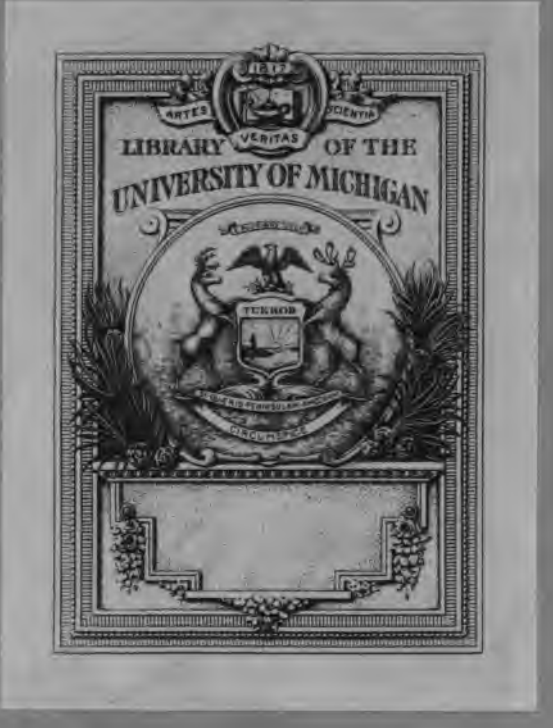
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ILLUSTRATIVE OF THE

HISTORY OF THE UNITED STATES

1776–1861


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SELECT DOCUMENTS

ILLUSTRATIVE OF THE

HISTORY OF THE UNITED STATES

1776-1861

EDITED WITH NOTES

BY

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Preface

It is my practice, in teaching American history, to require each member of the class to read critically a considerable number of important documents. While such acquaintance with the sources is now rightly insisted upon as the basis of all sound historical knowledge, the difficulty of obtaining the documents desired, and the impracticability of making effective use, with large classes, of a text only one or two copies of which are available, is often considerable; and I have thought that others besides myself might be glad to have, in a single volume of moderate compass, an accurately printed collection of such documents as any one pretending even to an elementary acquaintance with the history of the United States may fairly be expected to know.

The present volume covers the period from 1776 to 1861 — from the adoption of the Declaration of Independence to the eve of the Civil War. None of the documents given are "new" or "rare," but many of them have not hitherto been very accessible, save to students fortunate enough to have at hand large libraries. I have aimed to include the important documents which a systematic course of instruction, making some pretension to thoroughness, would be likely to dwell upon, while excluding everything an acquaintance with which could be demanded only of those students devoting especial attention to the subject. Selection is, after all, largely a matter of individual judgment, and I cannot anticipate that my judgment as to what is of primary importance will entirely satisfy every one who may find the book helpful; I hope, however, that no document has been included which a serious student of the period can afford to neglect.

Certain classes of documents, such as tariff acts, acts relating to the organization of the various departments of government, and platforms of political parties, have been omitted altogether, as have decisions of the Supreme Court, except the Dred Scott case, and speeches in Congress, except the Webster-Hayne debate. Some of these texts are not difficult to obtain; others do not admit of use in a work of this character; while the necessity of keeping the volume within reasonable bounds will, I think, make the propriety of many omissions sufficiently evident. Of the

documents given, a large number are in the form of significant extracts only, irrelevant matter and legal verbiage being pruned away wherever possible. A few pieces of great length have been condensed. In all cases, however, omissions and alterations are indicated by the usual signs. Especial pains have been taken to reproduce the text of each document with scrupulous fidelity.

To each document has been prefixed a brief introduction and select bibliography. The introduction is limited to the circumstances of the document itself; and I have thought it worth while to trace somewhat in detail the legislative or diplomatic history of the various selections. As the volume is designed for use either in connection with a narrative text-book, or as a manual to accompany lectures, no attempt has been made to make the introductions, taken together, form a connected story. The bibliographies deal almost exclusively with collateral documentary material, and the most important general discussions, and point the way to fields in which further study of the sources may be pursued. Official publications relating to American history during the constitutional period are often supposed to be a labyrinth, even for the initiated; and I shall be glad if the general bibliographical note renders the use of such matter less difficult, especially for beginners.

I am under obligations to Professor N. S. Shaler for permission to use the text of the Kentucky resolutions of 1798 contained in his history of Kentucky, and to the J. B. Lippincott Company for a like permission to reprint, from their edition of Madison's writings, the Virginia resolutions of 1798. For welcome advice, and assistance of various kinds, I am indebted to Professor Albert Bushnell Hart, of Harvard University; Mr. Wendell P. Garrison, editor of the *Nation;* Major George W. Davis, U.S.A., of the War Records Office at Washington; and my colleague, Professor Henry Crosby Emery; while to Mr. George T. Little, of the Bowdoin College Library, I owe generous privileges in the use of books. Lastly, I should not fail to acknowledge my obligation to many students, members of my classes in Bowdoin College, without whose aid the collection of the data embodied in the present volume would have been much more laborious than it has been.

WILLIAM MACDONALD.

BRUNSWICK, MAINE,
December, 1897.

Contents

Bibliographical Note

OFFICIAL documentary material for the study of the period covered by this volume must be sought in a variety of publications, the most important of which are indicated below. Elaborate bibliographies will be found in Winsor's *Narrative and Critical History*, especially vols. VI. and VII., and Channing and Hart's *Guide to the Study of American History*.

For the period from 1774 to 1788 we have the *Journals of Congress*, 13 vols., published contemporaneously at Philadelphia, and reprinted in 1800–1801. The *Secret Journals*, 4 vols., for the same period, form a separate series.

Of collections of documents for the period prior to 1789, the most important is Force's *American Archives*, of which, however, only 6 vols. of the Fourth Series (1774–1776), and 3 vols. of the Fifth Series (1776), were published.

Sparks's *Diplomatic Correspondence of the American Revolution*, 12 vols., is valuable, but must be used with caution. The best collection is Wharton's *Revolutionary Diplomatic Correspondence*, 6 vols.

From 1789 onward the so-called "Congressional Documents" are of primary importance. The official record of proceedings in the Senate and House of Representatives is the *Journal*, printed annually by each house. The Journal does not contain a report of debates. The original editions of the Journals of the earlier Congresses are now scarce; but there are reprints of those from 1789 to 1815, those of the Senate in 5 vols., those of the House in 9 vols. Certain proceedings of the Senate, omitted from the Journals as issued contemporaneously, have been published separately, from time to time, under the title of *Journal of the Executive Proceedings of the Senate*, sometimes cited as *Executive* or *Secret Journals*. This series, numbering 18 vols., extends to 1869. Executive proceedings of the House, to 1815, are contained in the reprint edition of the House Journals, and, usually, in the *Annals of Congress*.

The documents of the first fourteen Congresses (1789–1817) were not issued in uniform style. From 1789 to 1801, the documents were bound with a variety of titles, such as *Messages*, *Reports*, or simply *Documents*. From 1801 to 1817, the binder's title is, usually, *State Papers*. From the 15th to the 29th Congress, inclusive (1817–1847), the documents are classified as follows: *Senate Journal*, *Senate Documents*, *House Journal*, *House Documents*, with the addition, from the 16th Congress, of *House Reports of Committees;* but from 1817 to 1830, the House Documents often have the binder's title *State Papers*, and, from 1830 to 1847, the binder's title *Executive Documents*. Beginning with the 30th Congress, the classification is: *Senate Journal*, *Senate Executive Documents*, *Senate Miscellaneous Documents*, *Senate Reports of Committees*, *House Journal*, *House Executive Documents* (earlier sets fre-

quently have the binder's title *Executive Documents* only), *House Miscellaneous Documents, House Reports of Committees.* Executive Documents include communications from the President and the Executive Departments; Miscellaneous Documents include all other papers printed by order of either house, except the Reports of Committees. The documents in each series, excepting, of course, the Journals, are numbered consecutively, and are cited by the title of the series, the number of the document, and the number of the Congress and session.

The most important documents from 1789 to about 1838, with the exception of the Journals, are collected in a series entitled *American State Papers,* occasionally, from the size of the volumes, cited as *Folio* State Papers. The classification is as follows: *Foreign Relations,* 6 vols.; *Indian Affairs,* 2 vols.; *Finance,* 5 vols.; *Commerce and Navigation,* 2 vols.; *Military Affairs,* 7 vols.; *Naval Affairs,* 4 vols.; *Post Office,* 1 vol.; *Public Lands,* 8 vols.; *Claims,* 1 vol.; *Miscellaneous,* 2 vols.

Waite's *State Papers and Public Documents,* 15 vols., covers the years 1789–1815. The papers relate chiefly to foreign affairs.

The debates in Congress, from 1789 to 1824, are reported in the *Annals of Congress;* from 1825 to 1837, in the *Register of Debates,* frequently cited as *Congressional Debates;* from 1833 to 1873, in the *Congressional Globe;* and, since 1873, in the *Congressional Record.* The *Register* and *Globe* overlap, the period from the 1st session of the 23d Congress to the 1st session of the 25th Congress, inclusive, being covered by both works. Until the 2d session of the 3d Congress, the Senate sat with closed doors; no record of the debates, therefore, will be found in the *Annals* for that period. The acts of Congress, and, frequently, important documents, are printed as appendices to the volumes for each Congress of each of the above series, except the *Record;* but the texts are not authoritative.

Benton's *Abridgment of Debates in Congress,* 16 vols., is a well-executed work, very useful where the originals cannot be had. It ends with 1850.

There are several useful indexes to the public documents. Documents to 1863 are indexed in the catalogue of the Boston Public Library, and to 1877 in the catalogue of the Boston Athenæum. An index to the Journals, 1st to 10th Congress, inclusive, forms *House Report 1776,* 46th Cong., 2d Sess.; this is continued, 11th to 16th Congress, inclusive, in *House Report 1856,* 47th Cong., 1st Sess. An index to the Executive Documents of the House, to the end of the 14th Congress, is in *House Document 163,* 18th Cong., 1st Sess.; for an index to the House Executive Documents and Reports of Committees, 22d to 25th Congress, see *House Documents,* 25th Cong., 3d Sess. McPherson's *Consolidated Index* to the House Executive Documents, 26th to 40th Congress, and a similar index, for the same period, to the House Reports of Committees, are helpful, as are McKee's indexes to the Reports of Committees of both Senate and House, 1815–1887. The best guide to the contents of the various series is Ames's *List of Congressional Documents,* 15th to 51st Congress. Poore's *Catalogue of Government Publications* is not of great practical usefulness.

The acts of Congress, public and private, are published under the title of *Statutes at Large.* Vol. 6 contains private laws to 1845; vol. 7, Indian

treaties; vol. 8, foreign treaties, and a general index to 1845. Later volumes are separately indexed.

Public laws of a general and permanent nature are separately compiled, from time to time, under a topical classification, and are then known as *Revised Statutes*. There have been several editions of the Revised Statutes, the latest being that of 1878. A Supplement, vol. 1, 2d edition, continues the revision to cover the years 1874–1891; and vol. 2, to cover the years 1892–1895.

