration of the merits of this bill the necessities of the Government should control the question, and that it should be decided as a business proposition, depending upon the needs of a Government building at the point proposed in order to do the Government work.

This greatly reduces the value of statistics showing population, extent of business, prospective growth, and matters of that kind, which, though exceedingly interesting, do not always demonstrate the necessity of the expenditure of a large sum of money for a public building.

I find, upon examination, that United States courts are sometimes held at Sioux City, but that they have been thus far held in the county court-house, without serious inconvenience and without any expense to the Government. There are actually no other Federal officers there for whom the Government, in any view, should provide accommodations, except the postmaster. The post-office is now located in a building rented by the Government until the 1st day of January, 1889, at the rate of \$2,200 per annum.

By the last report of the Supervising Architect it appears that on October 1, 1885, there were eighty new public buildings in course of construction, and that the amount expended thereon during the preceding year was nearly two and a half millions of dollars, while large appropriations are asked to be expended on these buildings during the current year.

In my judgment the number of public buildings should not at this time be increased unless a greater public necessity exists therefor than is apparent in this case.

GROVER CLEVELAND.

The veto message was read and referred to the Senate Committee on Public Buildings and Grounds.

GROVER CLEVELAND.—XXVI.

June 19, 1886.

To the Senate :

I return without approval Senate bill No. 206, entitled "An act to provide for the erection of a public building in the city of Zanesville, Ohio."

No Federal courts are held at Zanesville, and there are no Government officers located there who should be provided for at the public expense, except the postmaster.

So far as I am informed, the patrons of the post-office are fairly well accommodated in a building which is rented by the Government at the rate of \$800 per annum; and though the postmaster naturally certifies that he and his fourteen employes require much more spacious surroundings, I have no doubt he and they can be induced to continue to serve the Government in its present quarters.

The buildings now in process of construction, numbering eighty, involving constant supervision, are all the building projects which the Government ought to have on hand at one time, unless a very palpable necessity exists for an increase in the number. The multiplication in these structures involves not only the appropriations made for their completion, but great expense in their care and preservation thereafter.

While a fine Government building is a desirable ornament to any town or city, and while the securing of an appropriation therefor is often considered as an illustration of zeal and activity in the interest of a constituency, I am of the opinion that the expenditure of public money for

such a purpose should depend upon the necessity of such a building for public uses.

In the case under consideration, I have no doubt the Government can be well accommodated for some time to come in all its business relations with the people of Zanesville by renting quarters, at less expense than the annual cost of maintaining the proposed new building after its completion.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Public Buildings and Grounds, and ordered to be printed.

GROVER CLEVELAND.—XXVII.

June 19, 1886.

To the House of Representatives :

I hereby return without approval House bill No. 1990, entitled "An act granting a pension to John Hunter."

The claimant was enrolled July 20, 1864, and was discharged by expiration of his term of service July 13, 1865.

During four months of the twelve, while he remained in the service, he is reported as "absent sick." His hospital record shows that he was treated for intermittent fever and rheumatism. In 1879, fourteen years after his discharge, he filed his claim for a pension, alleging that in May, 1864, he received a gunshot wound in the right leg, while in a skirmish. The month of May, 1864, is included in the time during which, by the record, he appears to have been absent sick and undergoing treatment for fever and rheumatism. His claim was rejected in December, 1884, on the ground that there was no record of the alleged wound, and the claimant was unable, though aided by the Bureau, to prove that the injury claimed was due to the service.

The evidence recited in the report of the Congressional committee to whom this bill was referred, though it tends to show, if reliable, that when the soldier returned from his service his leg was affected, fails to show a continuous disability from that cause. It is stated that about five years ago, while the claimant was gathering dandelions, in stepping across a ditch his leg broke. The doctor who attended him states that the leg was about four weeks longer in uniting than is usual, but he is not represented as giving an opinion that the fracture had anything to do with his patient's military service.

I find no reference to his condition since his recovery from the fracture of his leg, and there seems to be no allegation of present disability either from Army service or the injury sustained while gathering dandelions.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XXVIII.

*June 19, 1886.**To the House of Representatives :*

I return without approval House bill No. 3826, entitled "An act for the relief of John Taylor."

By this bill it is proposed to increase the pension of the beneficiary named to \$16 a month. He has been receiving a pension under the general law, dating from his discharge in 1865. His pension has been twice already increased, once by the Pension Bureau and once by a special act passed in 1882. His wound is not such as to cause his disability to become aggravated by time. The increase allowed by this bill when applied for at the Pension Bureau in 1885 was denied on the ground "that the rate he was receiving was commensurate with the degree of his disability, a board of surgeons having reported that he was receiving a liberal rating."

I can discover no just ground for reversing this determination and making a further discrimination in favor of this pensioner.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XXIX.

*June 19, 1886.**To the House of Representatives :*

I return without my approval House bill No. 4002, entitled "An act granting a pension to Carter W. Tiller."

The records of the War Department show that George W. Tiller, the son of the claimant, enlisted in a Kentucky regiment on the 8th day of October, 1861, and that he deserted on the 20th day of September, 1863; that he was captured by the Confederates afterward, but the time and circumstances are not given. On the 21st day of July, 1864, he was admitted to the Andersonville hospital, and died the same day of scurvy.

The father filed his claim for a pension in 1877, alleging his dependence upon the deceased soldier. It is probably true that the son, while in the Army, sent money to the claimant, though he appears to have been employed as a policeman in the city of Louisville ever since his son's death, at a fair salary.

The claim thus made was rejected by the Pension Bureau on the ground that the claimant was not dependent upon his son.

I am entirely satisfied of the correctness of this determination, and if the records presented to me are reliable, I think the fact which appears therefrom that the death of the soldier occurred ten months after desertion, and had no apparent relation to any service in the Union Army, is conclusive against the claim now made.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. The committee reported on the 2d of July. The report was ordered to be printed in the Record, and to go over, to be called up some time in the future. The bill was called up on the 6th of July, and, after having been debated at length, was postponed until July 9, by a vote of 117 yeas against 113 nays, 93 Representatives not voting. On the 9th of July the consideration of the bill was again postponed for one week. On the 16th of July the consideration of the bill was postponed until the fifth day of the next session of that Congress.

GROVER CLEVELAND.—XXX.

June 19, 1886.

To the House of Representatives :

I return without approval House bill No. 4058, entitled "An act for the relief of Joel D. Monroe."

The claimant mentioned in this bill enlisted in August, 1864, and was discharged with his regiment June 4, 1865.

The record of his short military service exhibits no mention of any injury or disability; but in June, 1880, fifteen years after his discharge, he filed in the Pension Bureau a claim for a pension based upon the allegation that in December, 1864, he was injured by a falling of a tree, which struck him on his head, affecting both of his eyes. He added to this allegation the further complaint that he contracted rheumatism while in the service.

The application for a pension was rejected by the Pension Bureau because there was no record of the disabilities claimed, nor was satisfactory proof furnished that any such disabilities originated in the service.

I am so entirely satisfied with this determination of the Pension Bureau that I am constrained to withhold my approval of this bill.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. On July 29 a motion to discharge the committee from the further consideration of the bill, with the President's veto thereon, and that the same be considered, was decided in the negative by a vote of 90 yeas against 117 nays, 115 Representatives not voting. So the House refused to discharge the committee from the further consideration of the bill.

GROVER CLEVELAND.—XXXI.

June 21, 1886.

To the House of Representatives :

I return without approval House bill No. 3624, entitled "An act granting a pension to Fred. J. Leese."

This claimant enlisted September 7, 1864, and was discharged June 4, 1865. During his short term of service there does not appear on the records any evidence of disability.

But in November, 1883, eighteen years after his discharge, he filed his application for a pension, alleging that in November 1864, he contracted chronic diarrhea from exposure and severe work.

His claim has not yet been fully passed upon by the Pension Bureau, which in my opinion is sufficient reason why this bill should not become a law. I am also thoroughly convinced, from examination of the case, that the claimant should not be pensioned.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XXXII.

June 21, 1886.

To the House of Representatives :

I herewith return without approval House bill No. 6897, entitled "An act granting a pension to Henry Hipple, jr."

This claimant entered the Army as a drummer August 6, 1862, and was discharged May 29, 1863.

In 1879, sixteen years after his discharge, he appears to have discovered that during his short term of military service, in the inhospitable climate of Port Tobacco, within the State of Maryland, he contracted rheumatism to such an extent as to entitle him to a pension, for which he then applied.

It is conceded that he received no medical treatment while in the Army for this complaint, nor does he seem to have been attended by a physician since his discharge.

Without commenting further upon the features of this case, which tend to discredit it, I deem myself obliged to disapprove this bill on the ground that there is an almost complete failure to state any facts that should entitle the claimant to a pension.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XXXIII.

*June 21, 1886.**To the House of Representatives :*

I hereby return without approval a bill originating in the House of Representatives entitled "An act granting an increase of pension to John W. Farris," which bill is numbered 6136.

The claimant mentioned in this bill enlisted in the month of October, 1861, and was mustered out of the service in August, 1865.

In 1881, sixteen years after his discharge, he filed an application for a pension, alleging that he was afflicted with chronic diarrhea contracted in the Army, and in 1885 his claim was allowed, and he was granted a pension for that cause.

In September of the same year, and after this pension was granted, he filed an application for an increase of his rate, alleging that in 1884 his eyes became affected in consequence of his previous ailments and the debility consequent thereupon.

The ingenuity developed in the constant and persistent attacks upon the public Treasury by those claiming pensions, and the increase of those already granted, is exhibited in bold relief by this attempt to include sore eyes among the result of diarrhea.

I am entirely satisfied with the opinion of the medical referee, who, after examining this case in October, 1885, reported that "the disease of the eyes cannot be admitted to be a result of chronic diarrhea."

On all grounds it seems to me that this claimant should be contented with the pension which has been already allowed him.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. The majority of the committee reported on the 16th of July, and it was ordered that the report be printed in the Record. The bill was called up on the 29th of July, and its consideration was objected to by a vote of 101 yeas against 117 nays, 104 Representatives not voting. On the 30th of July the further consideration of the bill was postponed until the next session.

GROVER CLEVELAND.—XXXIV.

*June 21, 1886.**To the House of Representatives :*

I hereby return without approval House bill No. 1707, entitled "An act granting a pension to Elijah P. Hensley."

The records of the War Department show that this claimant was mustered into the Third North Carolina Regiment, but on the muster-out roll of his company he is reported to have deserted April 3, 1865, and there is no record of any discharge or disability.

In September, 1866, an order was issued from his department headquarters removing the charge of desertion against him. Thirteen days afterward, and on the 25th day of September, 1866, he filed an application for pension, which, in 1868, was granted. He drew such pension dating from 1865 until 1877, when, upon evidence that the injury for which he was pensioned was not received in the line of duty, his name was dropped from the rolls.

The pensioner appealed from this determination of the Pension Bureau to the Secretary of the Interior, who, as lately as May, 1885, rendered a decision sustaining the action of the Bureau.

In find nothing in the facts presented to me which, in my opinion, justifies the reversal of the judgment of the Bureau and the Secretary of the Interior.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XXXV.

June 19, 1886.

To the House of Representatives :

I return without approval House bill No. 5997, entitled "An act granting a pension to Elizabeth Luce."

The claimant named in this bill is the widow of John W. Luce, who entered the Army in August, 1861, and who was discharged in January, 1864, for a disability declared at the time in the surgeon's certificate to arise from "organic stricture of the urethra," which, from his statement, existed at the time of his enlistment.

Notwithstanding the admission which thus appears to have been made by him at the time of his discharge, he soon afterward made an application for a pension, alleging that his difficulty arose from his being thrown forward on the pommel of his saddle when in the service.

Upon an examination of this claim by a special examiner, it is stated that no one could be found who had any knowledge of such an injury, and the claim was rejected.

In 1883, twenty years after the soldier alleged he was injured in the manner stated, he died, and the cause of his death was declared to be "chronic gastritis, complicated with kidney difficulty."

It is alleged that the examinations made by the Pension Bureau developed the fact that the deceased soldier was a man of quite intemperate habits.

The theory upon which this widow should be pensioned can only be that the death of her husband resulted from a disability or injury contracted or received in the military service. It seems to me that how-

ever satisfactorily the injury which he described may be established, and though every suspicion as to his habits be dismissed, there can hardly possibly be any connection between such an injury and the causes to which his death is attributed.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. The message was reported back July 10, with a majority report that was printed in the Record, and laid over for subsequent consideration. The views of the minority of the committee were presented on the 15th of July, and ordered to be printed in the Record. The bill was called up on the 16th of July, when the veto message, with the majority and minority reports thereon, were read, and the question was taken "Will the House, on reconsideration, agree to pass the bill, the objections of the President to the contrary notwithstanding?" On this there were 116 yeas against 124 nays, 82 Representatives not voting. So two-thirds not having voted in favor of the bill, on reconsideration, it failed to pass.

GROVER CLEVELAND.—XXXVI.

June 21, 1886.

To the Senate:

I return without approval Senate bill No. 2223, entitled "An act granting a pension to Elizabeth S. De Krafft."

My objection to this bill is that it is of no possible advantage to the beneficiary therein mentioned. It directs that her name be placed upon the pension-roll, subject to the provisions and limitations of the pension laws. The effect of such legislation would be to permit Mrs. De Krafft to draw a pension at the rate of \$30 each month from the date of the approval of the bill.

On the 26th day of February, 1886, under the provisions of the general pension law, she was allowed a pension of this exact sum; but the payments were to date from November 10, 1885.