The treaties between the United States and foreign powers, with the exception of postal treaties, have been several times compiled. The collection cited in this volume is entitled *Revised Statutes of the United States relating to the District of Columbia and Post Roads, . . . together with the Public Treaties in force on the first day of December, 1873*, published in 1875. The treaties, arranged alphabetically by countries, fill the last half of the volume, which is paged separately. A later and somewhat more accessible collection is the volume of *Treaties and Conventions*, 1889, printed as *Senate Exec. Doc. 47*, 48th Cong., 2d Sess., with valuable notes by J. C. Bancroft Davis. The two collections show minor variations in text, and neither agrees with the text in vol. 8 of the *Statutes at Large*.

The decisions of the United States Supreme Court, to 1874, are cited by the name of the reporter, as follows: *Dallas*, 1790–1800, 4 vols.; *Cranch*, 1801–1815, 9 vols.; *Wheaton*, 1816–1827, 12 vols.; *Peters*, 1828–1842, 16 vols.; *Howard*, 1843–1860, 24 vols.; *Black*, 1861–1862, 2 vols.; *Wallace*, 1863–1874, 23 vols. From 1875 to 1881 the reports, 15 vols., are cited sometimes as *Otto*, sometimes as *United States Reports;* since 1881 the title is *United States Reports*.

Select Documents

Illustrative of the

History of the United States

No. 1. Declaration of Independence

July 4, 1776

JUNE 7, 1776, Richard Henry Lee of Virginia submitted to the Continental Congress three resolutions, the first of which declared "That these United Colonies are, and of right ought to be, free and independent States, that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." The resolutions were seconded by John Adams, and on the 10th a committee, consisting of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert R. Livingstone, was appointed "to prepare a declaration to the effect of the said first resolution." On the 28th the committee brought in a draft of a declaration of independence. The resolution previously submitted was adopted July 2; on the 4th the Declaration of Independence was agreed to, and signed by John Hancock as president of the Congress. Congress directed that copies be sent "to the several Assemblies, Conventions, and Committees or Councils of Safety, and to the several commanding officers of the continental troops; that it be proclaimed in each of the United States, and at the head of the army." The members of Congress signed the Declaration August 2.

REFERENCES. — *Text* in *Revised Statutes* (ed. 1878). There are many reprints. A facsimile of the engrossed copy is in Force's *American Archives*, series V., vol. I., at p. 1597; a printed copy showing Jefferson's original draft and the changes made by Congress is in the *Madison Papers*, I., 19–27. The *Journal of Congress* (ed. 1800), II., gives the proceedings; Jefferson's notes of the debates are in the *Madison Papers*, I. Bancroft's *United States* (ed. 1860), VIII., chaps. 69, 70, gives abstracts of speeches in Congress, and a discussion of the Declaration itself. See also Ellis, in Winsor's *Narrative and Critical History*, VI., 231–274, and bibliographical notes; Frothingham's *Rise of the Republic*, chap. 11; Story's *Commentaries* (ed. 1833), I., 190–208; Randall's *Jefferson*, I., chaps. 4, 5.

In Congress, July 4, 1776,

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA,

WHEN in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected

them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury

For transporting us beyond Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and

fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

New Hampshire — JOSIAH BARTLETT, WM. WHIPPLE, MATTHEW THORNTON.

Massachusetts Bay — SAML. ADAMS, JOHN ADAMS, ROBT. TREAT PAINE, ELBRIDGE GERRY.

Rhode Island — STEP. HOPKINS, WILLIAM ELLERY.

Connecticut — ROGER SHERMAN, SAM'EL HUNTINGTON, WM. WILLIAMS, OLIVER WOLCOTT.

New York — WM. FLOYD, PHIL. LIVINGSTON, FRANS. LEWIS, LEWIS MORRIS.

New Jersey — RICHD. STOCKTON, JNO. WITHERSPOON, FRAS. HOPKINSON, JOHN HART, ABRA. CLARK.

Pennsylvania — ROBT. MORRIS, BENJAMIN RUSH, BENJA. FRANKLIN, JOHN MORTON, GEO. CLYMER, JAS. SMITH, GEO. TAYLOR, JAMES WILSON, GEO. ROSS.

Delaware — CÆSAR RODNEY, GEO. READ, THO. M'KEAN.

Maryland — SAMUEL CHASE, WM. PACA, THOS. STONE, CHARLES CARROLL of Carrollton.

Virginia — GEORGE WYTHE, RICHARD HENRY LEE, TH. JEFFERSON, BENJA. HARRISON, THOS. NELSON, jr., FRANCIS LIGHTFOOT LEE, CARTER BRAXTON.

North Carolina — WM. HOOPER, JOSEPH HEWES, JOHN PENN.

South Carolina — EDWARD RUTLEDGE, THOS. HEYWARD, Junr., THOMAS LYNCH, Junr., ARTHUR MIDDLETON.

Georgia — BUTTON GWINNETT, LYMAN HALL, GEO. WALTON.*

No. 2. Articles of Confederation

November 15, 1777

JUNE 11, 1776, the Continental Congress resolved "that a committee be appointed to prepare and digest the form of a confederation to be entered into between these colonies." The committee, consisting of one member from each of the colonies except New Jersey, was appointed the following day. A plan drawn up by John Dickinson of Delaware, a member of the committee, was reported July 12, considered in Committee of the Whole House July 22, and debated at intervals until Nov. 15, 1777, when, with some amendments, it was agreed to. Congress directed that "these articles shall be proposed to the legislatures of all the United States, to be considered, and if approved of by them, they are advised to authorize their delegates to ratify the same in the Congress of the United States; which being done, the same shall become conclusive." A form of circular letter to accompany the Articles was adopted Nov. 17; June 26, 1778, a form of ratification was agreed upon. The delegates from the several States signed the Articles as follows: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, Pennsylvania, Virginia and South Carolina, July 9, 1778; North Carolina, July 21, 1778; Georgia, July 24, 1778; New Jersey, Nov. 26, 1778; Delaware, May 5, 1779; Maryland, March 1, 1781. Congress met under the Articles March 2, 1781.

REFERENCES. — *Text* in *Revised Statutes* (ed. 1878). There are numerous reprints. The proceedings of Congress are in the *Journal* (ed. 1800), II.–VII.; Jefferson's notes are in Elliot's *Debates* (ed. 1836), I., 100–107. The circular letter accompanying the Articles is also in Elliot, I., 99, 100. Story's *Commentaries* (ed. 1833), I., 217–223, gives an analysis of the Articles. See also Bancroft's *United States* (ed. 1866), IX., chap. 26; Pitkin's *United States*, II., chap. 11; Johnston, in *Lalor's Cyclopædia*, I., 574–577; Curtis's *Origin, Formation, and Adoption of the Constitution*, I., chap. 6.

To all to whom these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting.

Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the year of our Lord One Thousand Seven Hundred and Seventy-seven,

* The arrangement of the names of the signers has been changed from that given in the Revised Statutes, to save space. The names are spelled as in the original. — ED.

and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz.

"*Articles of Confederation and perpetual Union between the States of Newhamshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.*

ARTICLE I. THE stile of this confederacy shall be "The United States of America."

ARTICLE II. EACH State retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

ARTICLE III. THE said States hereby severally enter into a firm league of friendship with each other, for their common defence, 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, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ARTICLE IV. THE better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other state of which the owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any State, on the property of the United States, or either of them.

IF any Person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and

be found in any of the United States, he shall upon demand of the Governor or Executive power, of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offence.

Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.

ARTICLE V. FOR the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each State shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each State, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

ARTICLE VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in Congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by Congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any State, except such number only, as shall be deemed necessary by the United States in Congress assembled, for the defence of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State; but every State shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No State shall engage in any war without the consent of the United States in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay, till the United States in Congress assembled can be consulted: nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in Congress assembled, unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in Congress assembled shall determine otherwise.

ARTICLE VII. WHEN land-forces are raised by any State for the common defence, all officers of or under the rank of colonel,

shall be appointed by the Legislature of each State respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

ARTICLE VIII. ALL charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States in Congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States within the time agreed upon by the United States in Congress assembled.

ARTICLE IX. THE United States in Congress assembled, 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 treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever — of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated — of granting letters of marque and reprisal in times of peace — appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of Congress shall be appointed a judge of any of the said courts.

THE United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. When-

ever the legislative or executive authority or lawful agent of any State in controversy with another shall present a petition to Congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as Congress shall direct, shall in the presence of Congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the State, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no State shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdiction as they may respect such lands, and the States which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different States.

THE United States in Congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States — fixing the standard of weights and measures throughout the United States — regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated — establishing and regulating post-offices from one State to another, throughout all the United States, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expenses of the said office — appointing all officers of the land forces, in the service of the United States, excepting regimental officers — appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States — making rules for the government and regulation of the said land and naval forces, and directing their operations.

THE United States in Congress assembled shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated "a Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for manageing the general affairs of the United States under their direction — to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses — to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted, — to build and equip a

navy — to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State; which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expense of the United States; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the United States in Congress assembled: but if the United States in Congress assembled shall, on consideration of circumstances judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such State, unless the legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the United States in Congress assembled.

THE United States in Congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the United States in Congress assembled.

THE Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties,

alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each State on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the Legislatures of the several States.

ARTICLE X. THE committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States in Congress assembled, by the consent of nine States, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine States in the Congress of the United States assembled is requisite.

ARTICLE XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

ARTICLE XII. ALL bills of credit emitted, monies borrowed and debts contracted by, or under the authority of Congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States, and the public faith are hereby solemnly pledged.

ARTICLE XIII. EVERY State shall abide by the determinations of the United States in Congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State.

And whereas it hath pleased the Great Governor of the World to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know ye that we the undersigned delegates, by virtue of the power and authority

to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in Congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the State of Pennsylvania the ninth day of July in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the independence of America.*

No. 3. Treaty of Paris

September 3, 1783

CORNWALLIS surrendered Oct. 19, 1781. News of the surrender reached Versailles Nov. 19, and London Nov. 25, two days before the meeting of Parliament. March 5, 1782, Parliament passed an act enabling the King to make peace or a truce until July 1, 1783. On the 20th Lord North resigned, and the Rockingham ministry came into power, to be followed in July by the Shelburne ministry. England had the task of making peace with America, France, Holland, and Spain, a task which was further complicated by the existence of alliances between France and America and France and Spain, and the hostility of Spain to the United States. Notwithstanding instructions from Congress "to be guided by the wishes of the French court," the American commissioners decided to enter into separate negotiations with Great Britain. April 15, 1782, Franklin received from Lord Shelburne the first communication relative to a treaty. A provisional treaty was signed at Paris Nov. 30, 1782, a cessation of hostilities being declared Jan. 20, 1783. The definitive treaty, in the same terms as the provisional articles, was not signed until Sept. 3, 1783, the interval being taken up with the adjustment of peace between England and France. Congress ratified the treaty Jan. 14, 1784.

REFERENCES. — *Text* in *Revised Statutes relating to the District of Columbia*, etc. (ed. 1875), 266–269. The diplomatic correspondence is given by Wharton, *Dipl. Corres. of the Amer. Rev.*, V., VI., and Sparks, *Dipl. Corres.*, VI., VII. The course of the negotiations is followed in detail by Wharton, *Digest of Intern. Law* (ed. 1887), III., 892–956; compare John Jay, in Winsor's *Nar-*

* The names of the signers are omitted. — ED.

rative and Critical History, VII., 89–169, and correspondence of William Jay and J. Q. Adams in *Mag. of Amer. Hist.*, III., 39–45. Important general accounts are: Bancroft's *United States* (ed. 1874), X., chaps. 26–29; Curtis, in *Harper's Magazine*, LXVI., 666–682, 833–844; Lecky's *England in the 18th Cent.* (Amer. ed.), IV., 218–289. There are valuable notes in Winsor, *op. cit.*, VII., 170–184, on fisheries and northern boundaries under the treaty. Later correspondence regarding the non-execution of certain provisions of the treaty relative to loyalists' estates and the rights of British creditors in United States courts, is in *Amer. State Papers, Foreign Relations*, I., 188–243; see also Ellis, in Winsor, VII., 185–214.

In the name of the Most Holy and Undivided Trinity.

It having pleased the Divine Providence to dispose the hearts of the most serene and most potent Prince George the Third, by the Grace of God King of Great Britain, France, and Ireland, Defender of the Faith, Duke of Brunswick and Luneberg, Arch-Treasurer and Prince Elector of the Holy Roman Empire, &ca., and of the United States of America, to forget all past misunderstandings and differences that have unhappily interrupted the good correspondence and friendship which they mutually wish to restore; and to establish such a beneficial and satisfactory intercourse between the two countries, upon the ground of reciprocal advantages and mutual convenience, as may promote and secure to both perpetual peace and harmony: And having for this desirable end already laid the foundation of peace and reconciliation, by the provisional articles, signed at Paris, on the 30th of Nov'r, 1782, by the commissioners empowered on each part, which articles were agreed to be inserted in and to constitute the treaty of peace proposed to be concluded between the Crown of Great Britain and the said United States, but which treaty was not to be concluded until terms of peace should be agreed upon between Great Britain and France, and His Britannic Majesty should be ready to conclude such treaty accordingly; and the treaty between Great Britain and France having since been concluded, His Britannic Majesty and the United States of America, in order to carry into full effect the provisional articles above mentioned, according to the tenor thereof, have constituted and appointed, that is to say, His Britannic Majesty on his part, David Hartley, esqr., member of the Parliament of Great Britain; and the said United States on their part, John Adams, esqr., late a commissioner of the United States of America at the Court of Versailles, late Delegate in Congress from the State of Massachu-

setts, and chief justice of the said State, and Minister Plenipotentiary of the said United States to their High Mightinesses the States General of the United Netherlands; Benjamin Franklin, esq're, late Delegate in Congress from the State of Pennsylvania, president of the convention of the said State, and Minister Plenipotentiary from the United States of America at the Court of Versailles; John Jay, esq're, late president of Congress, and chief justice of the State of New York, and Minister Plenipotentiary from the said United States at the Court of Madrid, to be the Plenipotentiaries for the concluding and signing the present definitive treaty; who, after having reciprocally communicated their respective full powers, have agreed upon and confirmed the following articles:

ARTICLE I.

His Britannic Majesty acknowledges the said United States, viz. New Hampshire, Massachusetts Bay, Rhode Island, and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, to be free, sovereign and independent States; that he treats with them as such, and for himself, his heirs and successors, relinquishes all claims to the Government, propriety and territorial rights of the same, and every part thereof.

ARTICLE II.

And that all disputes which might arise in future, on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared, that the following are, and shall be their boundaries, viz: From the northwest angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of Saint Croix River to the Highlands; along the said Highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut River; thence down along the middle of that river, to the forty-fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois or Cataraquy; thence along the middle of said river into Lake Ontario, through the middle of said lake until it strikes the communication by water between that lake and Lake Erie; thence

along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication between that lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said lake to the water communication between that lake and Lake Superior; thence through Lake Superior northward of the Isles Royal and Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude. South, by a line to be drawn due east from the determination of the line last mentioned, in the latitude of thirty-one degrees north of the Equator, to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's River; and thence down along the middle of St. Mary's River to the Atlantic Ocean. East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid Highlands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence; comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean; excepting such islands as now are, or heretofore have been, within the limits of the said province of Nova Scotia.

ARTICLE III.

It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulph of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish. And also that the inhabitants of the United

States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use (but not to dry or cure the same on that island) and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

ARTICLE IV.

It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted.

ARTICLE V.

It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective States, to provide for the restitution of all estates, rights, and properties which have been confiscated, belonging to real British subjects, and also of the estates, rights, and properties of persons resident in districts in the possession of His Majesty's arms, and who have not borne arms against the said United States. And that persons of any other description shall have free liberty to go to any part or parts of any of the thirteen United States, and therein to remain twelve months, unmolested in their endeavours to obtain the restitution of such of their estates, rights, and properties as may have been confiscated; and that Congress shall also earnestly recommend to the several States a reconsideration and revision of all acts or laws regarding the premises, so as to render the said laws or acts perfectly consistent, not only with justice and equity, but with that spirit of conciliation which, on the return of the blessings of peace, should universally prevail. And that Congress shall also earnestly recommend to the several States, that the estates, rights, and properties of such last mentioned persons, shall be restored to them, they refunding to any persons who may be now in possession, the bona fide price (where any has been given) which

such persons may have paid on purchasing any of the said lands, rights, or properties, since the confiscation. And it is agreed, that all persons who have any interest in confiscated lands, either by debts, marriage settlements, or otherwise, shall meet with no lawful impediment in the prosecution of their just rights.

ARTICLE VI.

That there shall be no future confiscations made, nor any prosecutions commenc'd against any person or persons for, or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future loss or damage, either in his person, liberty, or property; and that those who may be in confinement on such charges, at the time of the ratification of the treaty in America, shall be immediately set at liberty, and the prosecutions so commenced be discontinued.

ARTICLE VII.

There shall be a firm and perpetual peace between His Britannic Majesty and the said States, and between the subjects of the one and the citizens of the other, wherefore all hostilities, both by sea and land, shall from henceforth cease: All prisoners on both sides shall be set at liberty, and His Britannic Majesty shall, with all convenient speed, and without causing any destruction, or carrying away any negroes or other property of the American inhabitants, withdraw all his armies, garrisons, and fleets from the said United States, and from every port, place, and harbour within the same; leaving in all fortifications the American artillery that may be therein: And shall also order and cause all archives, records, deeds, and papers, belonging to any of the said States, or their citizens, which, in the course of the war, may have fallen into the hands of his officers, to be forthwith restored and deliver'd to the proper States and persons to whom they belong.

ARTICLE VIII.

The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain, and the citizens of the United States.

ARTICLE IX.

In case it should so happen that any place or territory belonging to Great Britain or to the United States, should have been

conquer'd by the arms of either from the other, before the arrival of the said provisional articles in America, it is agreed, that the same shall be restored without difficulty, and without requiring any compensation.

ARTICLE X.

The solemn ratifications of the present treaty, expedited in good and due form, shall be exchanged between the contracting parties, in the space of six months, or sooner if possible, to be computed from the day of the signature of the present treaty. In witness whereof, we the undersigned, their Ministers Plenipotentiary, have in their name and in virtue of our full powers, signed with our hands the present definitive treaty, and caused the seals of our arms to be affix'd thereto.

Done at Paris, this third day of September, in the year of our Lord one thousand seven hundred and eighty-three.

D. HARTLEY. [L.S.]
JOHN ADAMS. [L.S.]
B. FRANKLIN. [L.S.]
JOHN JAY [L.S.]

No. 4. Ordinance of 1787

July 13, 1787

MARCH 1, 1784, the Virginia delegates in Congress, in pursuance of an act of the general assembly of that State, passed Dec. 20, 1783, executed a deed of cession to the United States of the northwestern territory claimed by Virginia; and by act of April 23 Congress provided a temporary government. During the next three years various plans for the government of the territory were brought forward. July 11, 1787, a committee, of which Nathan Dane of Massachusetts was chairman, reported an ordinance for the government of the territory of the United States northwest of the Ohio River; on the 12th a clause forbidding slavery in the territory was added as an amendment; and on the 13th the bill became a law. By act of Aug. 7, 1789, the Congress of the United States continued the ordinance in effect; and the act of May 25, 1790, extended the main provisions of the ordinance to territory south of the Ohio River.

REFERENCES. — *Text* in *Revised Statutes* (ed. 1878). The act of the Virginia assembly, and the deed of cession, are in Poore's *Federal and State Constitutions*, I., 427, 428. The act of 1784 is in the *Journal of Congress* (ed. 1800), IX., 109, 110; Jefferson's plan is in Randall's *Jefferson*, I., 397–399. The detailed history of the ordinance of 1787, and the part played by Manasseh Cutler, were first shown by W. F. Poole, in *North Amer. Rev.*,

CXXII., 229–265; the ordinance proposed in May, 1787, is printed by Poole, *ib.*, 242–244. A fuller account is in the *Life, Journals and Correspondence of Manasseh Cutler*, I., chap. 8. Barrett's *Evolution of the Ordinance of 1787* gives an account of early plans, with maps. See also *Life and Public Services of Arthur St. Clair*, II. (*cf.* review in *Nation*, XXXIV., 383–385); Johnston, in *Lalor's Cyclopædia*, III., 30–34; Hinsdale's *Old Northwest*, chap. 15; and articles in *Mag. of Amer. Hist.*, XVI., 133–147; XXII., 483–486.

An Ordinance for the government of the territory of the United States northwest of the river Ohio.

SECTION 1. *Be it ordained by the United States in Congress assembled*, That the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

SEC. 2. *Be it ordained by the authority aforesaid*, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among, their children and the descendants of a deceased child in equal parts, the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them: and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall, in no case, be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall, be

appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

SEC. 3. *Be it ordained by the authority aforesaid*, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in one thousand acres of land, while in the exercise of his office.

SEC. 4. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

SEC. 5. The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

SEC. 6. The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

SEC. 7. Previous to the organization of the general assembly

the governor shall appoint such magistrates, and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

SEC. 8. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

SEC. 9. So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: *Provided*, That for every five hundred free male inhabitants there shall be one representative, and so on, progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the legislature: *Provided*, That no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee-simple, two hundred acres of land within the same: *Provided, also*, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

SEC. 10. The representatives thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the governor shall issue a writ to the

county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

SEC. 11. The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected the governor shall appoint a time and place for them to meet together, and when met they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress, five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly when, in his opinion, it shall be expedient.

SEC. 12. The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to Congress,

who shall have a seat in Congress, with a right of debating, but not of voting, during this temporary government.

SEC. 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

SEC. 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territories.

ARTICLE II.

The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, *bona fide*, and without fraud previously formed.

ARTICLE III.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

ARTICLE IV.

The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the Federal debts, contracted, or to be contracted, and a proportional part of the expenses of government to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. 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 regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be

admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V.