I am so thoroughly tired of disapproving gifts of public money to individuals who in my view have no right or claim to the same, notwithstanding apparent Congressional sanction, that I interpose with a feeling of relief a veto in a case where I find it unnecessary to determine the merits of the application.

In speaking of the promiscuous and ill-advised grants of pensions which have lately been presented to me for approval, I have spoken of their "apparent Congressional sanction," in recognition of the fact that a large proportion of these bills have never been submitted to a majority of either branch of Congress, but are the result of nominal sessions held for the express purpose of their consideration and attended by a small minority of the members of the respective houses of the legislative branch of Government.

Thus in considering these bills I have not felt that I was aided by the deliberate judgment of the Congress; and when I have deemed it my duty to disapprove many of the bills presented, I have hardly regarded my action as a dissent from the conclusions of the people's representatives.

I have not been insensible to the suggestions which should influence every citizen, either in private station or official place, to exhibit not only a just but a generous appreciation of the services of our country's defenders. In reviewing the pension legislation presented to me many bills have been approved upon the theory that every doubt should be resolved in favor of the proposed beneficiary. I have not, however, been able to entirely divest myself of the idea that the public money appropriated for pensions is the soldiers' fund, which should be devoted to the indemnification of those who in the defense of the Union and in the nation's service have worthily suffered, and who in the day of their dependence, resulting from such suffering, are entitled to the benefactions of their Government. This reflection leads to the bestowal of pensions a kind of sacredness which invites the adoption of such principles and regulations as will exclude perversion as well as insure a liberal and generous application of grateful and benevolent designs. Heedlessness and a disregard of the principle which underlies the granting of pensions is unfair to the wounded, crippled soldier who is honored in the just recognition of his Government. Such a man should never find himself side by side on the pension-roll with those who have been tempted to attribute the natural ills to which humanity is heir to service in the Army. Every relaxation of principle in the granting of pensions invites applications without merit and encourages those who for gain urge honest men to become dishonest. Thus is the demoralizing lesson taught the people that as against the public Treasury the most questionable expedients are allowable.

During the present session of Congress four hundred and ninety-three special pension bills have been submitted to me, and I am advised that one hundred and eleven more have received the favorable action of both Houses of Congress and will be presented within a day or two, making over six hundred of these bills which have been passed up to this time during the present session, nearly three times the number passed at any entire session since the year 1861.

With the Pension Bureau, fully equipped and regulated by the most liberal rules, in active operation, supplemented in its work by constant special legislation, it certainly is not unreasonable to suppose that in all the years that have elapsed since the close of the war a majority of the meritorious claims for pensions have been presented and determined.

I have now more than one hundred and thirty of these bills before me awaiting Executive action. It will be impossible to bestow upon them the examination they deserve, and many will probably become operative which should be rejected.

In the mean time I venture to suggest the significance of the startling increase in this kind of legislation and the consequences involved in its continuance.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and after debate, recommitted. On the 20th of July it was reported back to the Senate with reports thereon and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XXXVII.

June 21, 1886.

To the Senate:

I hereby return without approval Senate bill No. 1584, entitled "An act for the relief of Cornelia R. Schenck."

It is proposed by this bill to grant a pension to Mrs. Schenck as the widow of Daniel F. Schenck, who entered the military service of the United States in August, 1861, and was mustered out October 21, 1864.

The record of his service contains no mention of any disability; he died in December, 1875, of a disease called gastro-enteritis, which, being interpreted, seems to denote "inflammation of the stomach and small intestines." So far as the facts are made to appear, the soldier, neither during the term of his service nor during the eleven years he lived after his discharge, made any claim of any disability.

The claim of his widow was filed in the Pension Bureau in 1885, ten years after her husband's death, and is still undetermined.

The fact that her application is still pending in that Bureau is sufficient reason why this bill should not become a law.

A better reason is based upon the entire lack of any facts shown to exist which entitle the beneficiary named to a pension.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and after debate, recommitted. On the 20th of July it was reported back to the Senate with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XXXVIII.

June 22, 1886.

To the Senate:

I return herewith without approval Senate bill No. 1192, entitled "An act granting a pension to Alfred Denny."

It appears that the claimant entered the United States military service as captain and assistant quartermaster of volunteers on the 12th

day of June, 1863. After remaining in such position for less than a year he resigned to accept a civil position.

The short record of his military service discloses no mention of any accident or disability. But twenty years after his resignation, and on the 12th day of March, 1884, he reappears as an applicant for a pension and alleges in his declaration filed in the Pension Bureau that in August, 1863, while in the line of duty, he was, by a sudden movement of the horse he was riding, thrown forward upon the horn of his saddle and thereby received a rupture in his right side, which at some time and in a manner wholly unexplained subsequently caused a rupture in his left side also.

The number of instances in which those of our soldiers who rode horses during the war were injured by being thrown forward upon their saddles indicate that those saddles were very dangerous contrivances.

I am satisfied there is not a particle of merit in this claim, and no facts are presented to me which entitle it to charitable consideration.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XXXIX.

June 22, 1886.

To the Senate :

I hereby return without approval Senate bill No. 1400, entitled "An act granting a pension to William H. Beck."

This claimant enlisted in 1861. He re-enlisted as a veteran volunteer January 1, 1864, and was finally mustered out April 20, 1866. In all this time of service his record shows no medical treatment or claim of disability. Indeed an abstract of his re-enlistment January 1, 1864, shows a medical examination and perfect soundness.

Notwithstanding all this, he filed his declaration on the 4th day of April, 1879, nearly thirteen years after his discharge, alleging that in June, 1863, he incurred epilepsy, to which he has been subject since, and that his fits have been from one to ten days apart. To connect this in some way with his military service he stated that the doctor at a hospital said his epilepsy was caused "by jar to the head from heavy firing."

Six months after this alleged "jar" and his consequent epilepsy, he re-enlisted upon a medical certificate of perfect soundness and served more than two years thereafter.

Every conceded fact in the case negatives the allegations of his declaration, and the rejection of his claim necessarily followed.

If this disease can be caused in the manner here detailed, its manifestations are such as to leave no doubt of its existence, and it seems to me simply impossible under the circumstances detailed that there should be any lack of evidence to support the claim upon which this bill is predicated.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XL.

June 22, 1886.

To the Senate :

I hereby return without approval Senate bill No. 2005, entitled "An act granting a pension to Mary J. Nottage."

The beneficiary named in this bill is the widow of Thomas Nottage, who enlisted in August, 1861, and was discharged for disability September 17, 1862. The assistant surgeon of his regiment upon his discharge certified the cause to be "disease of the urinary organs," which had troubled him several years.

He died of consumption January 8, 1879, nearly seventeen years after his discharge, without ever having made any application for a pension.

In 1880 his widow made an application for pension, alleging that he contracted in the service "malarial poisoning, causing remittent fever, piles, general debility, consumption, and death," and that he left two children, both born after his discharge, one in 1866 and the other in 1874.

The only medical testimony which has been brought to my attention touching his condition since his discharge is that of a single physician, to the effect that he attended him from the year 1873 to the time of his death, in 1879. He states that the patient had, during that time, "repeated attacks of remittent fever and irritability of bladder with organic deposits"; that "in the spring of 1878 he had sore throat and cough, which resulted in consumption, of which he died.

The claim of the widow was rejected in July, 1885, on the ground that "the soldier's death was not the result of his service."

I am satisfied that this conclusion of the Pension Bureau was correct.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. On the 30th of June and July 10 Mr. Blair, from the Senate Committee on Pensions, submitted a report on the bill returned by the President, with his objections thereto. The report was recommitted, and on the 17th of July it was reported back

to the Senate, with a recommendation that the previous report stand as the report of the committee, and that the bill be passed, the objections of the President to the contrary notwithstanding. At the same time a minority report was submitted, and it was ordered that the bill be placed on the Calendar. On the 30th of July it was called up, and a resolution was offered that the report of the majority and views of the minority on the bill be printed in the Record. Objection was made to immediate consideration, and the resolution went over, under the rule, until the next day, when it was agreed to. On the 3d of August the bill was called up, debated, and decided in the negative by a vote of 26 yeas against 19 nays, 31 Senators not voting. Two-thirds not having voted in favor of the bill, it was not passed.

GROVER CLEVELAND.—XLI.

June 22, 1886.

To the Senate :

I return herewith without approval Senate bill No. 342, entitled "An act granting a pension to Marilla Parsons, of Detroit, Mich."

No claim has ever been made for a pension in this case to the Pension Bureau, probably for the reason that there is no pretext that the beneficiary named is entitled to a pension under any general law.

Daniel P. Parsons was her step-son, who enlisted in 1861 and died of consumption on the 13th day of August, 1864.

There are no special circumstances to distinguish this case from many others whose claims might be made by step-parents, and there are no facts stated in support of the conclusion embodied in the committee's report that the soldier was taken sick from exposure incident to the service.

To depart from all rules regulating the granting of pensions by such an enactment as is proposed would establish a precedent which could not fail to cause embarrassment and perplexity.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back on the 28th of July, with a recommendation that it be passed, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XLII.

June 22, 1886.

To the Senate :

I return without approval Senate bill No. 1383, entitled "An act granting a pension to Harriet Welch."

The beneficiary named in this bill asks for a pension as the widow of Syreannous Welch, who was wounded in 1864 while in the service and was pensioned therefor in 1867. In 1876 his rate of pension was increased. In 1877 he appears to have applied to have his pension again increased. It is alleged that upon such application he was directed to

appear before an examining board or a surgeon at Green Bay, Wis., for examination, and in returning to his home from that place on the 7th day of September, 1877, he fell from the cars and was killed, his remains having been found on the track the next morning.

No one appears to have seen the accident, but it is claimed that he could not depend upon his wounded leg, and that it "gave way many times and caused him to fall." From this statement the inference seems to have been indulged that his death was attributable to the wound he had received thirteen years before.

The widow's claim, based upon this state of facts, was rejected by the Pension Bureau on the ground that the accident resulting in death was not the result of his military service; and on an appeal taken to the Secretary of the Interior from that determination the same was sustained.

Though this widow admits that prior to her marriage with the deceased soldier she had married another man whom she could only say she believed to be dead, I believe her case to be a pitiable one, and wish that I could join in her relief. But, unfortunately, official duty cannot always be well done when directed solely by sympathy and charity.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XLIII.

June 22, 1886.

To the Senate:

I hereby return without approval Senate bill No. 2025, entitled "An act granting a pension to James Butler."

This claimant was enrolled as a private in a New Hampshire regiment August 23, 1864, but on the organization of his company on the 12th day of September, 1864, he was discharged on account of a fracture of his leg, which happened on the 11th day of September, 1874.

It appears that before the organization of the company to which he was attached, and on the 10th day of September, he obtained permission to leave the place of rendezvous for the purpose of visiting his family, and was to return the next day. At a very early hour in the morning, either while preparing to return or actually on his way, he fell into a new cellar and broke his leg. It is said that the leg fractured is now shorter than the other.

His claim for pension was rejected in December, 1864, by the Pen-

sion Bureau, and its action was affirmed in 1871, upon the ground that the injury was received while the claimant was on an individual furlough, and therefore not in the line of duty.

Considering the fact that neither his regiment nor his company had at the time of his accident been organized, and that he was in no sense in the military service of the United States, and that his injury was received while on a visit, and not in the performance of duty, I can see no pretext for allowing a pension in this case.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XLIV.

June 22, 1886.

To the Senate:

I return without approval Senate bill No. 1288, entitled "An act granting a pension to Robert Holsey."

This claimant enlisted in 1862, and though he appears to have been sick on two occasions during his term of service, he remained with his company until it was mustered out in 1865.

This soldier was really sick during the time he remained in the Army, and in this respect his claim for a pension has a better origin than many that are presented. But the fact must be recognized, I suppose, that every army ailment does not necessarily result in death or disability.

In 1882, seventeen years after his discharge, this soldier filed his declaration for a pension, alleging that in 1853 he contracted intermittent fever, affecting his lungs, kidneys, and stomach.

A board of surgeons, upon an examination made in 1882, find disease of kidneys, but no indication of lung and stomach trouble; and a medical referee reported in 1885 that there had been no disease of the stomach and lungs since the filing of the claim, and that the difficulty affecting the kidneys had no relation to the sickness for which the claimant had been treated while in the Army.

I am of the opinion that a correct conclusion was reached when the application for pension in this case was denied, by the Pension Bureau.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. It was reported back from the Committee on Pensions on the 10th of July, and, after debate, recommitted. On the 20th of July it was reported back to the Senate, with reports thereon, and a recommendation that it pass, the objections of the President to the contrary notwithstanding.

GROVER CLEVELAND.—XLV.

*June 22, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 7979, entitled "An act granting a pension to Jackson Steward."

This claimant's application for pension is now pending in the Pension Bureau, and has been sent to a special examiner for the purpose of taking additional proof.

This I deem sufficient reason why the proposed bill should not now become a law.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XLVI.

*June 23, 1886.**To the House of Representatives :*

I herewith return without approval House bill No. 6170, entitled "An act granting a pension to Mary A. Van Etten."

In her declaration for a pension, filed July 28, 1885, this claimant alleges that her husband was drowned upon attempting to cross Braddock's Bay, near his residence, in the State of New York, on the 16th day of July, 1875.

It is claimed that in an effort to drive across that bay in a buggy with his young son the buggy was overturned and both were drowned. The application for pension was based upon the theory that during his military service the deceased soldier contracted rheumatism, which so interfered with his ability to save himself by swimming that his death may be fairly traced to a disability incurred in the service.

He does not appear to have been treated while in the Army for rheumatism, though some evidence is presented of his complaining of rheumatic symptoms.