There shall be formed in the said territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State, in the said territory, shall be bounded by the Mississippi, the Ohio, and the Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however.* And it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatever; and shall be at liberty to form a permanent constitution and State government: *Provided,* The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles, and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ARTICLE VI.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided always,* That

any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

No. 5. Constitution of the United States

September 17, 1787

In January, 1786, the legislature of Virginia adopted a resolution providing for the appointment of commissioners to confer with representatives from other States in regard to the commercial interests of the United States. In response to this resolution, delegates from New York, New Jersey, Pennsylvania, Delaware, and Virginia, met Sept. 1, and reported in favor of a convention of representatives from all the States, to meet at Philadelphia in May following, to consider what further provisions were needed "to make the Constitution of the Federal Government adequate to the exigencies of the Union." A resolution favoring a convention was adopted by Congress, Feb. 21, 1787. The convention was called for May 14; May 25, seven States being represented, George Washington was chosen president, and consideration of the proposed constitution was begun. July 24 the provisions as agreed upon were sent to a Committee of Detail to be embodied in a formal constitution. The committee reported Aug. 6; Sept. 8 a Committee of Style was appointed; on the 15th the amended form of constitution was agreed to, and on the 17th signed by all but three of the delegates present. The Constitution was transmitted to Congress with an explanatory letter, and a resolution indicating the way in which the proposed government should be put into operation. On the 28th of September Congress transmitted the Constitution, with the letter and resolution, to the State legislatures for submission to a convention of delegates in each State. The States ratified the Constitution as follows: Delaware, Dec. 7; Pennsylvania, Dec. 12; New Jersey, Dec. 18, 1787; Georgia, Jan. 2; Connecticut, Jan. 9; Massachusetts, Feb. 7; Maryland, April 28; South Carolina, May 23; New Hampshire, June 21; Virginia, June 25; New York, July 26, 1788; North Carolina, Nov. 21, 1789; Rhode Island, May 29, 1790.

REFERENCES.—Official *text* in *Revised Statutes* (ed. 1878). There are many reprints. The text in the Revised Statutes is accompanied by references to judicial decisions, and an elaborate analytical index. The *Journal* of the

convention was printed at Boston, 1819; it is also in Elliot's *Debates* (ed. 1836), I., 176–348. Madison's notes of the debates are in the *Madison Papers*, II., III., and in Elliot; for Yates's minutes, Elliot, I., 439–515. The various plans submitted are mentioned in Madison's notes and in the *Journal*. The resolution of Sept. 17, the accompanying letter to Congress, and the resolution of Congress, Sept. 28, are in Elliot, I., 52, 53; texts of the ratifications of the States, *ib.*, I., 349–375. There is a brief history of the amendments to the Constitution in *Lalor's Cyclopædia*, I., 607–610. The classical exposition of the Constitution is the *Federalist*, of which there are numerous editions: Dawson's "university edition" has an elaborate analysis. On the sources of the Constitution, Johnston, in *New Princeton Rev.*, IV., 175–190; Robinson, in *Annals of the Amer. Acad. of Polit. and Soc. Science*, I., 203–243; Stevens, *Sources of the Constitution of the United States*. See also Curtis's *Origin, Formation, and Adoption of the Constitution;* Bancroft's *History of the Formation of the Constitution*, bks. III.–V.; Story's *Commentaries* (ed. 1833), vol. I., bk. III., chaps. 1, 2; Curtis, in Winsor's *Narrative and Critical History*, VII., 237–255, and bibliographical note.

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2.* The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those

* The numbers prefixed to the paragraphs in the Revised Statutes are omitted. — ED.

bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President

pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment 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: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. 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 chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

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.

SECTION. 6. The Senators and Representatives shall receive a

Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a 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, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Rep-

resentatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the Credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

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;

To constitute Tribunals inferior to the supreme Court;

To define and Punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

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 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 needful Buildings; — 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.

SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or expost facto Law shall be passed.

No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver

Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE II.

SECTION. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. 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. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority and have an equal Number of Votes, then

the House of Representatives shall immediately chuse by Ballot one of them for President; and if no person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "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."

* This paragraph was superseded by the 12th Article of the amendments. — Ed.

SECTION. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice 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, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the 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 Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. 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.

ARTICLE III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The

Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. The judicial Power 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 Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe

the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State 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 Congress.

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 Claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall 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.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, 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 to all Intents and Purposes, as Part of this 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 of Ratification may be pro-

posed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

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.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth **In Witness** whereof We have hereunto subscribed our Names,

G° WASHINGTON —
*Presidt, and Deputy from Virginia**

* The remaining signatures are omitted. — ED.

of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.*

Article XIII.

Section 1. 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.

Section 2. Congress shall have power to enforce this article by appropriate legislation.†

* In effect Sept. 25, 1804. — Ed.
† In effect Dec. 18, 1865. — Ed.

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such States, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or

any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.*

ARTICLE XV.

SECTION 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.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.†

No. 6. Hamilton's First Report on Public Credit

January 9, 1790

AUGUST 28, 1789, a memorial of certain public creditors of Pennsylvania was presented in the House, "praying the aid and interposition of Congress on behalf of the public creditors, by a permanent appropriation of adequate funds for the punctual payment of the interest of the public debt, or by the adoption of such other means as, in the wisdom of Congress, shall be best calculated to promote the public welfare, and render justice to the individuals who are interested." The memorial was referred to a committee, of which Madison was chairman, which reported on the 10th in favor of deferring action until the next session. On the 21st, after consideration of the report, it was resolved "that this House consider an adequate provision for the support of the public credit, as a matter of high importance to the national honor and prosperity," and "that the Secretary of the Treasury be directed to prepare a plan for that purpose, and to report the same to this House at its next meeting." January 14, 1790, the report on public credit, extracts from which follow, was sent in. The report was taken up Feb. 8, and considered in Committee of the Whole House until March 29, when eight resolutions, agreed to in committee, were reported. The first three resolutions, recommending payment of the foreign debt, together with principal and interest of the domestic debt, were agreed to; the fourth, in favor of the assumption of the State debts, was, by a vote of 29 to 27, recommitted; and the remaining resolutions were laid on the table. On the 30th, the last four resolutions were also recommitted. Consideration of the report in Committee of the Whole House was resumed, and April 26, by a vote of 32 to 18, the committee was discharged "for the present"

* In effect July 28, 1868. — ED. † In effect March 30, 1870. — ED.

from further consideration of so much of the report as related to assumption. The opposition to assumption which had, by this time, developed, strengthened by the arrival of members from North Carolina, bid fair to defeat the scheme. In the meantime, the plan for the location of the national capital had met with difficulty, owing to the rival interests of Pennsylvania and Virginia. Hamilton made use of Jefferson's influence to arrange a compromise, by which, in return for votes in favor of assumption, the capital was to be located at Philadelphia for ten years, and thereafter permanently on the Potomac. Acts of Aug. 4, 10, and 12, 1790, provided for the settlement of the public debt, and for increased duties on imports, substantially as suggested by Hamilton.

REFERENCES. — *Text* in *Amer. State Papers, Finance*, I., 15–25. For the proceedings of the House, see the *Journal*, 1st Cong., 1st and 2d Sess.; for the discussions, see the *Annals of Congress*, or Benton's *Abridgment*, I. The memorial presented Aug. 28 is in the *Annals;* for resolutions and memorials against the act of Aug. 4, 1790, see *Amer. State Papers, Finance*, I., 76–81, 90, 91. A contemporary view of the funding system is in Carey's *Amer. Museum*, VI., 91–98. On Hamilton's financial policy in general, see Lodge's *Hamilton*, chaps. 5, 6. See also McMaster's *United States*, I., 567–584; Hildreth's *United States*, I., 152–219; Von Holst's *United States*, I., 83–94; Bolles's *Financial History of the United States*, II., chaps. 3, 4; Hamilton's *Works* (ed. 1851), V., 454–459; Jefferson's *Works* (ed. 1854), IX., 91–96; Madison's *Writings* (ed. 1865), I., 490–496, 501, 507–522.

TREASURY DEPARTMENT,
January 9, 1790.

The Secretary of the Treasury, in obedience to the resolution of the House of Representatives of the twenty-first day of September last, has, during the recess of Congress, applied himself to the consideration of a proper plan for the support of the public credit, with all the attention which was due to the authority of the House, and to the magnitude of the object.

In the discharge of this duty, he has felt, in no small degree, the anxieties which naturally flow from a just estimate of the difficulty of the task, from a well founded diffidence of his own qualifications for executing it with success, and from a deep and solemn conviction of the momentous nature of the truth contained in the resolution under which his investigations have been conducted, "That an adequate provision for the support of the public credit is a matter of high importance to the honor and prosperity of the United States." . . .

In the opinion of the Secretary, the wisdom of the House, in giving their explicit sanction to the proposition which has been stated, cannot but be applauded by all who will seriously consider

and trace, through their obvious consequences, these plain and undeniable truths:

That exigencies are to be expected to occur, in the affairs of nations, in which there will be a necessity for borrowing;

That loans, in times of public danger, especially from foreign war, are found an indispensable resource, even to the wealthiest of them;

And that, in a country which, like this, is possessed of little active wealth, or, in other words, little moneyed capital, the necessity for that resource must, in such emergencies, be proportionably urgent.

And as, on the one hand, the necessity for borrowing, in particular emergencies, cannot be doubted; so, on the other, it is equally evident, that, to be able to borrow upon good terms, it is essential that the credit of a nation should be well established. . . .

If the maintenance of public credit, then, be truly so important, the next inquiry which suggests itself is, By what means it is to be effected? The ready answer to which question is, by good faith; by a punctual performance of contracts. States, like individuals, who observe their engagements, are respected and trusted, while the reverse is the fate of those who pursue an opposite conduct. . . .

While the observance of that good faith, which is the basis of public credit, is recommended by the strongest inducements of political expediency, it is enforced by considerations of still greater authority. There are arguments for it which rest on the immutable principles of moral obligation. And in proportion as the mind is disposed to contemplate, in the order of Providence, an intimate connexion between public virtue and public happiness, will be its repugnancy to a violation of those principles.

This reflection derives additional strength from the nature of the debt of the United States. It was the price of liberty. The faith of America has been repeatedly pledged for it, and with solemnities that give peculiar force to the obligation. There is, indeed, reason to regret that it has not hitherto been kept; that the necessities of the war, conspiring with inexperience, in the subjects of finance, produced direct infractions; and that the subsequent period has been a continued scene of negative violation, or non-compliance. But a diminution of this regret arises from

the reflection, that the last seven years have exhibited an earnest and uniform effort, on the part of the Government of the Union, to retrieve the national credit, by doing justice to the creditors of the nation; and that the embarrassments of a defective constitution, which defeated this laudable effort, have ceased.

From this evidence of a favorable disposition given by the former Government, the institution of a new one, clothed with powers competent to calling forth the resources of the community, has excited correspondent expectations. A general belief accordingly prevails, that the credit of the United States will quickly be established on the firm foundation of an effectual provision for the existing debt. The influence which this has had at home, is witnessed by the rapid increase that has taken place in the market value of the public securities. From January to November, they rose thirty-three and a third per cent.; and from that period to this time, they have risen fifty per cent. more; and the intelligence from abroad announces effects proportionably favorable to our national credit and consequence.

It cannot but merit particular attention, that, among ourselves, the most enlightened friends of good government are those whose expectations are the highest.

To justify and preserve their confidence; to promote the increasing respectability of the American name; to answer the calls of justice; to restore landed property to its due value; to furnish new resources, both to agriculture and commerce; to cement more closely the union of the States; to add to their security against foreign attack; to establish public order on the basis of an upright and liberal policy; — these are the great and invaluable ends to be secured by a proper and adequate provision, at the present period, for the support of public credit. . . .

The advantage to the public creditors, from the increased value of that part of their property which constitutes the public debt, needs no explanation.

But there is a consequence of this, less obvious, though not less true, in which every other citizen is interested. It is a well known fact, that, in countries in which the national debt is properly funded, and an object of established confidence, it answers most of the purposes of money. Transfers of stock or public debt, are there equivalent to payments in specie; or, in other words, stock, in the principal transactions of business, passes current as specie.

The same thing would, in all probability, happen here under the like circumstances. . . .

It ought not, however, to be expected, that the advantages described as likely to result from funding the public debt, would be instantaneous. It might require some time to bring the value of stock to its natural level, and to attach to it that fixed confidence, which is necessary to its quality as money. Yet the late rapid rise of the public securities encourages an expectation that the progress of stock, to the desirable point, will be much more expeditious than could have been foreseen. And as, in the mean time, it will be increasing in value, there is room to conclude that it will, from the outset, answer many of the purposes in contemplation. Particularly, it seems to be probable, that from creditors, who are not themselves necessitous, it will early meet with a ready reception in payment of debts, at its current price.

Having now taken a concise view of the inducements to a proper provision for the public debt, the next inquiry which presents itself is, What ought to be the nature of such a provision? This requires some preliminary discussions.

It is agreed on all hands, that that part of the debt which has been contracted abroad, and is denominated the foreign debt, ought to be provided for according to the precise terms of the contracts relating to it. The discussions which can arise, therefore, will have reference essentially to the domestic part of it, or to that which has been contracted at home. It is to be regretted that there is not the same unanimity of sentiment on this part as on the other.

The Secretary has too much deference for the opinions of every part of the community, not to have observed one, which has more than once made its appearance in the public prints, and which is occasionally to be met with in conversation. It involves this question: Whether a discrimination ought not to be made between original holders of the public securities, and present possessors, by purchase? Those who advocate a discrimination, are for making a full provision for the securities of the former at their nominal value; but contend that the latter ought to receive no more than the cost to them, and the interest. And the idea is sometimes suggested, of making good the difference to the primitive possessor.

In favor of this scheme, it is alleged, that it would be unreason-

able to pay twenty shillings in the pound, to one who had not given more for it than three or four. And it is added, that it would be hard to aggravate the misfortune of the first owner, who, probably, through necessity, parted with his property at so great a loss, by obliging him to contribute to the profit of the person who had speculated on his distresses.

The Secretary, after the most mature reflection on the force of this argument, is induced to reject the doctrine it contains, as equally unjust and impolitic; as highly injurious, even to the original holders of public securities; as ruinous to public credit.

It is inconsistent with justice, because, in the first place, it is a breach of contract — a violation of the rights of a fair purchaser.

The nature of the contract, in its origin, is, that the public will pay the sum expressed in the security, to the first holder or his assignee. The intent in making the security assignable, is, that the proprietor may be able to make use of his property, by selling it for as much as it may be worth in the market, and that the buyer may be safe in the purchase.

Every buyer, therefore, stands exactly in the place of the seller; has the same right with him to the identical sum expressed in the security; and, having acquired that right, by fair purchase, and in conformity to the original agreement and intention of the Government, his claim cannot be disputed, without manifest injustice. . . .

The impolicy of a discrimination results from two considerations: One, that it proceeds upon a principle destructive of that quality of the public debt, or the stock of the nation, which is essential to its capacity for answering the purposes of money, that is, the security of transfer; the other, that, as well on this account as because it includes a breach of faith, it renders property, in the funds, less valuable, consequently, induces lenders to demand a higher premium for what they lend, and produces every other inconvenience of a bad state of public credit.

It will be perceived, at first sight, that the transferable quality of stock is essential to its operation as money, and that this depends on the idea of complete security to the transferee, and a firm persuasion, that no distinction can, in any circumstances, be made between him and the original proprietor.

The precedent of an invasion of this fundamental principle,

would, of course, tend to deprive the community of an advantage with which no temporary saving could bear the least comparison.

And it will as readily be perceived that the same cause would operate a diminution of the value of stock in the hands of the first as well as of every other holder. The price which any man who should incline to purchase, would be willing to give for it, would be in a compound ratio to the immediate profit it afforded, and the chance of the continuance of his profit. If there was supposed to be any hazard of the latter, the risk would be taken into the calculation, and either there would be no purchase at all, or it would be at a proportionably less price. . . .

But there is still a point in view, in which it will appear perhaps even more exceptionable than in either of the former. It would be repugnant to an express provision of the constitution of the United States. This provision is, that "all debts contracted, and engagements entered into, before the adoption of that constitution, shall be as valid against the United States under it, as under the Confederation;" which amounts to a constitutional ratification of the contracts respecting the debt, in the state in which they existed under the confederation. And, resorting to that standard, there can be no doubt that the rights of assignees and original holders must be considered as equal. . . .

The Secretary, concluding that a discrimination between the different classes of creditors of the United States cannot, with propriety, be made, proceeds to examine whether a difference ought to be permitted to remain between them and another description of public creditors — those of the States, individually. The Secretary, after mature reflection on this point, entertains a full conviction, that an assumption of the debts of the particular States by the Union, and a like provision for them, as for those of the Union, will be a measure of sound policy and substantial justice. . . .

There are several reasons, which render it probable that the situation of the State creditors would be worse than that of the creditors of the Union, if there be not a national assumption of the State debts. Of these it will be sufficient to mention two; one, that a principal branch of revenue is exclusively vested in the Union; the other, that a State must always be checked in the imposition of taxes on articles of consumption, from the want of

power to extend the same regulation to the other States, and from the tendency of partial duties to injure its industry and commerce. Should the State creditors stand upon a less eligible footing than the others, it is unnatural to expect they would see with pleasure a provision for them. The influence which their dissatisfaction might have, could not but operate injuriously, both for the creditors and the credit of the United States. Hence it is even the interest of the creditors of the Union, that those of the individual States should be comprehended in a general provision. Any attempt to secure to the former either exclusive or peculiar advantages, would materially hazard their interests. Neither would it be just, that one class of public creditors should be more favored than the other. The objects for which both descriptions of the debt were contracted, are in the main the same. Indeed, a great part of the particular debts of the States has arisen from assumptions by them on account of the Union. And it is most equitable, that there should be the same measure of retribution for all. There is an objection, however, to an assumption of the State debts, which deserves particular notice. It may be supposed, that it would increase the difficulty of an equitable settlement between them and the United States.

The principles of that settlement, whenever they shall be discussed, will require all the moderation and wisdom of the Government. In the opinion of the Secretary, that discussion, till further lights are obtained, would be premature. All, therefore, which he would now think advisable on the point in question, would be, that the amount of the debts assumed and provided for, should be charged to the respective States, to abide an eventual arrangement. This, the United States, as assignees to the creditors, would have an indisputable right to do. . . .

There is good reason to conclude, that the impressions of many are more favorable to the claim of the principal, than to that of the interest; at least so far as to produce an opinion, that an inferior provision might suffice for the latter.

But, to the Secretary, this opinion does not appear to be well founded. His investigations of the subject have led him to a conclusion, that the arrears of interest have pretensions at least equal to the principal. . . .

The result of the foregoing discussions is this: That there ought to be no discrimination between the original holders of the debt,

and present possessors by purchase. That it is expedient there should be an assumption of the State debts by the Union, and that the arrears of interest should be provided for on an equal footing with the principal.

The next inquiry, in order, towards determining the nature of a proper provision, respects the quantum of the debt, and the present rates of interest.

The debt of the Union is distinguishable into foreign and domestic.

The foreign debt, as stated in schedule B, amounts to, principal, ...	$10,070,307 00
Bearing an interest of four, and partly an interest of five per cent.	
Arrears of interest to the last of December, 1789.	1,640,071 62
Making, together . . .	$11,710,378 62
The domestic debt may be subdivided into liquidated and unliquidated; principal and interest.	
The principal of the liquidated part, as stated in the schedule C, amounts to . . .	$27,383,917 74
Bearing an interest of six per cent.	
The arrears of interest, as stated in the schedule D, to the end of 1790, amount to . .	13,030,168 20
Making, together . . .	$40,414,085 94

The unliquidated part of the domestic debt, which consists chiefly of the continental bills of credit, is not ascertained, but may be estimated at 2,000,000 dollars.

These several sums constitute the whole of the debt of the United States, amounting together to $54,124,464 56. That of the individual States is not equally well ascertained. . . . The Secretary, however, presumes that the total amount may be safely stated at twenty-five millions of dollars, principal and interest. . . .

On the supposition that the arrears of interest ought to be provided for on the same terms with the principal, the annual amount of the interest, which, at the existing rates, would be payable on the entire mass of the public debt, would be —

On the foreign debt, computing the interest on the principal, as it stands, and allowing four per cent. on the arrears of interest, . . .	$542,599 66
On the domestic debt, including that of the States,	4,044,845 15
Making, together, . . .	$4,587,444 81

The interesting problem now occurs: Is it in the power of the United States, consistently with those prudential considerations which ought not to be overlooked, to make a provision equal to the purpose of funding the whole debt, at the rates of interest which it now bears, in addition to the sum which will be necessary for the current service of the Government?

The Secretary will not say that such a provision would exceed the abilities of the country; but he is clearly of opinion that, to make it, would require the extension of taxation to a degree, and to objects, which the true interest of the public creditors forbids. It is therefore to be hoped, and even to be expected, that they will cheerfully concur in such modifications of their claims, on fair and equitable principles, as will facilitate to the Government an arrangement substantial, durable, and satisfactory to the community. . . .

Probabilities are always a rational ground of contract. The Secretary conceives, that there is good reason to believe, if effectual measures are taken to establish public credit, that the Government rate of interest in the United States will, in a very short time, fall at least as low as five per cent.; and that, in a period not exceeding twenty years, it will sink still lower, probably to four. There are two principal causes which will be likely to produce this effect; one, the low rate of interest in Europe; the other, the increase of the moneyed capital of the nation, by the funding of the public debt. . . .

Premising these things, the Secretary submits to the House the expediency of proposing a loan, to the full amount of the debt, as well of the particular States as of the Union, upon the following terms:

First. That, for every hundred dollars subscribed, payable in the debt, (as well interest as principal) the subscriber be entitled, at his option, either to have two-thirds funded at an annuity or yearly interest of six per cent., redeemable at the pleasure of the

Government, by payment of the principal, and to receive the other third in lands in the western territory, at the rate of twenty cents per acre; or, to have the whole sum funded at an annuity or yearly interest of four per cent., irredeemable by any payment exceeding five dollars per annum, on account both of principal and interest, and to receive, as a compensation for the reduction of interest, fifteen dollars and eighty cents, payable in lands, as in the preceding case; or, to have sixty-six dollars and two-thirds of a dollar funded immediately, at an annuity or yearly interest of six per cent., irredeemable by any payment exceeding four dollars and two-thirds of a dollar per annum, on account both of principal and interest, and to have, at the end of ten years, twenty-six dollars and eighty-eight cents funded at the like interest and rate of redemption; or, to have an annuity, for the remainder of life, upon the contingency of fixing to a given age, not less distant than ten years, computing interest at four per cent.; or, to have an annuity, for the remainder of life, upon the contingency of the surviership of the youngest of two persons, computing interest in this case also at four per cent.