He was mustered out in 1863, and though he lived twelve years thereafter, it does not appear that he ever applied for a pension. And though he was drowned in 1875, his widow apparently did not connect his military service with his death until ten years thereafter.

It seems to me that there is such an entire absence of direct and tangible evidence that the death of this soldier resulted from any incident of his service, that the granting of a pension upon such a theory is not justified.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XLVII.

June 23, 1886.

To the House of Representatives :

I return herewith without approval House bill No. 6753, entitled "An act granting a pension to Mrs. Alice E. Travers."

The husband of the beneficiary, John T. Travers, enlisted August 25, 1864, and was discharged June 11, 1866.

He died January 6, 1881, from the effects of an overdose of morphine which he administered himself. He was a druggist, and when suffering severely was in the habit of taking opiates for relief and sleep.

The disease from which it is said he suffered was lung difficulty claimed to have been caused by a severe cold contracted in the service.

It does not appear that he ever applied for a pension, and the widow's claim seems to have been properly rejected by the Pension Bureau on the ground that the soldier's death was not due to his military service.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XLVIII.

June 23, 1886.

To the House of Representatives :

I herewith return without approval House bill No. 6266, entitled "An act granting a pension to Philip Arner."

It is conceded in the application for a pension made by this claimant that he was perfectly well prior to his enlistment, during his service, and for a year thereafter. He was discharged in July, 1864, and the proof is that he was taken seriously ill in the fall of 1865, since which time he has been troubled with lung difficulty.

He filed his application for pension in 1883. This was rejected on the ground that the sickness which produced his disability having occurred more than a year after his discharge from the Army, it cannot be accepted as a result of his military service.

There is absolutely no allegation of any incident of his service which it is claimed is at all related to his sickness and disability.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XLIX.

*June 23, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 6117, entitled "An act granting a pension to James D. Cotton."

The claim for a pension in this case is on behalf of the father of Thomas Cotton, who was killed at Pittsburg Landing, April 6, 1862.

The application of this claimant still remains in the Pension Bureau undetermined. The doubt in the case appears to relate to the dependence of the father upon his son at the time of his death.

This is a question which the Bureau is so well fitted to investigate and justly determine that it is, in my opinion, best to permit the same to be there fully examined.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—L.

*June 23, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 1816, entitled "An act granting a pension to Mary Ann Miller."

Hamilton Miller, the husband of the claimant, enlisted April 22, 1861, and was sent with his regiment to Camp Dennison, in the suburbs of Cincinnati.

While thus in camp, apparently before he had ever been to the front, and on the 3d of June, 1861, he obtained permission to go to the city of Cincinnati, and was there killed by a blow received from some person who appears to be unknown; but undoubtedly the injury occurred in a fight, or as a result of an altercation.

It is very clear to me that the Pension Bureau properly rejected the widow's claim to pension, for the reason that the soldier was not in the line of duty at the date of his death. It is also impossible to connect the death with any incident of the soldier's military service.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LI.

*June 23, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 7436, entitled "An act to grant a pension to Mary Anderson."

This claimant is the widow of Richard Anderson, who at the time of his death was receiving a pension on account of chronic diarrhea contracted in the service.

On the 7th day of February, 1882, the deceased pensioner went to Sparta, in the State of Wisconsin, to be examined for an increase of his pension. He called on the surgeon and was examined, and the next morning he was found beheaded on the railroad track under such circumstances as indicated suicide.

The claim of the widow was rejected by the Pension Bureau on the ground that the cause of the death of her husband was in no way connected with his military service.

His wife and family present pitiable objects for sympathy, but I am unable to see how they have any claim to a pension.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. The bill was reported back from the committee on the 24th of July, and called up on the 29th of July, when the question of consideration was raised, and decided in the negative by a vote of 113 yeas against 116 nays, 93 Representatives not voting. The bill was again called up on the 30th of July, and, after debate, "Shall this bill pass, the objections of the President to the contrary notwithstanding?" was decided in the negative by a vote of 120 yeas against 95 nays, 107 Representatives not voting. Two-thirds not having voted in the affirmative the House refused to pass the bill.

GROVER CLEVELAND.—LII.

*June 23, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 5995, entitled "An act granting a pension to David T. Elderkin."

This claimant enlisted August 5, 1862. From his record it appears that he was dishonorably discharged the service, to date from June 11, 1863, with loss of all pay, bounty, and allowances.

He filed a declaration for a pension in 1882, claiming that he was wounded in the head by a shell January 1, 1863, which cut his cheek close to his right ear, causing almost total deafness.

There is conflicting evidence as to the claimant's freedom from deafness prior to enlistment, and on a special examination it was shown

that he was slightly hard of hearing before enlistment. Indeed the claimant himself stated to the special examiner and also to the board of surgeons that he had been somewhat deaf from childhood.

In 1882 an examining surgeon reports that he finds no scar or evidence of wound, but his hearing is very much impaired.

The claim was rejected in 1885 on the ground that deafness existed prior to enlistment, and also because of no ratable disability by reason of alleged wound in the cheek.

I think, considering the manner of the soldier's discharge and the facts developed, that the claimant should not be pensioned.

GROVER CLEVELAND.

The veto messages was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. The report of the majority of the committee was presented on the 16th of July and ordered to be printed in the Record and lie over. It came up in the House on the 30th of July, and its further consideration was postponed until the following December.

GROVER CLEVELAND.—LIII.

June 23, 1886.

To the House of Representatives :

I return herewith without approval House bill No. 3205, entitled "An act granting a pension to George W. Guyse."

The claimant filed his declaration for a pension in 1878, alleging that about the 25th day of December, 1863, he received a gunshot wound in his left knee while engaged in a skirmish.

There has been much testimony taken in this case, and a great deal of it is exceedingly contradictory. Three of the claimant's comrades, who originally testified to the receipt of the injury by him, afterward denied that he was wounded in the service, and a portion of the evidence taken by the Bureau tends to establish the fact that the claimant cut his left knee with a knife shortly after his discharge.

An examining surgeon, in November, 1884, reports that he finds "no indication of a gunshot wound, there being no physical or rational signs to sustain claimant in his application for pension."

He further reports that there "seems to be an imperfect scar near the knee, so imperfect as to render its origin uncertain, but in no respect resembling a gunshot wound."

I think upon all the facts presented the Pension Bureau properly rejected this claim, because there was no record of the injury, and no satisfactory evidence produced showing that it was incurred in service and in line of duty—all sources of information having been exhausted.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LIV.

*June 23, 1886.**To the House of Representatives :*

I return without approval House bill No. 7401, entitled "An act granting a pension to Samuel Miller."

This man was discharged from one enlistment June 16, 1864, and enlisted again in August of that year. He was finally discharged July 1, 1865.

In 1880 he filed an application for a pension, alleging that in May, 1862, he contracted, in the service, "kidney disease and weakness of the back."

A board of surgeons in 1881 reported that they failed to "discover any evidence of disease of kidneys."

It will be observed that since the date when it is claimed his disabilities visited him Mr. Miller not only served out his first term of enlistment but re-enlisted, and necessarily must have passed a medical examination.

I am entirely satisfied with the rejection of this claim by the Pension Bureau.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LV.

*June 23, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 424, entitled "An act to pension Giles C. Hawley."

This claimant enlisted August 5, 1861, and was discharged November 14, 1861, upon a surgeon's certificate, in which he stated: "I deem him unfit to stay in the service on account of deafness. He cannot hear an ordinary command."

Seventeen years after his discharge from a military service of a little more than three months' duration, and in the year 1878, the claimant filed an application for pension, in which he alleged that "from exposure and excessive duty in the service his hearing was seriously affected."

There is no doubt that his disability existed to quite an extent at least before his enlistment, and there was plenty of opportunity for its increase between the time of discharge and of his application for pension.

I am entirely satisfied that it should not be altogether charged to the three months he spent in the service.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LVI.

June 23, 1886.

To the House of Representatives :

I hereby return without approval House bill No. 7298, entitled "An act for the relief of Charles Schuler."

It is proposed by this bill to grant a pension to the person above named, who was discharged from the military service in December, 1864. He filed a declaration for a pension in the Pension Bureau in January, 1883. This application is still pending. Without referring to the merits of the case, I am of the opinion that the matter should be determined by the Bureau to which it has properly been presented before special legislation should be invoked.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LVII.

June 23, 1886.

To the House of Representatives :

I return herewith without approval House bill No. 7073, entitled "An act granting a pension to Mary S. Woodson."

Henry Woodson, the husband of the beneficiary named, enlisted in September, 1861, and was discharged in October, 1863, on account of valvular disease of the heart.

The application for pension on behalf of his widow was filed August 5, 1881.

She concedes that she is unable to furnish any evidence of the date or the cause of her husband's death.

It appears that he left home in March, 1874, for the purpose of finding work, and neither she nor her friends have ever heard from him since. His death may naturally be presumed, and the condition of his family is such that it would be a positive gratification to aid them in the manner proposed ; but the entire and conceded absence of any presumption, however weak, that he died from any cause connected with his military service seems to render it improper to place the widow's name upon the pension-rolls.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LVIII.

*June 23, 1886.**To the House of Representatives :*

I return without approval House bill No. 7108, entitled "An act granting a pension to Andrew J. Wilson."

It appears that this man was drafted and entered the service in February, 1865, and was discharged in September of the same year on account of "chronic nephritis and deafness."

In 1882 he filed his application for a pension, alleging that in June, 1865, from exposure, he contracted rheumatism. Afterward he described his trouble as inflammation of the muscles of the back, with pain in the kidneys. In another statement, filed in December, 1884, he alleges that while in the service he contracted diarrhea, and was injured in one of his testicles, producing a rupture.

Whatever else may be said of this claimant's achievements during his short military career, it must be conceded that he accumulated a great deal of disability.

There is no doubt in my mind that whatever ailments he may honestly lay claim to, his title to the same was complete before he entered the Army.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. The committee submitted a report on the veto message and accompanying bill, which was ordered to be printed in the Record, and go over until some other day. The bill was called up on the 29th of July, but the House, by a vote of 100 yeas against 121 nays, 101 Representatives not voting, refused to proceed to its consideration. Later in the day the bill came up, was debated, and on the question "Shall the bill pass, the objections of the President to the contrary notwithstanding?" it was decided in the negative by a vote of 106 yeas against 86 nays, 130 Representatives not voting. So two-thirds not voting in the affirmative, the bill was not passed.

GROVER CLEVELAND.—LIX.

*June 23, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 7222, entitled "An act granting a pension to Sallie West."

I base my action upon the opinion, derived from an examination of the circumstances attending the death of the claimant's husband, that his fatal disease did not have its origin in the military service, and was entirely disconnected therewith.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LX.

*June 23, 1886.**To the House of Representatives :*

I return without approval House bill No. 6257, entitled "An act for the relief of Julia Connelly."

It is proposed by this bill to grant a pension to the beneficiary named as the widow of Thomas Connelly.

This man was mustered into the service October 26, 1861. He never did a day's service so far as his name appears, and the muster-out roll of his company reports him as having deserted at Camp Cameron, Pennsylvania, November 14, 1861.

He visited his family about the 1st day of December, 1861, and was found December 30, 1861, drowned in a canal about 6 miles from his home.

Those who prosecute claims for pensions have grown very bold when cases of this description are presented for consideration.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXI.

*June 23, 1886.**To the House of Representatives :*

I herewith return without approval House bill No. 6774, entitled "An act granting a pension to Bruno Schultz."

The application of this claimant for a pension, which was filed a number of years ago, though at one time rejected, has been since opened for re-examination, and is now awaiting additional evidence.

In this condition of this case I think this bill should not be approved.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXII.

*June 23, 1886.**To the House of Representatives :*

I hereby return without approval House bill No. 576, entitled "An act for the relief of Louisa C. Beezeley."

By this bill it is proposed to grant a pension to the beneficiary named, as the widow of Nathaniel Beezeley, who was enrolled in an Indiana

regiment as a farrier in September, 1861. He was discharged July 17, 1862, after having been in the hospital considerable of the short time he was connected with the Army. The surgeon's certificate on his discharge stated that it was granted by reason of "old age," he then being sixty years old.

He never made any claim for pension, but in 1877 his widow filed her declaration, stating that her husband died in 1875 from disease contracted in the service.

I am convinced that the Pension Bureau acted upon entirely satisfactory evidence when this claim was rejected upon the ground that the cause of death originated subsequent to the soldier's discharge.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXIII.

June 23, 1886.

To the House of Representatives:

I hereby return without approval House bill No. 7167, entitled "An act for the relief of Mrs. Maria Hunter."

The beneficiary named in this bill, to whom it is therein proposed to grant a pension at the rate of \$50 a month, on the 23d of March, 1886, filed her application for a pension in the Pension Bureau, where it is still pending, undetermined.

Although the deceased soldier held a high rank, I have no doubt his widow will receive ample justice through the instrumentality organized for the purpose of dispensing the nation's grateful acknowledgment of military service in its defense.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. On July 13 the committee presented a report, which was ordered to be printed in the Record and to lie over. The bill, with the accompanying veto message, was called up on the 16th of July, and postponed until the following Tuesday. The bill was called up for consideration on the 29th of July, and the House refused to consider it by a vote of 93 yeas against 107 nays, 122 Representatives not voting. The bill came before the House on the 30th of July, and, after debate, the question "Shall the bill pass, the objections of the President to the contrary notwithstanding?" was decided in the negative by a vote of 111 yeas against 108 nays, 103 Representatives not voting. So two-thirds not voting in the affirmative, the bill was not passed.

GROVER CLEVELAND.—LXIV.