In addition to the foregoing loan, payable wholly in the debt, the Secretary would propose that one should be opened for ten millions of dollars, on the following plan:

That, for every hundred dollars subscribed, payable one half in specie, and the other half in debt, (as well principal as interest) the subscriber be entitled to an annuity or yearly interest of five per cent., irredeemable by any payment exceeding six dollars per annum, on account both of principal and interest. [The details of these various plans are then discussed at length.]

In order to keep up a due circulation of money, it will be expedient that the interest of the debt should be paid quarter-yearly. . . .

The remaining part of the task to be performed is to take a view of the means of providing for the debt, according to the modification of it which is proposed. . . .

. . . to pay the interest of the foreign debt, and to pay four per cent. on the whole of the domestic debt, principal and interest, forming a new capital, will require a yearly income of $2,239,163,09 — the sum which, in the opinion of the Secretary, ought now to be provided, in addition to what the current service will require. . . .

With regard to the instalments of the foreign debt, these, in the opinion of the Secretary, ought to be paid by new loans abroad. Could funds be conveniently spared from other exigencies, for paying them, the United States could illy bear the drain of cash, at the present juncture, which the measure would be likely to occasion.

But to the sum which has been stated for payment of the interest, must be added a provision for the current service. This the Secretary estimates at six hundred thousand dollars, making, with the amount of the interest, two millions eight hundred and thirty-nine thousand one hundred and sixty-three dollars and nine cents.

This sum may, in the opinion of the Secretary, be obtained from the present duties on imports and tonnage, with the additions which, without any possible disadvantage, either to trade or agriculture, may be made on wines, spirits, (including those distilled within the United States) teas and coffee. [A discussion of this point, with a detailed statement of the proposed duties, follows.]

The Secretary now proceeds, in the last place, to offer to the consideration of the House his ideas of the steps which ought, at the present session, to be taken towards the assumption of the State debts.

These are, briefly, that concurrent resolutions of the two Houses, with the approbation of the President, be entered into, declaring, in substance —

That the United States do assume, and will, at the first session in the year 1791, provide, on the same terms with the present debt of the United States, for all such part of the debts of the respective States, or any of them, as shall, prior to the first day of January, in the said year, 1791, be subscribed towards a loan to the United States, upon the principles of either of the plans, which shall have been adopted by them, for obtaining a reloan of their present debt.

Provided, that the provision to be made, as aforesaid, shall be suspended, with respect to the debt of any State which may have exchanged the securities of the United States for others issued by itself, until the whole of the said securities shall either be re-exchanged or surrendered to the United States.

And provided, also, that the interest upon the debt assume

be computed to the end of the year 1791; and that the interest to be paid by the United States, commence on the first day of January, 1792.

That the amount of the debt of each State, so assumed and provided for, be charged to such State in account with the United States, upon the same principles upon which it shall be lent to the United States.

That subscriptions be opened for receiving loans of the said debts, at the same times and places, and under the like regulations, as shall have been prescribed in relation to the debt of the United States. . . .

No. 7. Report on Slavery Memorials

March 23, 1790

FEBRUARY 11, 1790, certain memorials adopted by the Quakers in 1789 at their annual meetings in Philadelphia and New York were presented to the House of Representatives, "praying the attention of Congress in adopting measures for the abolition of the Slave Trade; and, in particular, in restraining vessels from being entered and cleared out for the purposes of that trade." The next day a memorial to the same effect from the Pennsylvania Society for Promoting the Abolition of Slavery, signed by Benjamin Franklin as president, was also presented. After heated discussion the memorials, by vote of 43 to 11, were referred to a special committee, which reported March 5; on the 8th the report was referred to the Committee of the Whole House, where it was debated from the 16th to the 23d, when, by vote of 26 to 25, several amendments suggested in committee were considered by the House, and, finally, the reports of the special committee and of the Committee of the Whole House were, by vote of 29 to 25, ordered to be printed in the journal and to lie on the table. The principles laid down in the report formed the basis of the action of Congress for many years in regard to slavery.

REFERENCES. — *Text* of both reports in the *House Journal*, 1st Cong., 2d Sess.; the report of the special committee is also in the *Annals of Congress*, 1st Cong., II., 1414, 1415, and in *Amer. State Papers, Miscellaneous*, I., 12. Full reports of discussions are in the *Annals;* condensed in Benton's *Abridgment*, I. See also Von Holst's *United States*, I., 89–94; Parton's *Franklin*, II., 606–614; Wilson's *Rise and Fall of the Slave Power*, I., 61–67.

REPORT OF THE SPECIAL COMMITTEE.

THE committee to whom were referred sundry memorials from the People called Quakers; and also, a memorial from the Penn-

sylvania Society for promoting the Abolition of Slavery, submit the following report:

That, from the nature of the matters contained in those memorials, they were induced to examine the powers vested in Congress, under the present Constitution, relating to the abolition of slavery, and are clearly of opinion,

First. That the General Government is expressly restrained from prohibiting the importation of such persons "as any of the States now existing shall think proper to admit, until the year one thousand eight hundred and eight."

Secondly. That Congress, by a fair construction of the Constitution, are equally restrained from interfering in the emancipation of slaves, who already are, or who may, within the period mentioned be, imported into, or born within any of the said States.

Thirdly. That Congress have no authority to interfere in the internal regulations of particular States, relative to the instruction of slaves in the principles of morality and religion; to their comfortable clothing, accommodations, and subsistence; to the regulation of their marriages, and the prevention of the violation of the rights thereof, or to the separation of children from their parents; to a comfortable provision in cases of sickness, age, or infirmity; or to the seizure, transportation, or sale, of free negroes; but have the fullest confidence in the wisdom and humanity of the Legislatures of the several States, that they will revise their laws from time to time, when necessary, and promote the objects mentioned in the memorials, and every other measure that may tend to the happiness of slaves.

Fourthly. That, nevertheless, Congress have authority, if they shall think it necessary, to lay at any time a tax or duty, not exceeding ten dollars for each person of any description, the importation of whom shall be by any of the States admitted as aforesaid.

Fifthly. That Congress have authority to interdict, or (so far as it is or may be carried on by citizens of the United States, for supplying foreigners) to regulate the African trade, and to make provision for the humane treatment of Slaves, in all cases while on their passage to the United States, or to foreign ports, as far as it respects the citizens of the United States.

Sixthly. That Congress have also authority to prol

eigners from fitting out vessels, in any port of the United States, for transporting persons from Africa to any foreign port.

Seventhly. That the memorialists be informed, that in all cases to which the authority of Congress extends, they will exercise it for the humane objects of the memorialists, so far as they can be promoted on the principles of justice, humanity, and good policy.

REPORT OF THE COMMITTEE OF THE WHOLE HOUSE.

THE Committee of the Whole House, to whom was committed the report of the committee on the memorials of the People called Quakers, and of the Pennsylvania Society for promoting the Abolition of Slavery, report the following amendments:

Strike out the first clause, together with the recital thereto, and in lieu thereof, insert, "That the migration or importation of such persons as any of the States now existing shall think proper to admit, cannot be prohibited by Congress, prior to the year one thousand eight hundred and eight."

Strike out the second and third clauses, and in lieu thereof insert, "That Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them within any of the States; it remaining with the several States alone to provide any regulations therein, which humanity and true policy may require."

Strike out the fourth and fifth clauses, and in lieu thereof insert, "That Congress have authority to restrain the citizens of the United States from carrying on the African trade, for the purpose of supplying foreigners with slaves, and of providing by proper regulations for the humane treatment, during their passage, of slaves imported by the said citizens into the States admitting such importation."

Strike out the seventh clause.

Ordered, that the said report of the Committee of the Whole House do lie on the table.

No. 8. Hamilton's Second Report on Public Credit

December 13, 1790

IN his report of Jan. 9, 1790, Hamilton had recommended additional duties on distilled spirits, including those produced in the United States; but a bill embodying this suggestion had been rejected by the House June 21, by a vote of 23 to 35. An estimated deficit of about $825,000 had, however, to be provided for. August 9, three days before the adjournment of Congress, a resolution passed the House directing the Secretary of the Treasury to report, on the second Monday of December, "such further provisions as may, in his opinion, be necessary for establishing the public credit." The first fruit of this resolution was the report submitted Dec. 13, recommending certain import and excise duties on distilled spirits. Consideration of the report began Dec. 27; on the 30th a bill imposing additional duties was brought in, and Jan. 27, 1791, passed the House by a vote of 35 to 21. Amendments by the Senate being disagreed to by the House, the bill received its final form from a conference committee; March 3 the act was approved.

REFERENCES. — *Text* in *Amer. State Papers, Finance*, I., 64–67. For the proceedings in the House, see the *Journal*, 1st Cong., 3d Sess.; for the debates, see the *Annals*, or Benton's *Abridgment*, I. The discussions in the Senate are not reported. The act of March 3, 1791, is in *U. S. Stat. at Large*, I., 219–221. Hamilton's report of March 5, 1792, on difficulties attending the execution of the act, is in *Amer. State Papers, Finance*, I., 151–158. See further, Madison's *Writings* (ed. 1865), I., 527–530; Johnston, in *Lalor's Cyclopædia*, III., 1108–1110.

TREASURY DEPARTMENT,
December 13, 1790.

In obedience to the order of the House of Representatives, of the ninth day of August last, requiring the Secretary of the Treasury to prepare and report, on this day, such further provision as may, in his opinion, be necessary for establishing the public credit, the said Secretary respectfully reports:

That the object which appears to be most immediately essential to the further support of public credit, in pursuance of the plan adopted during the last session of Congress, is the establishment of proper and sufficient funds for paying the interest which will begin to accrue after the year one thousand seven hundred and ninety-one, on the amount of the debts of the several States, assumed by the United States, having regard at the same time to the probable or estimated deficiency in those already established, as they respect the original debt of the Union.

In order to this, it is necessary, in the first place, to take a view of the sums requisite for those purposes.

The amount which has been assumed, of the State debts, is	$21,500,000 00
The sum of annual interest upon that amount, which, according to the terms of the proposed loan, will begin to accrue after the year one thousand seven hundred and ninety one, is .	$788,333 33
The estimated deficiency in the funds already established, as they respect the original debt of the United States, is	38,291 40
Making, together	826,624 73

For procuring which sum, the reiterated reflections of the Secretary have suggested nothing so eligible and unexceptionable, in his judgment, as a further duty on foreign distilled spirits, and a duty on spirits distilled within the United States, to be collected in the mode delineated in the plan of a bill, which forms part of his report to the House of Representatives, of the ninth day of January last.

Under this impression, he begs leave, with all deference, to propose to the consideration of the House —

That the following additions be made to the duties on distilled spirits imported from foreign countries, which are specified in the act making further provision for the payment of the debts of the United States, namely: [A detailed statement of the proposed duties follows.]