*June 23, 1886.**To the House of Representatives :*

I return without approval House bill No. 6895, entitled "An act granting a pension to Sarah Harbaugh."

The husband of this claimant enlisted August 1, 1861, and was discharged September 7, 1864. He received a gunshot wound in the left ankle in May, 1863, and died suddenly from disease of the heart October 4, 1881. He was insane before his death; but in my opinion any connection between his injury and his service in the Army is next to impossible.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXV.

*June 23, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 7703, entitled "An act granting a pension to Anna A. Probert."

The husband of this beneficiary was pensioned in 1864. He was a druggist and apothecary at Norwalk, in the State of Ohio. Shortly before his death, in 1878, he went to Memphis for the purpose of giving his professional assistance to those suffering from yellow fever at that place. He was himself attacked by that disease, and died on the 28th day of October, 1878.

His widow has never herself applied for a pension, but a power of attorney has been filed, authorizing the prosecution of her claim by another.

That she has employed an ingenious attorney or agent is demonstrated by the fact that the bill now before me seems to be based upon the theory that Mr. Probert might have recovered from his attack of yellow fever if he had been free from the ailments for which he had been pensioned fourteen years before.

If such speculations and presumptions as this are to be indulged, we shall find ourselves surrounded and hedged in by the rule that all men entering an army were free from disease or the liability to disease before their enlistment, and every infirmity which is visited upon them thereafter is the consequence of army service.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXVI.

*June 23, 1886.**To the House of Representatives :*

I return without approval House bill No. 7162, entitled "An act granting a pension to Martha McIlwain."

R. J. McIlwain, the husband of the claimant, enlisted in 1861, and was discharged in 1862 because of the loss of his right leg by a gunshot wound. He was pensioned for this disability. He died May 15, 1883, from an overdose of morphia. It is claimed by the widow that her husband was in the habit of taking morphia to alleviate the pain he endured from his stump, and that he accidentally took too much.

The case was investigated by a special examiner upon the widow's application for pension, and his report shows that the deceased had been in the habit of taking morphia and knew how to use it; that he had been in the habit of buying six grains at a time, and that his death was caused by his taking one entire purchase of six grains while under the influence of liquor.

In any event it is quite clear that the taking of morphia in any quantity was not the natural result of military service, or injury received therein.

I concur in the judgment of the Pension Bureau which rejected the widow's claim for pension on the ground that "the death of the soldier was not due to his military service."

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXVII.

*June 23, 1886.**To the House of Representatives :*

I hereby return without approval House bill No. 7931, entitled "An act increasing the pension of Clark Boon."

This claimant filed his declaration for pension February 3, 1874, in which he states that he lost his health while a prisoner at Tyler, Tex. On the 19th day of October, 1874, he filed an affidavit, claiming that he contracted diseases of the heart and head while in the service. In a further application, filed January 16, 1878, he abandoned his allegations as to disease, and asks for a pension on account of a gunshot wound in the left ankle. Medical testimony was produced on his behalf tending to show not only a gunshot wound, but a disease of the eyes.

A small pension was at last granted him upon the theory advanced

by a board of surgeons in 1880 that it was "possible that applicant was entitled to a small rating for weakness of ankle."

A declaration was filed June 4, 1885, by which this claimant insists upon an increase of pension on account of the wound and also for disease of eyes and rheumatism.

I am entirely satisfied that all has been done in this case that the most liberal treatment demands.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXVIII.

June 23, 1886.

To the House of Representatives :

I hereby return without approval House bill No. 7257, entitled "An act granting a pension to James H. Darling."

This man enlisted in November, 1861, and was reported as having deserted March 5, 1862. The charge of desertion was, however, removed, and it is stated that he went to his home in Ohio at the date stated, by proper authority, where he remained sick till December, 1862, when he was discharged for disability caused "by a disease of the kidneys known as Bright's disease," from which the physician making the certificate thought "there was no reasonable prospect of his recovery."

The claimant filed his application for pension, alleging that in January, 1862, he contracted rheumatism.

The claim was investigated by a special examiner and rejected, on the ground that the evidence produced failed to show the alleged disability was contracted in the service and in the line of duty.

A medical examination made in 1877 showed that the claimant was "a well-nourished man, sixty-five years old; height, 5 feet 8 inches; weight, 165 pounds." No disability was discovered," but a general stiffness of joints, especially of legs, which he says is much aggravated in stormy weather."

Another examination in 1882 found this victim of war disability with the "appearance of a hale, hearty old man—no disease that was discoverable by examination (without chemical tests), except some lameness from rheumatism." His weight upon this examination is stated to be 186 pounds.

It is evident to me that this man ought not to be pensioned.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. On July 29 it was moved that the House discharge the Committee on Invalid Pensions from the further consideration of the bill and accompanying veto message, and the motion was lost by a vote of 87 yeas against 112 nays, 123 Representatives not voting.

GROVER CLEVELAND.—LXIX.

*June 23, 1886.**To the House of Representatives :*

I return herewith without my approval House bill No. 6372, entitled "An act to pension Charles A. Chase."

This claimant was enrolled September 6, 1864, and mustered out with his detachment June 1, 1865. His brief service contains no record of disability.

But in 1880 he filed a declaration for pension in which he claims that by reason of exposure suffered in the service about the 20th of October, 1864 he contracted disease of the liver and kidneys.

The application for pension was denied January 9, 1884, because there was no record of the alleged diseases, and no satisfactory proof of their contraction in the Army was produced, and because of the meager and unconvincing evidence of disability found by the surgeon on an actual examination of the claimant.

I adopt these as the reasons for my action in withholding my approval of this bill.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be read.

GROVER CLEVELAND.—LXX.

*June 23, 1886.**To the House of Representatives :*

I return herewith without my approval House bill No. 7614, entitled "An act granting an increase of pension to Hezekiah Tillman."

This claimant, in his declaration for pension, filed in 1866, alleges that he received a gunshot wound in his right leg November 25, 1862. He was mustered out with his company September 22, 1864.

He was pensioned for the wound which he claimed to have received as his only injury.

In another declaration, filed in 1872, he alleged that in December, 1862, he was struck in his left eye by some hard substance, which destroyed the vision of that organ.

In a subsequent declaration, filed in 1878, he claimed that he received a shell wound in his left knee in November, 1863.

This latter claim has not been finally acted upon by the Pension Bureau, and I am of the opinion that with the diverse claims for injuries which have been there presented on behalf of the beneficiary named justice will be done in the case.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXI.

June 23, 1886.

To the House of Representatives :

I return without approval House bill No. 6718, entitled "An act granting a pension to William H. Starr."

An application made by this claimant to the Pension Bureau is still pending there, and additional evidence has been called for, which the claim is awaiting before final decision.

I am of the opinion that the investigation there should be fully completed before special legislation is resorted to.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXII.

June 23, 1886.

To the House of Representatives :

I return herewith without approval House bill No. 6192, entitled "An act granting a pension to Mary Norman."

The husband of this claimant was enrolled May 22, 1863, and was mustered out of the service June 1, 1866.

He was wounded in the head February 20, 1864; was treated for the same and returned to duty September 3, 1864.

In her declaration for pension, filed in February, 1880, the claimant claims a pension because of his wound and deafness consequent therefrom, and that he died after he left the service.

In a letter, however, dated October 13, 1880, she states that her husband was drowned while trying to cross Roanoke River in December, 1868.

Her claim was rejected in 1881 on the ground that the cause of the soldier's death was accidental drowning, and was not due to his military service.

In an attempt to meet this objection it was claimed as lately as 1885, on behalf of the widow, that her husband's wound caused deafness to such an extent that at the time he was drowned he was unable to hear the ferryman, with whom he was crossing the river, call out that the boat was sinking.

How he could have saved his life if he had heard the warning is not stated.

It seems very clear to me that this is not a proper case for the granting of a pension.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. On the 9th of July the report of the committee and the views of the minority on the case were filed, ordered to be printed, and to lie over. The views of the minority were presented, and ordered to be printed in the Record. The bill came up on the 30th of July, and, after brief discussion, was ordered to be postponed until the next session.

GROVER CLEVELAND.—LXXIII.

June 29, 1886.

To the Senate :

I hereby return Senate bill No. 1797, entitled "An act granting a pension to John S. Kirkpatrick."

This claimant appears to have enlisted December 10, 1861, and to have been discharged December 20, 1864. He is borne upon the rolls of his company as present up to June, 1862; in July and August, 1862, as on detached service as hospital attendant, and so reported February 28, 1863. In March and April, 1863, he is reported as present, and in May and June, 1863, as on detached service. There is nowhere in his service any record of disability.

He filed his application for a pension in 1880, in which he alleged that from hardship and exposure on a long march in New Mexico in the month of December, 1862, he contracted varicose veins in his legs.

As I understand the record given above, this claimant was on detached service from July, 1862, to February, 1863.

It will be observed that his claim is that he contracted his disability within that time and in December, 1862. He appears also to have served for two years after the date of his alleged injury, and that he did not file his application for pension till about sixteen years afterward.

His claim is still pending undertermined in the Pension Bureau, and if there is merit in it there is no doubt that he will be able to make it apparent.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. On the 24th of July a majority of the committee reported the bill back, and recommending its passage, the objections of the President to the contrary notwithstanding, and the attention of the minority of the committee was called to the report.

GROVER CLEVELAND.—LXXIV.

*June 29, 1886.**To the Senate :*

I hereby return without approval Senate bill No. 1077, entitled "An act granting a pension to Newcomb Parker."

This claimant filed an application for a pension in the year 1880.

Before the passage of the bill herewith returned the Commissioner of Pensions, in ignorance of the action of Congress, allowed his claim under the general law.

As this decision of the Pension Bureau entitles the beneficiary named to draw a pension from the date of filing his application, which under the provisions of the special bill in his favor would only accrue from the time of its passage, I am unwilling that one found worthy to be placed upon the pension-rolls by the Bureau to which he properly applied should be an actual loser by reason of a special interposition of Congress in his behalf.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed. On the 24th of July a majority of the committee reported the bill back, recommending its passage, the objections of the President to the contrary notwithstanding, and the attention of the minority of the committee was called to the report.

GROVER CLEVELAND.—LXXV.

*July 2, 1886.**To the House of Representatives :*

I return without approval House bill No 473, entitled "An act granting a pension to William Boone."

There is not the slightest room for doubt as to the facts involved in this case.

No application for pension was ever made to the Pension Bureau by the beneficiary named in this bill. He enlisted in August, 1862; was in action November, 1862, and taken prisoner and at once paroled. During his parole, and at Aurora, in the State of Illinois, he took part in the celebration of the 4th day of July, 1863, and while so engaged was terribly injured by the discharge of a cannon. He is poor, and has a wife and a number of children.

These facts are derived from the report of the committee in Congress to whom the bill was referred, and from a letter written by the soldier since favorable action was had upon said bill by both houses of Congress,

which letter is now before me. In this letter he says: "I never thought of trying getting a pension until my old comrades urged me to do so."

This declaration does not in the least, I think, militate against the present application for pension, but it tends to show the ideas that have become quite prevalent concerning the facts necessary to be established in order to procure a pension by special act of Congress.

Let it be conceded that during the three months which elapsed between the soldier's enlistment and his capture and parole he was constantly in the field and bravely did his duty. The case presented is that of a brave soldier, not injured in any engagement with the enemy, but honorably captured, and by his parole placed in a condition which prevented, for the time being, his further active military service. He proceeded to his home, or to his friends, and took his place among non-combatants. Eight months afterwards he joined the citizens of the place of his sojourn, and the citizens of every town and hamlet in loyal States, in the usual and creditable celebration of our national holiday. Among the casualties which unfortunately always result from such celebration there occurred a premature discharge of a cannon, which the present claimant for pension was assisting other citizens to discharge and manage.

Whether any of those thus engaged with him were injured is not disclosed; but it is certain that the paroled soldier was very badly hurt.

I am utterly unable to discover any relation between this accident and the military service, or any reason why, if a pension is granted as proposed by this bill, there should not also be a pension granted to any of the companions of the claimant who chanced to be injured at the same time.

A disabled man and a wife and family in need are objects which appeal to the sympathy and charitable feelings of any decent man; but it seems to me that it by no means follows that those intrusted with the people's business and the expenditure of the people's money are justified in so executing the pension laws as that they shall furnish a means of relief in every case of distress or hardship.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXVI.

July 3, 1886.

To the Senate:

I hereby return without approval Senate bill No. 365, entitled "An act for the relief of Martin L. Bundy."

By this bill it is proposed to allow in the settlement by the United States with Mr. Bundy, who was lately a paymaster in the Army, the

sum of \$719.47 for the forage of two horses to which he claims he was entitled while in the service, and which has never been drawn by him. The time during which it is alleged this forage was due is stated to be between July 17, 1862, and April 15, 1866.

This claimant was mustered out as paymaster on the last-mentioned date, and in 1872 a certificate was issued that his accounts having been adjusted, they exhibited no indebtedness on his part to the United States.

Subsequently, however, and in or about the year 1879, it was discovered that by reason of a duplicate credit, which had been allowed him by mistake, he was actually indebted to the Government in the sum of \$528.72.

After the fact had been made known to him the claim embodied in this bill was suggested to or invented by him, which, if allowed, will not only extinguish his indebtedness to the Government, but leave a balance due to him.

By the law and the Army regulations the forage upon which this claim is based is or should be only allowed to those in the service who actually have and use horses in the performance of their duties.

And when thus entitled to forage it was necessary to draw it in kind or in the specific articles permitted every month, and if not thus drawn it could not afterward be claimed. There seems to be no such thing as commutation of forage in such cases.

There is no suggestion that the claimant named in this bill had or used any horses while in the service. If he did and paid for their maintenance and at the time of the settlement of his accounts made no claim for reimbursement, he presents a case of incredible ignorance of his rights or a wonderful lack of that disposition to gain every possible advantage which is usually found among those who deal with the Government.

It is quite apparent that the claim is not valid, and the fact that it is made long after the discovery of his deficit leads to the suspicion that it is insisted on merely for the purpose of paying his debt.

Though in this particular case it would do but little more than to extinguish an indebtedness to the Government, the allowance of this claim would set a precedent which could hardly be ignored, and which, if followed, would furnish another means of attack upon the public Treasury quite as effective as many which are now in active operation.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXVII.

*July 5, 1886.**To the House of Representatives :*

I herewith return without approval House bill No. 7018, entitled "An act granting a pension to Aretus F. Loomis."

The Commissioner of Pensions, before he became aware of the passage of this bill, directed favorable action upon the application of the claimant pending in the Pension Bureau. A certificate has been issued for the payment of a pension to him, dating from September 30, 1882.

In the interest of the claimant I therefore withhold my signature from the bill, as the pension granted by special act would only date from the time of its passage.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXVIII.

*July 5, 1886.**To the House of Representatives :*

I herewith return without approval House bill No. 1818, entitled "An act granting a pension to H. L. Kyler."

A pension was granted to the person named in this bill, dating from September, 1864, for neuralgia and disease of the eyes.

He was mustered into the service, to serve one hundred days, May 14, 1864, and mustered out September 8, 1864.

In 1880 information reached the Pension Bureau that the pensioner was treated for neuralgia and disease of the eyes at various times between the years 1859 and 1864, and this fact appearing to the satisfaction of the Bureau upon the examination which followed the pensioner's name was dropped from the roll.

Afterward another thorough examination of the case was made, when the pensioner was permitted to confront the witnesses against him and produce evidence in his own behalf.

It is claimed that a Dr. Saunders, who testified to treating the pensioner before his enlistment, was exceedingly unfriendly; but he was corroborated by his son and by entries on his books. Another physician, apparently disinterested, also testified to his treatment of the pensioner in 1860 for difficulties with his eyes and ears. The pensioner himself admitted that he had trouble with one of his eyes in 1860, but that he entirely recovered. Six other witnesses testified to the existence of disease of the pensioner's eyes before enlistment.

Though twelve neighbors of the pensioner testified that he was free from neuralgia and disease of the eyes before enlistment, I am of the opinion that the evidence against the pension was quite satisfactory, and that it should not be restored, as the bill before me proposes.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXIX.

July 5, 1886.

To the House of Representatives:

I return herewith without approval House bill No 3640, entitled "An act granting a pension to James T. Irwin."

This claimant enlisted in February, 1864, and was mustered out June 10, 1865. He is reported as absent sick from August 20, 1864, until mustered out. He seems to have been treated for remittent fever, chronic diarrhea, general debility, and palpitation of the heart.

In 1876 he filed a declaration for pension, alleging that at Petersburg, July 1, 1864, he contracted fever and inflammation of the eyes.

He filed an affidavit in January, 1877, in which he states that his diseased eyes resulted from diseased nerves, caused by a wound received June 18, 1864, at Petersburg, and from a consequent abscess on the back of the neck.

In an affidavit filed in July, 1878, he states that in June, 1864, in front of Petersburg, he had his gun smashed in front of his face and his eyes injured, and afterwards he had an abscess on the back of his neck, typhoid fever, and disease of the left lung.

His claim, founded upon these various allegations of injury, was rejected in February, 1879.

In September, 1884, a declaration was filed for a pension, alleging disease of the heart contracted at Petersburg June 16, 1864.

The claimant was examined once in 1882 and twice in 1884 by United States examining surgeons and boards, and it is stated that these examinations failed to reveal any disease or disability except disease of the eyes and an irritable heart, the result of indigestion.

An oculist, who made an examination in 1884, reported that the unnatural condition of claimant's eyes was congenital and in no manner the result of injury or disease.

Upon a consideration of the very short time that the claimant was in actual service, the different claims he has made touching his alleged disability, and the positive results of medical examinations, I am satisfied this pension should not be allowed.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXX.

*July 5, 1886.**To the House of Representatives:*

I return herewith without my approval House bill No. 5306, entitled "An act granting a pension to Roxana V. Rowley."

The beneficiary named in this bill is the widow of Franklin Rowley, who enlisted February 8, 1865, was promoted to first lieutepant March 13, 1865, and was discharged May 22, 1865, having tendered his resignation, as it is stated, on account of incompetency. His tender of resignation was indorsed by the commanding officer of his regiment, as follows: "This man is wholly unfit for an officer."

It will be seen that he was in the service a little more than three months.

In 1880, fifteen years after his discharge, he applied for a pension, alleging that he contracted a disease of the liver while in the service.

Upon an examination of the claim, his attending physician, before enlistment, stated that as early as 1854 the claimant was afflicted with dyspepsia and functional disease of the liver; that he regarded him as incurable, so far as being restored to sound health was concerned, and that if he had been at home at the time when he enlisted he would have advised against it.

The testimony of this physician as to the claimant's condition after his discharge is referred to in the report of the committee of the House to whom this bill was referred, and I do not understand that he is at all impeached. He certainly is better informed than any other person regarding the condition of the man who was his patient.

The soldier died in 1881, sixteen years after his discharge, and his widow filed her claim for pension in 1882, alleging that the death of her husband was caused by a disease of the liver contracted in the service.

Her claim was rejected in 1883, upon the ground that the disease of which her husband died existed prior to his enlistment.

I can not avoid the conclusion, upon all the facts presented, that his death was not chargeable to any incident of his brief military service.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXXI.

*July 5, 1886.**To the House of Representatives :*

I herewith return without approval House bill No. 5021, entitled "An act granting a pension to Mrs. Margaret A. Jacoby."

A pension has been allowed on account of the disability of the claimant's husband, dating from his discharge in 1864.

The beneficiary named in this bill applied for pension in 1885, alleging that she married the soldier in 1864; that he incurred deafness and chronic diarrhea while in the service, from the combined effect of which he partially lost his mind; that on the 7th day of September, 1875, he disappeared, and that after diligent search and inquiry she is unable to learn anything of him since that time.

His disability from Army service should be conceded and his death at some time and in some manner may well be presumed; but the fact that he died from any cause related to his disability or his service in the Army has no presumption and not a single particle of proof to rest upon.

With proper diligence something should be discovered to throw a little light upon this subject.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXXII.

*July 5, 1886.**To the House of Representatives :*

I return without approval House bill No. 3304, entitled "An act to restore the name of Abner Morehead to the pension-roll."

The person mentioned in this bill was pensioned in November, 1867, upon the claim made by him that, in 1863, from hardship and exposure incident to camp life and field duty, he contracted a fever which settled in his eyes, almost wholly destroying his sight. Afterward his pension was increased to \$15 a month, dating from December, 1867, and arrears at the rate of \$8 a month from February, 1864. In 1876 the case was put in the hands of a special agent of the Pension Bureau for examination, and upon his report, showing that the claimant's disease of the eyes existed prior to enlistment, his name was dropped from the rolls.

An application for restoration was made in 1879, and a thorough examination was made by a special examiner in 1885, who reported that the testimony taken conclusively established the fact that the claimant had disease of the eyes prior to the time of enlistment, the result of a

disorder which he specially mentions, and that he was treated for the same more than a year subsequently to 1860. He adds: "There is no merit whatever in this case, and it is evident that he obtained a large sum as pension to which he must have known he was not entitled."

The results of these examinations, instituted for the express purpose of developing the facts, and with nothing apparent to impeach them, should, I think, control as against the statements of neighbors and comrades, based upon mere general observation, and not necessarily covering the period which is important to the controversy.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXXIII.

July 5, 1886.

To the House of Representatives:

I herewith return without approval House bill No. 4782, entitled "An act granting a pension to Elizabeth McKay."

The beneficiary named is the widow of Rowley S. McKay, who, in 1862, seems to have been employed as pilot on the ram *Switzerland*. He seems to have been upon the rolls of two other vessels of the United States, the *Covington* and *General Price*, but was discharged by Admiral Porter in June, 1864, with loss of all pay and emoluments.

He filed an application for pension in 1870, alleging that while on duty as pilot and in action with the rebel ram *Arkansas* his hearing became affected by heavy firing. He also claimed that in February, 1863, while on the vessel *Queen of the West*, she grounded, and to escape capture he got off and floated down the river on a cotton bale, and being in the water about three hours the exposure caused a disease of the urinary organs; and that a few days after, while coming up the river on a transport, the boat was fired into and several balls passed through his left thigh. It seems that this claim was not definitely passed upon, but it is stated that the records failed to show that McKay was in the service of the United States at the time he alleged the contraction of disease of the urinary organs and was wounded in the thigh.

The beneficiary named in this bill never made application for pension to the Pension Bureau, but it appears that she bases her claims to consideration by Congress upon the allegation that, in 1862, while her husband was acting as pilot of the ram or gunboat *Switzerland*, he contracted chronic diarrhea, from which he never recovered, and that he died from the effects of said disease in May, 1874.

It will be observed that among the various causes which the soldier or sailor himself alleged as the grounds of his application for a pension chronic diarrhea is not mentioned.

There does not appear to be any medical testimony to support the claim thus made by the widow, and the cause of death is not definitely stated.

Taking all together, it has the appearance of a case by no means rare, where chronic diarrhea or rheumatism are appealed to as a basis for a pension claim in the absence of something more substantial and definite.

The fact that the claim of the beneficiary has never been presented to the Pension Bureau influences in some degree my action in withholding my approval of this bill.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXXIV.

July 5, 1886.

To the House of Representatives:

I herewith return without approval House bill No. 1505, entitled "An act granting a pension to William Dermody."

By the records of the War Department, which have been furnished me, it appears that this claimant enlisted August 19, 1861; that he deserted August 29, 1862; in November and December, 1862, he is reported as present in confinement in regimental guard-house, to forfeit one month's pay by sentence of regimental court-martial; he is reported as having deserted again in December, 1863, but as present for duty in January and February, 1864. He re-enlisted in the latter month, and was mustered out July 17, 1865, and with his company was paid up to and including July 21, 1865.

He filed a declaration for pension in 1879, alleging that he received a gunshot wound in the thigh at Trenton, N. J., July 21, 1865, and that the wound was inflicted by a member of the Invalid Corps, who was whipping a drummer boy and the claimant interfered in behalf of the boy.

It is quite certain that the transaction took place July 23.

An examining board, in 1880, found pistol shot in thigh, but refused to give the claimant a rating, because, as they report, "from the evidence before the board there is reason to suppose that he was deserting from the barracks at Trenton, July 23, 1865, and was shot by the guard."

This may not be a just suspicion or finding, but he surely was not in the service nor in the performance of any military duty at the time of the injury, nor was he engaged in such manner as to entitle him to indemnification at the hands of the Government.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXXV.

*July 5, 1886.**To the House of Representatives:*

I return herewith without approval House bill No. 3623, entitled "An act granting a pension to William H. Nevil."

This bill directs that the name of the claimant be placed upon the pension-roll "subject to the provisions and limitations of the pension laws."

This very thing was done on the 22d day of June, 1865, and the claimant is in the receipt at the present time of the full amount of pension allowed by our pension laws as administered by the Pension Bureau.

I suppose the intention of the bill was to increase this pension; but it is not framed in such a way as to accomplish that object, or to benefit the claimant in any way whatever.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXXVI.

*July 5, 1886.**To the House of Representatives:*

I herewith return without approval House bill No. 2971, entitled "An act granting a pension to Francis Deming."

This claimant entered the service in August, 1861, and was discharged September 15, 1865.

His hospital record shows that during his service he was treated for various temporary ailments, among which rheumatism is not included.

He filed an application for pension in September, 1884, alleging that in August, 1864, he contracted rheumatism, which had resulted in blindness.

On examination of his case in November, 1884, he stated that his eyesight began to fail in 1882.

There seems to be no testimony showing his condition from the time of his discharge to 1880, a period of fifteen years.

The claim that his present condition of blindness is the result of his Army service is not insisted upon as a reason for granting him relief, as strongly as his sad and helpless condition. The committee of the House to which this bill was referred, after detalling his situation, close their report with these words: "He served well his country in its dire need; his necessities now appeal for relief."

We have here presented the case of a soldier who did his duty during his Army service, and who was discharged in 1865 without any record of having suffered with rheumatism and without any claim of disability arising from the same; he returned to his place as a citizen, and in peaceful pursuits, with chances certainly not impaired by the circumstance that he had served his country, he appears to have held his place in the race of life for fifteen years or more. Then, like many another, he was subjected to loss of sight, one of the saddest afflictions known to human life.

Thereupon, and after nineteen years had elapsed since his discharge from the Army, a pension is claimed for him, upon a very shadowy allegation of the incurrance of rheumatism while in the service, coupled with the startling proposition that this rheumatism resulted, just previous to his application, in blindness. Upon medical examination it appeared that his blindness was caused by amaurosis, which is generally accepted as an affection of the optic nerve.

I am satisfied that a fair examination of the facts in this case justifies the statement that the bill under consideration can rest only upon the grounds that aid should be furnished to this ex-soldier because he served in the Army, and because he a long time thereafter became blind, disabled, and dependent.

The question is whether we are prepared to adopt this principle and establish this precedent.