The product of these several duties (which correspond in their rates with those proposed in the report above referred to, of the ninth of January last) may, upon as good grounds as the nature of the case will admit, prior to an experiment, be computed at eight hundred and seventy-seven thousand and five hundred dollars, the particulars of which computation are contained in the statement which accompanies this report.

This computed product exceeds the sum which has been stated as necessary to be provided, by fifty thousand eight hundred and seventy-five dollars and twenty seven cents; an excess which, if it should be realized by the actual product, may be beneficially applied towards increasing the sinking fund.

The Secretary has been encouraged to renew the proposition of these duties, in the same form in which they were before submitted,* from a belief, founded on circumstances which appeared in the different discussions on the subject, that collateral considerations, which were afterwards obviated, rather than objections to the measure itself, prevented its adoption, during the last session; from the impracticability, which he conceives to exist, of devising any substitute equally conducive to the ease and interest of the community; and from an opinion that the extension of the plan of collection, which it contemplates, to the duties already imposed on wines and distilled spirits, is necessary to a well grounded reliance on their efficacy and productiveness.

The expediency of improving the resource of distilled spirits, as an article of revenue, to the greatest practicable extent, had been noticed upon another occasion. Various considerations might be added to those then adduced, to evince it, but they are too obvious to justify the detail. There is scarcely an attitude in which the object can present itself, which does not invite, by all the inducements of sound policy and public good, to take a strong and effectual hold of it.

The manner of doing it, or, in other words, the mode of collection, appears to be the only point about which a difficulty or question can arise. . . .

The Secretary, however, begs leave to remark, that there appear to him two leading principles, one or the other of which must necessarily characterise whatever plan may be adopted. One of them makes the *security* of the *revenue* to depend chiefly upon the *vigilance* of the *public officers;* the other rests it essentially on the *integrity* of the *individuals* interested to avoid the payment of it.

The first is the basis of the plan submitted by the Secretary; the last has pervaded most, if not all the systems, which have been hitherto practised upon, in different parts of the United States. The oaths of the dealers have been almost the only security for their compliance with the laws.

It cannot be too much lamented, that these have been found inadequate dependence. But experience has, on every trial, manifested them to be such. Taxes or duties, relying for their collection on that security, wholly, or almost wholly, are uniformly

* In the report on public credit, Jan. 9, 1790. — ED.

unproductive. And they cannot fail to be unequal, as long as men continue to be discriminated by unequal portions of rectitude. The most conscientious will pay most; the least conscientious, least. . . .

It may not be improper further to remark, that the two great objections to the class of duties denominated excises, are inapplicable to the plan suggested. These objections are, first, the *summary jurisdiction* confided to the officers of excise, in derogation from the course of the common law, and the right of trial by jury; and, secondly, the general power vested in the same officers, of *visiting and searching, indiscriminately,* the houses, stores, and other buildings, of the dealers in excised articles. But, by the plan proposed, the officers to be employed are to be clothed with no such *summary* jurisdiction, and their *discretionary* power of visiting and searching, is to be restricted to those places which the dealers themselves shall designate, by public insignia or marks, as the depositories of the articles on which the duties are to be laid. Hence, it is one of the recommendations of the plan, that it is not liable to those objections.

Duties of the kind proposed are not novel in the United States as has been intimated in another place. They have existed, to a considerable extent, under several of the State Governments, particularly in Massachusetts, Connecticut, and Pennsylvania. In Connecticut, a State exemplary for its attachment to popular principles, not only all ardent spirits, but foreign articles of consumption, generally, have been the subjects of an excise or inland duty.

If the supposition, that duties of this kind are attended with greater expense in the collection, than taxes on lands, should seem an argument for preferring the latter, it may be observed that the fact ought not too readily to be taken for granted. The state of things in England, is sometimes referred to as an example on this point, but, there, the smallness of the expense in the collection of the land tax, is to be ascribed to the peculiar modification of it, which, proceeding without new assessments, according to a fixed standard, long since adjusted, totally disregards the comparative value of lands, and the variations in their value. The consequence of this is, an inequality so palpable and extreme, as would be likely to be ill relished by the landholders of the United States. If, in pursuit of greater equality, accurate peri-

odical valuations or assessments are to afford a rule, it may well be doubted whether the expense of a land tax will not always exceed that of the kind of duties proposed. . . .

Among other substantial reasons which recommend, as a provision for the public debt, duties upon articles of consumption, in preference to taxes on houses and lands, is this: It is very desirable, if practicable, to reserve the latter fund for objects and occasions which will more immediately interest the sensibility of the whole community, and more directly affect the public safety. It will be a consolatory reflection, that so capital a resource remains untouched by their provision, which, while it will have a very material influence in favor of public credit, will, also, be conducive to the tranquillity of the public mind, in respect to external danger, and will really operate as a powerful guarantee of peace. . . .

But, in order to be at liberty to pursue this salutary course, it is indispensable that an efficacious use should be made of those articles of consumption which are the most proper and the most productive, to which class distilled spirits very evidently belong; and a prudent energy will be requisite, as well in relation to the mode of collection, as to the quantum of the duty.

It need scarcely be observed, that the duties on the great mass of imported articles have reached a point which it would not be expedient to exceed. There is at least satisfactory evidence that they cannot be extended further, without contravening the sense of the body of the merchants; and, though it is not to be admitted as a general rule, that this circumstance ought to conclude against the expediency of a public measure, yet, when due regard is had to the disposition which that enlightened class of our citizens has manifested towards the National Government . . . there will be perceived to exist the most solid reasons against lightly passing the bounds which coincide with their impressions of what is reasonable and proper. It would be, in every view, inauspicious to give occasion for a supposition that trade alone is destined to feel the immediate weight of the hands of Government, in every new emergency of the treasury.

However true, as a general position, that the consumer pays the duty, yet, it will not follow, that trade may not be essentially distressed and injured, by carrying duties on importation to a height which is disproportionate to the mercantile capital of the

country. It may not only be the cause of diverting too large a share of it from the exigencies of business, but, as the requisite advances to satisfy the duties, will, in many, if not in most cases, precede the receipts from the sale of the articles on which they are laid, the consequence will often be sacrifices which the merchant cannot afford to make.

The inconveniences of exceeding the proper limit, in this respect, which will be felt every where, will fall with particular severity on those places which have not the advantage of public banks, and which abound least in pecuniary resources. Appearances do not justify such an estimate of the extent of the mercantile capital of the United States as to encourage to material accumulations on the already considerable rates of the duties on the mass of foreign importation. . . .

A diversification of the nature of the funds is desirable on other accounts. It is clear that less dependence can be placed on one species of funds, and that, too, liable to the vicissitude of the continuance, or interruption of foreign intercourse, than upon a variety of different funds, formed by the union of internal with external objects.

The inference, from these various and important considerations seems to be, that the attempt to extract wholly, from duties on imported articles, the sum necessary to a complete provision for the public debt, would probably be both deceptive and pernicious — incompatible with the interests not less of revenue than of commerce; that resources of a different kind must, of necessity, be explored; and the selection of the most fit objects is the only thing which ought to occupy the inquiry. . . .

To these more direct expedients for the support of public credit, the institution of a national bank presents itself, as a necessary auxiliary. This the Secretary regards as an indispensable engine in the administration of the finances. To present this important object in a more distinct and more comprehensive light, he has concluded to make it the subject of a separate Report. . . .

No. 9. Hamilton's Report on a National Bank

December 13, 1790

HAMILTON'S report on a national bank formed the second part of the plan for the settlement of the revenue elaborated by him in response to the House resolution of Aug. 9, 1790 (see note to No. 8). The report was laid before the House Dec. 14, and on the 23d was transmitted by that body to the Senate. The Senate referred it to a special committee, who brought in a bill Jan. 3 "to incorporate the subscribers to the Bank of the United States"; on the 20th the bill passed the Senate. The House took up the bill Feb. 1, and passed it on the 8th, by a vote of 39 to 20. The bill was not presented to the President until Feb. 14; on the 25th the act was approved.

REFERENCES. — *Text* in *Amer. State Papers, Finance*, I., 67–76. For the proceedings, see the *House and Senate Journals*, 1st Cong., 3d Sess.; for the discussions in the House, see the *Annals*, or Benton's *Abridgment*, I. Debates in the Senate are not reported. The act of Feb. 25 is in *U. S. Stat. at Large*, I., 191–196. Various reports relating to the early operations of the bank are collected in *Amer. State Papers, Finance*, I. See also Randall's *Jefferson*, I., chap. 15; McMaster's *United States*, II., 28–41; Madison's *Writings* (ed. 1865), I., 525, 528–530, 535; Bolles's *Financial Hist. of the United States*, II., chap. 7; White's *Money and Banking*, bk. II., chap. 4.

TREASURY DEPARTMENT,
December 13th, 1790.

In obedience to the order of the House of Representatives, of the ninth day of August last, requiring the Secretary of the Treasury to prepare and report, on this day, such further provision as may, in his opinion, be necessary for establishing the public credit, the said Secretary further respectfully reports:

That, from a conviction (as suggested in his report * herewith presented) that a National Bank is an institution of primary importance to the prosperous administration of the finances, and would be of the greatest utility in the operations connected with the support of the public credit, his attention has been drawn to devising the plan of such an institution, upon a scale which will entitle it to the confidence, and be likely to render it equal to the exigencies of the public. . . .

It is a fact, well understood, that public banks have found admission and patronage among the principal and most enlightened commercial nations. They have successively obtained in Italy,

* Second report on public credit. — ED.

Germany, Holland, England, and France, as well as in the United States. And it is a circumstance which cannot but have considerable weight, in a candid estimate of their tendency, that, after an experience of centuries, there exists not a question about their utility in the countries in which they have been so long established. Theorists and men of business unite in the acknowledgment of it. . . .

The following are among the principal advantages of a bank:

First. The augmentation of the active or productive capital of a country. Gold and silver, where they are employed merely as the instruments of exchange and alienation, have been not improperly denominated dead stock; but when deposited in banks, to become the basis of a paper circulation, which takes their character and place, as the signs or representatives of value, they then acquire life, or, in other words, an active and productive quality. . . .

Secondly. Greater facility to the Government, in obtaining pecuniary aids, especially in sudden emergencies. . . .

Thirdly. The facilitating of the payment of taxes. . . .

It would be to intrude too much on the patience of the House, to prolong the details of the advantages of banks; especially, as all those which might still be particularized, are readily to be inferred as consequences from those which have been enumerated. Their disadvantages, real or supposed, are now to be reviewed. The most serious of the charges which have been brought against them, are:

That they serve to increase usury;

That they tend to prevent other kinds of lending;

That they furnish temptations to overtrading;

That they afford aid to ignorant adventurers, who disturb the natural and beneficial course of trade;

That they give to bankrupt and fraudulent traders, a fictitious credit, which enables them to maintain false appearances, and to extend their impositions; and, lastly,

That they have a tendency to banish gold and silver from the country.

There is great reason to believe, that, on a close and candid survey, it will be discovered that these charges are either destitute of foundation, or that, as far as the evils they suggest have been found to exist, they have proceeded from other, or partial, or

temporary causes, are not inherent in the nature and permanent tendency of such institutions, or are more than counterbalanced by opposite advantages. [The various objections are then taken up in order, and considered at length.]