None of us are entitled to credit for extreme tenderness and consideration toward those who fought their country's battles; these are sentiments common to all good citizens; they lead to the most benevolent care on the part of the Government and deeds of charity and mercy in private life. The blatant and noisy self-assertion of those who, from motives that may well be suspected, declare themselves above all others friends of the soldier, cannot discredit nor belittle the calm, steady, and affectionate regard of a grateful nation.

An appropriation has just been passed setting apart \$76,000,000 of the public money for distribution as pensions, under laws liberally constructed, with a view of meeting every meritorious case; more than a million of dollars was added to maintain the Pension Bureau, which is charged with the duty of a fair, just, and liberal apportionment of this fund.

Legislation has been at the present session of Congress perfected, considerably increasing the rate of pension in certain cases. Appropriations have also been made of large sums for the support of national homes where sick, disabled, or needy soldiers are cared for; and within a few days a liberal sum has been appropriated for the enlargement and increased accommodation and convenience of these institutions.

All this is no more than should be done.

But with all this, and with the hundreds of special acts which have been passed, granting pensions in cases where, for my part, I am will-

ing to confess that sympathy rather than judgment has often led to the discovery of a relation between injury or death and military service, I am constrained by a sense of public duty to interpose against establishing a principle and setting a precedent which must result in unregulated, partial, and unjust gifts of public money under the pretext of indemnifying those who suffered in their means of support as an incident of military service.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions and ordered to be printed.

GROVER CLEVELAND.—LXXXVII.

July 5, 1886.

To the House of Representatives :

I herewith return without approval House bill No. 1059, entitled "An act to grant a pension to Joseph Romiser."

The Pension Bureau reports that the records of the office fail to show that an application has been filed in favor of this claimant, though it is stated in the report of the House committee that such a claim was made and rejected on the ground that the claimant was not at the time of injury in the service of the United States.

It certainly appears from the report of the committee that the beneficiary named in this bill was not in the service of the Government at such a time, and also that he had not been mustered into the service of any State military organization. It is stated that he belonged to Capt. Frank Mason's Company of volunteers, of Frostburg, in the State of Maryland.

Whether this company was organized for the purpose of co-operating at any time with the Union or State forces is not alleged, and it may well have been existing merely for the purpose of neighborhood protection.

Such as it was, the company was ordered in June, 1861, to proceed to Cumberland to repel a threatened attack of Confederate forces. Upon arriving at that place the men were ordered to uncap their muskets. In doing this, and through the negligence of another member of the company whose musket was discharged, the claimant was wounded.

It does not seem to me that the facts in this case, so far as they have been developed, justify the passage of this act.

GROVER CLEVELAND.

The veto message was read on the 9th of July, and, after debate, was referred to the House Committee on Invalid Pensions, by a vote of 92 yeas against 87 nays, 74 Representatives not voting. The committee reported back the veto message on the

14th of July, accompanied by a report in writing, and recommending the passage of the bill, the objections of the President to the contrary notwithstanding. The report was called up on the 16th of July, and, after debate, the question "Will the House, on reconsideration, pass the bill, the President's objections to the contrary notwithstanding?" was decided in the affirmative by a vote of 175 yeas against 38 nays, 109 Representatives not voting. So, two-thirds having voted in favor thereof, the bill was passed by the House over the veto of the President. The bill was received and referred to the Senate Committee on Pensions, with the message of the President, on the 17th of July. The bill was reported back to the Senate on the 20th of July, with the recommendation that the bill do pass, the objections of the President to the contrary notwithstanding. The bill was called up on the 3d of August, and, after a brief debate, the question of reconsideration was decided in the affirmative by a vote of 50 yeas against no nays, 26 Senators being absent. So the bill was passed by the Senate unanimously.

GROVER CLEVELAND.—LXXXVIII.

July 6, 1886.

To the House of Representatives:

I herewith return without approval House bill No. 4642, entitled "An act granting a pension to James Carroll."

The claimant alleges that he was wounded while in the service as a member of Company B, Third Regiment North Carolina Mounted Volunteers, while securing recruits for the regiment at Watauga, N. C., January 25, 1865.

The records of the War Department develop the fact that the name of this man is not borne upon any roll of the company to which he claims to belong.

He stated in his application that he was sworn in by one George W. Perkins—who, it appears, was a private in said company—and that Perkins was with him at the time he was shot.

This is undoubtedly true, and that the claimant was injured by a gunshot is also probably true. He was not, however, at the time regularly in the United States service, but this objection might in some circumstances be regarded as technical. The difficulty is that the fact that he was creditably employed in a service of benefit to the country is not satisfactorily shown. He gives two accounts of the business in which he was engaged, and Mr. Perkins' explanation of the manner in which the two were occupied is somewhat different still.

Carroll's claim, presented to the Pension Bureau, was rejected upon the ground that there was no record of his service on file. But in his testimony he stated that Perkins was wounded on the same occasion as himself, and that he, Perkins, was then a pensioner on account thereof.

The records of the Pension Bureau show that Perkins was pensioned in 1873 on account of three wounds received at the time and place of Carroll's injury.

It also appears that his name was dropped from the rolls in 1877 on the ground that his wounds were not received in the line of duty.

After an investigation made at that time by a special examiner, he reported that Perkins and Carroll had collected a number of men together who made their headquarters at the home of Carroll's mother, and were engaged in plundering the neighborhood; and that, on account of their depredations, they were hunted down by home guards and shot at the time they stated.

If this report is accepted as reliable it should of course lead to the rejection of the claim for pension on the part of Mr. Carroll.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—LXXXIX.

July 6, 1886.

To the House of Representatives :

I herewith return without approval House bill No. 3043, entitled "An act granting a pension to Lewis W. Scanland."

The claimant filed his declaration for a pension in 1884, alleging that he contracted chronic diarrhea while serving in a company of mounted Illinois volunteers in the Black-Hawk war.

The records show that he served from April 18, 1832, to May 28, in the same year.

He was examined by a board of surgeons in 1884, when he was said to be seventy-five years old. In his examination he did not claim to have diarrhea for a good many years. On the contrary he claimed to be affected with constipation, and said he had never had diarrhea of late years, except at times when he had taken medicine for constipation.

I am inclined to think it would have been a fortunate thing if in this case it could have been demonstrated that a man could thrive so well with the chronic diarrhea for fifty-two years, as its existence in the case of this good old gentleman would prove. We should then, perhaps, have less of it in claims for pension.

The fact is in this case there is no disability which can be traced to the forty days' military service of fifty-four years ago, and I think little if any more infirmity than is usually found in men of the age of the claimant.

Entertaining this belief, I am constrained to withhold my signature from this bill.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XC.

July 6, 1886.

To the House of Representatives :

I return herewith without approval House bill No. 5414, entitled "An act granting a pension to Maria Cunningham."

The husband of the beneficiary named in this bill enlisted January 29, 1862, and was discharged January 20, 1865.

He applied for a pension in 1876, alleging a shell wound in the head. His claim was rejected on the ground that there appeared to be no disability from that cause. No other injury or disability was ever claimed by him, but at the time of his examination in 1876 he was found to be sickly, feeble, and emaciated, and suffering from an advanced stage of saccharine diabetes.

His widow filed an application for a pension in 1879, alleging that her husband died in December, 1877, of spinal disease and diabetes, contracted in the service.

Her claim was rejected because evidence was not furnished that the cause of the soldier's death had its origin in the military service.

There seems to be an entire absence of proof of this important fact.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XCI.

July 6, 1886.

To the House of Representatives :

I herewith return without approval House bill No. 4797, entitled "An act granting a pension to Robert H. Stapleton."

This claimant filed an application for pension in the Pension Bureau in 1883, alleging that, while acting as lieutenant-colonel of a New Mexico regiment, on February 21, 1862, the tongue of a caisson struck him, injuring his left side. A medical examination made in 1882 showed a fracture of the ninth, tenth, and eleventh ribs of the left side.

If these fractures were the result of the injury alleged they were immediately apparent, and the delay of twenty-one years in presenting the claim for pension certainly needs explanation.

Claims of this description, by a wise provision of law, must, to be valid, be prosecuted to a successful issue prior to the 4th day of July, 1874.

The rank which this claimant held presupposes such intelligence as admits of no excuse on the ground of ignorance of the law for his failure to present his application within the time fixed by law.

The evidence of disability from the cause alleged is weak, to say the most of it, and I cannot think that such a wholesome provision of law as that above referred to, which limits the time for the adjustment of such claims, should be modified upon the facts presented in this case.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XCII.

July 6, 1886.

To the House of Representatives:

I return herewith without approval House bill No. 2043, entitled "An act to place Mary Karstetter on the pension-roll."

The husband of this beneficiary, Jacob Karstetter, was enrolled June 30, 1864, as a substitute in a Pennsylvania regiment, and was discharged for disability June 20, 1865, caused by a gunshot wound in the left hand.

A declaration for pension was filed by him in 1865, based upon this wound, and the same was granted, dating from June in that year, which he drew till the time of his death, August 21, 1874.

In 1882 his widow filed her application for pension, alleging that he died of wounds received in battle. The claim was made that he was injured while in the Army by a horse running over him.

There is little or no evidence of such an injury having been received; and if this was presented there would be no necessary connection between that and the cause of the soldier's death, which was certified by the attending physician to be gastritis and congestion of the kidneys.

I can hardly see how the Pension Bureau could arrive at any conclusion except that the death of the soldier was not due to his military service, and the acceptance of this finding, after an examination of the facts, leads me to disapprove this bill.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XCIII.

*July 6, 1886.**To the House of Representatives :*

I herewith return without approval House bill No. 5550, entitled "An act to provide for the erection of a public building at Duluth, Minn."

After quite a careful examination of the public needs at the point mentioned, I am entirely satisfied that the public building provided for in this bill is not immediately necessary.

Not a little legislation has lately been perfected, and very likely more will be necessary, to increase miscalculated appropriations for, and correct blunders in, the construction of many of the public buildings now in process of erection.

While this does not furnish a good reason for disapproving the erection of other buildings where actually necessary, it induces close scrutiny, and gives rise to the earnest wish that new projects for public buildings shall for the present be limited to such as are required by the most pressing necessities of the Government's business.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Public Buildings and Grounds, and ordered to be printed.

GROVER CLEVELAND.—XCIV.

*July 6, 1886.**To the House of Representatives :*

I herewith return without approval House bill No. 4426, entitled "An act granting a pension to Fannie E. Evans."

The beneficiary named in this bill is the widow of George S. Evans. He was a soldier in the Mexican war, and entered the Union Army in the war of the rebellion, on the 16th day of October, 1861, as major of a California regiment. He became a colonel in February, 1863, and resigned in April of that year, to take effect on the 31st of May ensuing. His resignation seems to have been tendered on account of private matters, and no mention was then made of any disability. It is stated in the committee's report to the House that in 1864 he accepted the office of adjutant-general of the State of California, which he held for nearly four years.

He died in 1883 from cerebral apoplexy.

In March, 1884, his widow filed an application for pension, based upon the allegation that from active and severe service in a battle with the

Indians at Spanish Fort, in 1863, her husband incurred a hernia, which incapacitated him for active service.

There appears to be evidence to justify this statement, notwithstanding the fact that the deceased during the twenty years that followed before his death made no claim for such disability.

But it seems to me that the effort to attribute his death by apoplexy to the existence of hernia ought not to be successful.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—XCV.

July 6, 1886.

To the House of Representatives:

I herewith return without approval House bill No. 5394, entitled "An act granting a pension to Sally Ann Bradley."

The husband of this proposed beneficiary was discharged from the military service in 1865, after a long service, and was afterward pensioned for gunshot wound.

He died in 1882. The widow appears to have never filed a claim for pension in her own right.

No cause is given of the soldier's death, but it is not claimed that it resulted from his military service, her pension being asked for entirely because of her needs and the faithful service of her husband and her sons.

This presents the question whether a gift in such a case is a proper disposition of money appropriated for the purpose of paying pensions.

The passage of this law would, in my opinion, establish a precedent so far reaching, and open the door to such a vast multitude of claims not on principle within our present pension laws, that I am constrained to disapprove the bill under consideration.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. On the 22d of July the committee presented a report, which was ordered to be printed in the Record, and laid over for the present. The bill, with the veto message, was postponed until the second Tuesday of the following December.

GROVER CLEVELAND.—XCVI.

*July 6, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 5603, entitled "An act granting a pension to Mrs. Catherine McCarty."

The beneficiary is the widow of John McCarty, of the First Missouri Regiment of State Militia Volunteers, who died at Clinton, Mo., April 8, 1864.

The widow filed her claim in 1866, alleging that her husband died while in the service from an overdose of colchicum.

The evidence shows without dispute that on the day previous to the death of the soldier a comrade procured some medicine from the regimental surgeon and asked McCarty to smell and taste it; that he did so, and shortly afterward became very sick and died the next morning.

It is quite evident that the deceased soldier did more than taste this medicine.

Although it would be pleasant to aid the widow in this case, it is hardly fair to ask the Government to grant a pension for the freak or gross heedlessness and recklessness of this soldier.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed. It was reported back on the 10th of July, and the report was ordered to be printed in the Record and laid over. The views of the minority were submitted on the 15th of July, and ordered to be printed in the Record. The bill was called up on the 16th of July, when the report and the views of the minority were read, and a debate ensued, followed by the question on ordering the previous question, which was decided in the affirmative by a vote of 117 yeas against 111 nays, 94 Representatives not voting. So the previous question "Will the House, on reconsideration, pass the bill, notwithstanding the objections of the President?" was ordered, and it was decided in the negative by a vote of 124 yeas against 97 nays, 101 Representatives not voting. So, two-thirds not voting in favor thereof, the bill was not passed.

GROVER CLEVELAND.—XCVII.

*July 6, 1886.**To the House of Representatives :*

I herewith return without my approval House bill No. 6648, entitled "An act for the relief of Edward M. Harrington."

It appears that this claimant was enrolled as a recruit December 31, 1863, and mustered in at Dunkirk, N. Y. He remained at the barracks there until March, 1864, when he was received at the Elmira rendezvous. From there he was sent to his regiment on the 7th day of April, 1864.

He was discharged June 15, 1864, upon a surgeon's certificate of disability, declaring the cause of discharge to be epilepsy, produced by blows of violence over the hypochondrial region while in the service, producing a deformity of sternum.

The claimant filed an application for pension in June, 1879, and in that and subsequent affidavits he alleged that while in barracks at Dunkirk, N. Y., and about the 9th day of January, 1864, and in the line of duty, he was attacked by one Patrick Burnes, who struck him upon the head and stamped upon and kicked him, breaking his collar-bone and a number of ribs, causing internal injury and fits, the latter recurring every two weeks.

It is hardly worth while considering the character of these alleged injuries or their connection with the fits with which the claimant is afflicted.

I am entirely unable to see how the injuries are related to the claimant's Army service.

The Government ought not to be called upon to insure against the quarrelsome propensities of its individual soldiers, nor to compensate one who is worsted in a fight, or even in an unprovoked attack, when the cause of injury is in no way connected with or related to any requirement or incident of military service.

GROVER CLEVELAND.

The veto message was read, and, after a prolonged debate, was referred, with the bill, to the Committee on Invalid Pensions.

GROVER CLEVELAND.—XCVIII.

July 7, 1886.

To the Senate of the United States :

I return without approval Senate bill No. 2281 entitled "An act granting to railroads the right of way through the Indian reservation in Northern Montana."

The reservation referred to stretches across the extreme northern part of Montana Territory, with British America for its northern boundary. It contains an area of over 30,000 square miles. It is dedicated to Indian occupancy by treaty of October 17, 1855, and act of Congress of April 15, 1874. No railroads are within immediate approach to its boundaries, and only one, as shown on recent maps, is under construction in the neighborhood leading in its direction. The surrounding country is sparsely settled, and I have been unable to ascertain that the necessities of commerce or any public exigencies demand this legislation which would affect so seriously the rights and interests of the Indians occupying the reservation.

The bill is in the nature of a general right of way for railroads through this Indian reservation. The Indian occupants have not given their consent to it, neither have they been consulted regarding it, nor is there any provision in it for securing their consent or agreement to the location or construction of railroads upon their lands. No routes are described, and no general directions on which the line of any railroad will be constructed are given.

No particular organized railway company engaged in constructing a railroad toward the reservation and ready and desirous to build its road through the Indian lands to meet the needs and requirements of trade and commerce is named. The bill gives the right to any railroad in the country, duly organized under the laws of any Territory, of any State, or of the United States, except those of the District of Columbia, to enter this Indian country, prospect for routes of travel, survey them and construct routes of travel wherever it may please, with no check save possible disapproval by the Secretary of the Interior of its maps of location, and no limitation upon its acts except such rules and regulations as he may prescribe.

This power vested in the Secretary of the Interior might itself be improvidently exercised and subject to abuse.

No limit of time is fixed within which the construction of railroads should begin or be completed. Without such limitations, speculating corporations would be enabled to seek out and secure the right of way over the natural and most feasible routes with no present intention of constructing railroads along such lines, but with the view of holding their advantageous easements for disposal at some future time to some other corporation for a valuable consideration. In this way the construction of needed railroad facilities in that country could be hereafter greatly obstructed and retarded.

If the United States must exercise its right of eminent domain over the Indian territories for the general welfare of the whole country, it should be done cautiously, with due regard for the interests of the Indians, and to no greater extent than the exigencies of the public service require.

Bills tending somewhat in the direction of this general character of legislation, affecting the rights of the Indians reserved to them by treaty stipulations, have been presented to me during the present session of Congress. They have received my reluctant approval, though I am by no means certain that a mistake has not been made in passing such laws without providing for the consent to such grants by the Indian occupants, and otherwise more closely guarding their rights and interests; and I hoped that each of those bills as it received my approval would be the last of the kind presented. They, however, designated particular railroad companies, laid down general routes over which the respective roads should be constructed through the Indian lands, and specified their direction and termini, so that I was enabled

to reasonably satisfy myself that the exigencies of the public service and the interests of commerce probably demanded the construction of the roads, and that by their construction and operation the Indians would not be too seriously affected.

The bill now before me is much more general in its terms than those which have preceded it. It is a new and wide departure from the general tenor of legislation affecting Indian reservations. It ignores the right of the Indians to be consulted as to the disposition of their lands, opens wide the door to any railroad corporation to do what, under the treaty covering the greater portion of the reservation, is reserved to the United States alone; it gives the right to enter upon Indian lands to a class of corporations carrying with them many individuals not known for any scrupulous regard for the interest or welfare of the Indians; it invites a general invasion of the Indian country, and brings into contact and intercourse with the Indians a class of whites and others who are independent of the orders, regulations, and control of the resident agents.

Corporations operating railroads through Indian lands are strongly tempted to infringe at will upon the reserved rights and the property of Indians, and thus are apt to become so arbitrary in their dealings and domineering in their conduct toward them that the Indians become disquieted, often threatening outbreaks, and periling the lives of frontier settlers and others.

I am impressed with the belief that the bill under consideration does not sufficiently guard against an invasion of the rights and a disturbance of the peace and quiet of the Indians on the reservation mentioned; nor am I satisfied that the legislation proposed is demanded by any exigency of the public welfare.

GROVER CLEVELAND.

The veto message was read and referred to the Senate Committee on Indian Affairs, accompanied by article 8 of the treaty of October 17, 1855, and the message was reported back from the Committee on Indian Affairs on the 17th of July, and placed on the Calendar.

GROVER CLEVELAND.—XCIX.

July 9, 1886.

To the House of Representatives:

I return herewith without approval House bill No. 524, entitled "An act granting a pension to Daniel H. Ross." An application was filed in the Pension Bureau by the beneficiary named in this bill, and considerable testimony was filed in support of the same. I do not understand that the claim has been finally rejected. But, however that may

be, the claimant died, as I am advised, on the 1st day of February last. This, of course, renders the proposed legislation entirely inoperative, if it would not actually prejudice the claim of his surviving widow. She has already been advised of the evidence necessary to complete the claim of her husband, and it is not at all improbable that she will be able to prosecute the same to a successful issue for her benefit. At any rate her rights should not be in the least jeopardized by the completion of the legislation proposed in this bill.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—C.

July 9, 1886.

To the Senate:

I herewith return without approval Senate bill No. 856, entitled "An act to provide for the erection of a public building in the city of Dayton, Ohio."

It is not claimed that the Government has any public department or business which it should quarter at Dayton, except its post-office and internal-revenue office. The former is represented as employing ten clerks, sixteen regular and two substitute letter-carriers, and two special-delivery employés, who I suppose are boys only occasionally in actual service. I do not understand that the present post-office quarters are either insufficient or inconvenient. By a statement prepared by the present postmaster it appears that they are rented by the Government for a period of ten years from the 15th day of October, 1883, at an annual rent of \$2,950, which includes the cost of heating the same.

The office of the internal-revenue collector is claimed to be inadequate, but I am led to believe that this office is fairly accommodated at an annual rental of \$900. It is not impossible that a suggestion to change the area of this revenue district may be adopted, which would relieve any complaint of inadequacy of office room.

With only these two offices to provide for, I am not satisfied that the expenditure of \$150,000 for their accommodation as proposed by this bill is in accordance with sound business principles or consistent with that economy in public affairs which has been promised to the people.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Public Buildings and Grounds, and ordered to be printed.

GROVER CLEVELAND.—OI.

*July 10, 1886.**To the House of Representatives:*

I herewith return without approval House bill No. 5546, entitled "An act for the erection of a public building at Asheville, N. C."

If the needs of the Government are alone considered, the proposed building is only necessary for the accommodation of two terms of the United States court in each year and to provide an office for the clerk of that court, and more commodious quarters for the post office.

The terms of the court are now held in the county court-room at Asheville at an expense to the Government of \$50 for each term; the clerk of the court occupies a room for which an annual rent of \$150 is paid, and the rent paid for the rooms occupied by the post-office is \$180 each year.

The postmaster reports that four employés are regularly engaged in his office, which is now rated as third class.

I have no doubt that the court could be much more conveniently provided for in a new building if one should be erected; but it is represented to me that the regular terms held at Asheville last only two or three weeks each, though special terms are ordered at times to clear the docket. It is difficult to see from any facts presented in support of this bill why the United States court does not find accommodations which fairly answer its needs in the rooms now occupied by it. The floor-space furnished for the terms of the Federal court is stated to be 75 by 100 feet, which, it must be admitted, provides a very respectable court-room.

It is submitted that the necessity to the Government of a proper place to hold its courts is the only consideration which should have any weight in determining upon the propriety of expending the money which will be necessary to erect the proposed new building.

The limit of its cost is fixed in the bill under consideration at the sum of \$80,000; but the history of such projects justifies the expectation that this limit will certainly be exceeded.

I am satisfied that the present necessity for this building is not urgent, and that something may be gained by a delay which will demonstrate more fully the public needs, and thus better suggest the style and size of the building to be erected.

GROVER CLEVELAND.

The veto message was read, and referred, with the accompanying bill, to the House Committee on Public Buildings and Grounds.

GROVER CLEVELAND.—CII.

*July 30, 1886.**To the Senate:*

I return without approval Senate bill No. 63, entitled "An act to authorize the construction of a highway bridge across that part of the waters of Lake Champlain lying between the towns of North Hero and Alburg, in the State of Vermont."

On the 20th day of June, 1884, a bill was approved and became a law having the same title and containing precisely the same provisions and in the exact words of the bill herewith returned.

The records of the War Department indicate that nothing has been done toward building the bridge permitted by such prior act; it is hardly possible that the bill now before me is intended to authorize an additional bridge between the two towns named, and I have been unable to discover any excuse or necessity for new legislation on the subject.

I conclude, therefore, that Congress in passing this bill acted in ignorance of the fact that a law providing for its objects and purposes was already on the statute book.

My approval of the bill is withheld for this reason and in order to prevent an unnecessary and confusing multiplicity of laws.

GROVER CLEVELAND.

The veto message was read, and ordered by the Senate to lie on the table and be printed.

GROVER CLEVELAND.—CIII.

*July 30, 1886.**To the House of Representatives:*

I hereby return without my approval House bill No. 1391, entitled "An act to provide for the erection of a public building at Springfield, Mo." It appears from the report of the committee of the House of Representatives to which this bill was referred that the city of Springfield is in a thriving condition, with stores, banks, and manufactories, and having, with North Springfield, which is an adjoining town, about 20,000 inhabitants. No Federal courts are held at this place, and apparently the only quarters which the Government should provide are such as are necessary for the accommodation of the post-office and the land office located there. The postmaster reports that six employes are engaged in his office. The rooms used as a post-office are now furnished the Government free of expense, and the rent paid for the quarters oc-

cupied as a land office amounts to \$300 annually. Upon the facts presented I am satisfied that the business of the Government at this point can be well transacted for the present without the construction of the proposed building.

GROVER CLEVELAND.

The veto message was read and referred to the House Committee on Public Buildings and Grounds.

GROVER CLEVELAND.—CIV.

July 31, 1886.

To the Senate:

I herewith return without my approval Senate bill No. 1421, entitled "An act granting a pension to William H. Weaver."

The claimant named in this bill enlisted August 12, 1862, and was mustered out of service June 12, 1865. During his service he was treated in hospital for diarrhea and lumbago, and in the reports for May and June, as well as July and August, 1864, he is reported as absent sick.

He filed his application for pension in November, 1877, alleging that in March, 1863, he contracted measles, and in May, 1864, remittent fever, and that as a result of the two attacks he was afflicted with weakness in the limbs and eyes. He made statements afterward in support of his application that he was also troubled in the service with rheumatism and diarrhea.

The case was examined by several special examiners, from which, as reported to me, it appeared from the claimant's admission that he had sore eyes previous to his enlistment, though he claimed they were sound when he entered the Army.

A surgeon who made an examination in March, 1881, reported that he could not find any evidence whatever of disease of the eyes, and nothing to corroborate the claimant's assertion that he was suffering from rheumatism, piles, or diarrhea.

Another surgeon who examined the claimant in 1879 reported that he found the eyelids slightly granulated, producing some irritation of the eyeball, and rendering the eyes a little weak, and that he found no other disability.

In 1882 a surgeon who made an examination reported that he discovered indications that the claimant had suffered at some time with chronic ophthalmia, but that in his opinion his eyes did not disable him in the least, and that the claimant was well nourished and in good health.

The report of the committee to whom this bill was referred in the Senate states that six special examinations have been made in the case, and that two of them were favorable to the claim.

The trouble and expense incurred by the Pension Bureau to ascertain the truth and to deal fairly by this claimant, and the entire absence of any suspicion of bias against the claim in that Bureau, ought to give weight to its determination.

The claim was rejected by the Pension Bureau in July, 1885, upon the ground that disease of the eyes existed prior to enlistment, and that the evidence failed to show that there had existed a pensionable degree of disability, since discharge, from diarrhea or rheumatism.

It will be observed that this is not a case where there was a lack of the technical proof required by the Pension Bureau, but that its judgment was based upon the merits of the application, and affected the very foundation of the claim.

I think it should be sustained; and its correctness is somewhat strengthened by the fact that the claimant continued in active service for more than a year after his alleged sickness, that after filing his claim he added thereto allegation of additional disabilities, and that he made no application for pension until more than twelve years after his discharge.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed.

GROVER CLEVELAND.—CV.

July 31, 1886.

To the Senate:

I return without approval Senate bill No. 2160, entitled "A bill granting a pension to Mary J. Hageman."

The husband of this proposed beneficiary enlisted in 1861, and was wounded by a gunshot which seriously injured his left forearm. In 1864 he was discharged; was afterward pensioned for his wound, and died in August, 1884.

Dr. Hageman, who attended the deceased in his last illness, testifies that he was called to attend him in August, 1884; that he was sick with typho-malarial fever, and that upon inquiry he (the physician) found that it was caused by hard work or overexertion and exposure. He was ill for about ten days.

The application of his widow for pension was rejected in 1885 on the ground that the fatal disease was not due to military service.

I am unable to discover how any different determination could have been reached.

To grant a pension in this case would clearly contravene the present policy of the Government, and either establish a precedent which, if

followed, would allow a pension to the widow of every soldier wounded or disabled in the war, without regard to the cause of death, or would unjustly discriminate in favor of the few thus receiving the bounty of the Government against many whose cases were equally meritorious.

GROVER CLEVELAND.

The veto message was read, referred to the Senate Committee on Pensions, and ordered to be printed.

GROVER CLEVELAND.—CVI.

July 31, 1886.

To the House of Representatives :

I herewith return without approval House bill No. 3363, entitled "An act granting a pension to Jennette Dow."

The husband of the claimant enlisted August 7, 1862; received a gunshot wound in his left knee in September, 1863, and was mustered out with his company June 10, 1865. He was pensioned for his wound in 1878, at the rate of \$4 per month, dating from the time of his discharge, which amount was increased to \$8 per month from June 4, 1880. The pensioned soldier died December 17, 1882, and in 1883 his widow, the claimant, filed an application for pension alleging that her husband's death resulted from his wound. Her claim was rejected in 1885, upon the ground that death was not caused by the wound.

The physician who was present at the time of the death certifies that the same resulted from apoplexy in twelve hours after the deceased was attacked.

It also appears from the statement of this physician that the deceased was employed for years after his discharge from the Army as a railroad conductor, and that at the time of his death he had with difficulty reached his home. He then describes as following the attack the usual manifestations of apoplexy, and adds that he regards the case as one of "hemiplegia, the outgrowth primarily of nerve injury, aggravated by the life's calling, and eventuating in apoplexy, as stated."

Evidence is filed in the Pension Bureau showing that after his discharge he was more or less troubled with his wound, though one witness testifies that he railroaded with him for fifteen years after his injury. I find no medical testimony referred to which, with any distinctness, charges death to the wound; and it would be hardly credible if such evidence was found.

I am sure that in no case, except in an application for pension, would an attempt be made in the circumstances here developed to attribute death from apoplexy to a wound in the knee received nineteen years before the apoplectic attack.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—CVII.

*July 31, 1886.**To the House of Representatives :*

I return without approval House bill No. 9106, entitled "An act granting a pension to Rachel Barnes."

William Barnes, the husband of the beneficiary named in this bill, enlisted in the United States Infantry in February, 1838, and was discharged February 24, 1841.

In 1880 he applied for a pension, alleging that while serving in Florida in 1840 and 1841 he contracted disease of the eyes. He procured considerable evidence in support of his claim, but in 1882, and while still endeavoring to furnish further proof, he committed suicide by hanging.

The inference that his death, thus occasioned, was the result of despondency and despair brought on by his failure to procure a pension, while it adds a sad feature to the case, does not aid in connecting his death with his military service.

That this was the view of the committee of the House to whom the bill was referred is evidenced by the conclusion of their report in these words:

"And while your committee do not feel justified under the law as at present existing in recommending that the name of the widow be placed upon the pension-roll for the purpose of a pension in her own right as widow of the deceased soldier and by reason of the soldier's death, they do think that she should be allowed such pension as, had her husband's claim been favorably determined on the day of his decease, he would have received."

And yet the bill under consideration directs the Secretary of the Interior to place this widow's name on the pension-roll, and to "pay her a pension as such widow from and after the passage of this act, subject to the provisions and limitations of the pension laws."

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—CVIII.

*July 31, 1886.**To the House of Representatives :*

I return herewith without approval House bill No. 8336, entitled "An act granting an increase of pension to Duncan Forbes."

The beneficiary named in this bill enlisted under the name of Alexander Sheret, January 7, 1862, in the Regular Army, and was discharged January 8, 1865.

He applied for a pension in 1879, alleging that he was wounded in his right breast December 31, 1862, and in his right ankle September 20, 1863. He was pensioned in 1883, dating from January 9, 1865, for the ankle wound, but that part of his claim based upon the wound in his breast was rejected upon the ground that there was no record of the same, and the testimony failed to show that such a wound had its origin in the service.

Though the lack of such a record is sufficiently accounted for, I am convinced that, conceding both the wounds alleged were received, this pensioner has been fairly and justly treated.

It appears from the allegations of his application to the Pension Bureau that after the wound in his breast, in December, 1862, he continued his service till September, 1863, when he was wounded again in the ankle, and that with both wounds he served until his discharge, in January, 1865. It also appears from the records that after his discharge from the Army, and on the 3d day of February, 1865, he enlisted as landsman in the United States Navy, and served in that branch of the service for three years.

A medical examination in May, 1885, disclosed the appearance of a gunshot wound in the right breast, which is thus described: "The missile struck the seventh rib of right side and glanced off, leaving a horizontal scar two and one-fourth inches long and one-half inch wide, deeply depressed and firmly adherent.

I credit this claimant with being a good soldier, and I am willing to believe that his insistence upon a greater pension than that already allowed by the Pension Bureau, under liberal general laws enacted for the benefit of himself and all his comrades, is the result of the demoralization produced by ill-advised special legislation on the subject.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—CIX.

August 4, 1886.

To the House of Representatives:

I return without approval House bill No. 5389, entitled "An act granting a pension to Ann Kinney."

This beneficiary applied for a pension in 1877 as the widow of Edward Kinney, alleging that he died September 5, 1875, from the effects of a wound received in the Army. He enlisted November 4, 1861, and was discharged July 28, 1862, on account of a gunshot wound in his left elbow, for which wound he was pensioned in the year 1865.

A physician testifies that the pensioned soldier's death was, in his opinion, brought on indirectly by the intemperate use of intoxicating liquors, and that he died from congestion of the brain.

The marshal of the city where he resided states that on the day of the soldier's death he was called to remove him from a house in which he was making a disturbance, and that finding him intoxicated, he arrested him and took him to the lock-up, and placed him in a cell. In a short time, not exceeding an hour thereafter, he was found dead. He further states that he was addicted to periodical sprees.

Another statement is made that the soldier was an intemperate man, and died very suddenly in the city lock-up, where he had been taken by an officer while on a drunken spree.

This is not a pleasant recital, and as against the widow I should be glad to avoid its effect. But the most favorable phase of the case does not aid her, since her claim rests upon the allegation that her husband was subject to epileptic fits, and died from congestion of the brain while in one of these fits. Even upon this showing the connection between the fits and the wound in the elbow is not made apparent.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—CX.

August 4, 1886.

To the House of Representatives:

I herewith return without approval House bill No. 8556, entitled "An act granting a pension to Abraham Points."

This soldier enlisted August 11, 1864, and was mustered out June 28, 1865.

He was treated during his short time of service for "catarrhal," "constipation," "diarrhea," "jaundice," and "colic."

He filed an application for pension in 1878, alleging that some of his comrades in a joke twisted his arm in such a manner that the elbow joint became stiffened and ankylosed, and that his eyes became sore and have continued to grow worse ever since. There is no record of either of these disabilities.

The application was denied upon the ground, as stated in the report from the Pension Bureau, that the claim "was specially examined, and it was shown conclusively, from the evidence of neighbors and acquaintances of good repute and standing, that the alleged disabilities existed at and prior to claimant's enlistment."

I am satisfied from an examination of the facts submitted to me that this determination was correct.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—CXI.

August 4, 1886.

To the House of Representatives:

I herewith return without approval House bill No. 3551, entitled "An act granting a pension to George W. Cutler, late a private in Company B, Ninth New Hampshire Volunteers."

This claimant enlisted July 12, 1862, and was discharged June 22, 1863, for disability resulting from "scrofulous ulceration of the tibia and fibula of right leg; loss of sight of left eye."

He made a claim for pension in 1865, alleging an injury while loading commissary stores, resulting in spitting of blood, injury to lungs, and heart disease.

This claim was rejected August 31, 1865.

In 1867 he again enlisted in the United States Infantry, and was discharged from that enlistment March 29, 1869, for disability, the certificate stating that "he is unfit for military service by reason of being subject to bleeding of the lungs. He was wounded while in the line of his duty in the United States Army, at Fredericksburg, Va., December 13, 1862. Said wound is not the cause of his disability."

Afterward, and in the year 1879, he filed affidavits claiming that he was wounded by a minie-ball at the battle of Fredericksburg, December 13, 1862, and was injured by falling down an embankment.

In 1883 he filed an affidavit in which he stated that the disability for which he claims a pension arose from injuries received in falling down a bank at Fredericksburg and being tramped on by troops, causing a complication of diseases resulting in general debility.

The statement in the certificate of discharge from his second enlistment as to the wound he received by a minie-ball at Fredericksburg was of course derived from his own statement, as it was related to a prior term of service.

The records of the Adjutant-General's Office furnish no evidence of wounds or injury at Fredericksburg.

The injury alleged at first as a consequence of loading commissary stores seems to have been abandoned by the claimant for the adoption of a wound at Fredericksburg, which in its turn seems to have been abandoned, and a fall down a bank and trampling upon by troops substituted.

Whatever injuries he may have suffered during his first enlistment, and to whatever cause he chooses at last to attribute them, they did not prevent his re-enlistment and passing the physical examination necessary before acceptance.

The surgeon of the Ninth New Hampshire Volunteers, in which he first enlisted, states that he remembers the claimant well; that he was mustered and accepted as a recruit in spite of his (the surgeon's) protest;

that he was physically unfit for duty; that he had the appearance of impaired health, and that his face and neck were marked by one or more deep scars, the result, as the claimant himself alleged, of scrofulous abscesses in early youth. He expresses the opinion that he is attempting to palm off these old scars as evidence of wounds received, and that if he had been wounded, as he claimed, he (the surgeon) would have known it and remembered it.

It is true that whenever in this case a wound is described it is located in the jaw, while some of the medical testimony negatives the existence of any wound.

The contrariety of the claimant's statements, and the testimony and circumstances, tend so strongly to impeach his claim that I do not think the decision of the Pension Bureau should be reversed and the claimant pensioned.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

GROVER CLEVELAND.—CXII.

August 4, 1886.

To the House of Representatives:

I herewith return without my approval House bill No. 7234, entitled "An act granting a pension to Susan Hawes."

The beneficiary named in this bill is the mother of Jeremiah Hawes, who enlisted in February, 1861, in the United States Artillery, and was discharged in February, 1864. He filed a claim for pension in 1881, alleging that in 1862, by the premature discharge of a cannon, he sustained paralysis of his right arm and side. In 1883, while his claim was still pending, he died.

He does not appear to have made his home with his mother altogether, if at all; for some years prior to his death and at the time of its occurrence he was an inmate, or had been an inmate, of a soldier's home in Ohio.

But, whatever may be said of the character of any injuries he may have received in the service, or of his relations to his mother, the cause of his death, it seems to me, can not possibly upon any reasonable theory be attributable to any incident of his military service.

It appears that in July, 1883, while the deceased was on his way from Buffalo, where he had been in a hospital, to the soldier's home in Ohio, he attempted to step on a slowly-moving freight train, and, making a misstep, a wheel of the car passed over his foot, injuring it so badly that it was deemed necessary, by two physicians who were called, to

amputate the foot. An anæsthetic was administered preparatory to the operation, but before it was entered upon the injured man died, having survived the accident but two hours.

The physicians who were present stated that in their opinion death was due to heart disease.

The above account of the death of the soldier is derived from a report furnished by the Pension Bureau, and differs somewhat from the statement contained in the report of the House Committee on Invalid Pensions as related to the intention of the physicians to amputate the injured foot and their administration of an anæsthetic. But the accident and the death two hours thereafter under the treatment of the physicians are conceded facts.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions and ordered to be printed.

GROVER CLEVELAND.—OXIII.

August 4, 1886.

To the House of Representatives:

I herewith return without approval House bill No. 1584, entitled "An act for the relief of Mrs. Aurelia C. Richardson."

Albert H. Fillmore, the son of the beneficiary mentioned in this bill, enlisted in August, 1862, and died in the service, of small-pox, May 20, 1865.

His father having died some time prior to the soldier's enlistment, his mother, in 1858, married Lorenzo D. Richardson. It is stated in the report upon this case from the Pension Bureau that the deceased did not live with his mother after her marriage to Richardson, and that there is no competent evidence that he contributed to her support after that event.

At the time of the soldier's death his step father was a blacksmith, earning at about that time, as it is represented, not less than \$70 a month, and owning considerable property, a part of which still remains to him.

While in ordinary cases of this kind I am by no means inclined to distinguish very closely between dependence at the date of the soldier's death and the date of proposed aid to a needy mother, I think the circumstances here presented, especially the fact of non-residence by the son with his mother, since her second marriage, do not call for a departure from the law governing claims based upon dependence.

GROVER CLEVELAND.

The veto message was read, referred to the House Committee on Invalid Pensions, and ordered to be printed.

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