These several views of the subject appear sufficient to impress a full conviction of the utility of banks, and to demonstrate that they are of great importance, not only in relation to the administration of the finances, but in the general system of the political economy.

The judgment of many concerning them, has, no doubt, been perplexed by the misinterpretation of appearances which were to be ascribed to other causes. The general devastation of personal property, occasioned by the late war, naturally produced, on the one hand, a great demand for money, and, on the other, a great deficiency of it to answer the demand. Some injudicious laws, which grew out of the public distresses, by impairing confidence, and causing a part of the inadequate sum in the country to be locked up, aggravated the evil. The dissipated habits contracted by many individuals during the war, which, after the peace, plunged them into expenses beyond their incomes; the number of adventurers without capital, and, in many instances, without information, who at that epoch rushed into trade, and were obliged to make any sacrifices to support a transient credit; the employment of considerable sums in speculations upon the public debt, which, from its unsettled state, was incapable of becoming itself a substitute: all these circumstances concurring, necessarily led to usurious borrowing, produced most of the inconveniences, and were the true causes of most of the appearances, which, where banks were established, have been by some erroneously placed to their account — a mistake which they might easily have avoided by turning their eyes towards places where there were none, and where, nevertheless, the same evils would have been perceived to exist, even in a greater degree than where those institutions had obtained.

These evils have either ceased, or been greatly mitigated. Their more complete extinction may be looked for from that additional security to property which the constitution of the United States happily gives; (a circumstance of prodigious moment in the scale, both of public and private prosperity) from the attraction of foreign capital, under the auspices of that security, to be employed upon objects, and in enterprises, for which the state

of this country opens a wide and inviting field; from the consistency and stability which the public debt is fast acquiring, as well in the public opinion at home and abroad, as, in fact, from the augmentation of capital which that circumstance and the quarterly payment of interest will afford; and from the more copious circulation which will be likely to be created by a well constituted national bank.

The establishment of banks in this country seems to be recommended by reasons of a peculiar nature. Previously to the Revolution, circulation was in a great measure carried on by paper emitted by the several local governments. In Pennsylvania alone, the quantity of it was near a million and a half of dollars. This auxiliary may be said to be now at an end. And it is generally supposed that there has been, for some time past, a deficiency of circulating medium. How far that deficiency is to be considered as real or imaginary, is not susceptible of demonstration; but there are circumstances and appearances, which, in relation to the country at large, countenance the supposition of its reality. . . .

Assuming it, then, as a consequence, from what has been said, that a National Bank is a desirable institution, two inquiries emerge: Is there no such institution, already in being, which has a claim to that character, and which supersedes the propriety or necessity of another? If there be none, what are the principles upon which one ought to be established? [The organization of the Bank of North America is then examined, and the conclusion drawn that a national bank should be differently constituted.]

The order of the subject leads next to an inquiry into the principles upon which a national bank ought to be organized.

The situation of the United States naturally inspires a wish that the form of the institution could admit of a plurality of branches. But various considerations discourage from pursuing this idea. The complexity of such a plan would be apt to inspire doubts, which might deter from adventuring in it. And the practicability of a safe and orderly administration, though not to be abandoned as desperate, cannot be made so manifest in perspective, as to promise the removal of those doubts, or to justify the Government in adopting the idea as an original experiment. The most that would seem advisable, on this point, is, to insert a provision which may lead to it hereafter, if experience shall more clearly demonstrate its utility, and satisfy those who may have the direc-

tion, that it may be adopted with safety. It is certain that it would have some advantages, both peculiar and important. Besides more general accommodation, it would lessen the danger of a run upon the bank. . . .

Another wish, dictated by the particular situation of the country, is, that the bank could be so constituted as to be made an immediate instrument of loans to the proprietors of land; but this wish also yields to the difficulty of accomplishing it. . . .

Considerations of public advantage suggest a further wish, which is — that the bank could be established upon principles, that would cause the profits of it to redound to the immediate benefit of the State. This is contemplated by many who speak of a national bank, but the idea seems liable to insuperable objections. . . .

It will not follow, from what has been said, that the State may not be the holder of a part of the stock of a bank, and consequently a sharer in the profits of it. It will only follow that it ought not to desire any participation in the direction of it, and, therefore, ought not to own the whole or a principal part of the stock: for, if the mass of the property should belong to the public, and if the direction of it should be in private hands, this would be to commit the interests of the State to persons not interested, or not enough interested in their proper management.

There is one thing, however, which the Government owes to itself and to the community — at least, to all that part of it who are not stockholders — which is, to reserve to itself a right of ascertaining, as often as may be necessary, the state of the bank; excluding, however, all pretension to control. This right forms an article in the primitive constitution of the Bank of North America; and its propriety stands upon the clearest reasons. . . .

Abandoning, therefore, ideas which, however agreeable or desirable, are neither practicable nor safe, the following plan, for the constitution of a National Bank, is respectfully submitted to the consideration of the House.

1. The capital stock of the bank shall not exceed ten millions of dollars, divided into twenty-five thousand shares, each share being four hundred dollars; to raise which sum, subscriptions shall be opened on the first Monday of April next, and shall continue open until the whole shall be subscribed. Bodies politic as well as individuals may subscribe.

2. The amount of each share shall be payable, one-fourth in gold and silver coin, and three-fourths in that part of the public debt, which, according to the loan proposed by the act making provision for the debt of the United States, shall bear an accruing interest, at the time of payment, of six per centum per annum.

3. The respective sums subscribed shall be payable in four equal parts, as well specie as debt, in succession, and at the distance of six calendar months from each other; the first payment to be made at the time of subscription. If there shall be a failure in any subsequent payment, the party failing shall lose the benefit of any dividend which may have accrued prior to the time for making such payment, and during the delay of the same.

4. The subscribers to the bank, and their successors, shall be incorporated, and shall so continue until the final redemption of that part of its stock which shall consist of the public debt.

5. The capacity of the corporation to hold real and personal estate, shall be limited to fifteen millions of dollars, including the amount of its capital, or original stock. The lands and tenements which it shall be permitted to hold, shall be only such as shall be requisite for the immediate accommodation of the institution, and such as shall have been bona fide mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted, in the usual course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts.

6. The totality of the debts of the company, whether by bond, bill, note, or other contract, (credits for deposites excepted) shall never exceed the amount of its capital stock. In case of excess, the directors, under whose administration it shall happen, shall be liable for it in their private or separate capacities. Those who may have dissented may excuse themselves from this responsibility, by immediately giving notice of the fact, and their dissent, to the President of the United States, and to the stockholders, at a general meeting, to be called by the President of the bank, at their request.

7. The company may sell or demise its lands and tenements, or may sell the whole, or any part of the public debt, whereof its stock shall consist; but shall *trade* in nothing except bills of exchange, gold and silver bullion, or in the sale of goods pledged for money lent; nor shall take more than at the rate of six per centum per annum, upon its loans or discounts.

8. No loan shall be made by the bank for the use, or on account, of the Government of the United States, or of either of them, to an amount exceeding fifty thousand dollars, or of any foreign prince or state, unless previously authorized by a law of the United States.

9. The stock of the bank shall be transferable, according to such rules as shall be instituted by the company in that behalf.

10. The affairs of the bank shall be under the management of twenty-five directors, one of whom shall be the President; and there shall be, on the first Monday of January, in each year, a choice of directors, by a plurality of suffrages of the stockholders, to serve for a year. The directors, at their first meeting after each election, shall choose one of their number as President.

11. The number of votes to which each stockholder shall be entitled, shall be according to the number of shares he shall hold, in the proportions following, that is to say: For one share, and not more than two shares, one vote; for every two shares above two, and not exceeding ten, one vote; for every four shares above ten, and not exceeding thirty, one vote; for every six shares above thirty, and not exceeding sixty, one vote; for every eight shares above sixty, and not exceeding one hundred, one vote; and for every ten shares above one hundred, one vote; but no person, co-partnership, or body politic, shall be entitled to a greater number than thirty votes. And, after the first election, no share or shares shall confer a right of suffrage, which shall not have been holden three calendar months previous to the day of election. Stockholders actually resident within the United States, and none other, may vote in the elections by proxy.

12. Not more than three-fourths of the directors in office, exclusive of the President, shall be eligible for the next succeeding year. But the director who shall be President at the time of an election, may always be re-elected.

13. None but a stockholder, being a citizen of the United States shall be eligible as a director.

14. Any number of stockholders, not less than sixty, who, together, shall be proprietors of two hundred shares, or upwards, shall have power, at any time, to call a general meeting of the stockholders, for purposes relative to the institution; giving at least six weeks notice, in two public gazettes, of the place where the bank is kept, and specifying, in such notice, the object of the meeting.

15. In case of the death, resignation, absence from the United States, or removal, of a director, by the stockholders, his place may be filled by a new choice for the remainder of the year.

16. No director shall be entitled to any emolument, unless the same shall have been allowed by the stockholders at a general meeting. The stockholders shall make such compensation to the President, for his extraordinary attendance at the bank, as shall appear to them reasonable.

17. Not less than seven directors shall constitute a board for the transaction of business.

18. Every cashier or treasurer, before he enters on the duties of his office, shall be required to give bond, with two or more sureties, to the satisfaction of the directors, in a sum not less than twenty thousand dollars, with condition for his good behavior.

19. Half-yearly dividends shall be made of so much of the profits of the bank, as shall appear to the directors advisable. And, once in every three years, the directors shall lay before the stockholders, at a general meeting, for their information, an exact and particular statement of the debts which shall have remained unpaid, after the expiration of the original credit, for a period of treble the term of that credit, and of the surplus of profit, if any, after deducting losses and dividends.

20. The bills and notes of the bank, originally made payable, or which shall have become payable, on demand, in gold and silver coin, shall be receivable in all payments to the United States.

21. The officer at the head of the Treasury Department of the United States shall be furnished, from time to time, as often as he may require, not exceeding once a week, with statements of the amount of the capital stock of the bank, and of the debts due to the same, of the moneys deposited therein, of the notes in circulation, and of the cash in hand; and shall have a right to inspect such general accounts in the books of the bank as shall relate to the said statements; provided that this shall not be construed to imply a right of inspecting the account of any private individual or individuals, with the bank.

22. No similar institution shall be established by any future act of the United States, during the continuance of the one hereby proposed to be established.

23. It shall be lawful for the directors of the bank to establish

offices wheresoever they shall think fit, within the United States, for the purposes of discount and deposite, only, and upon the same terms, and in the same manner, as shall be practised at the bank, and to commit the management of the said offices, and the making of the said discounts, either to agents specially appointed by them, or to such persons as may be chosen by the stockholders residing at the place where any such office shall be, under such agreements, and subject to such regulations, as they shall deem proper, not being contrary to law, or to the constitution of the bank.

24. And, lastly, the President of the United States shall be authorized to cause a subscription to be made to the stock of the said company, on behalf of the United States, to an amount not exceeding two millions of dollars, to be paid out of the moneys which shall be borrowed by virtue of either of the acts, the one, entitled "An act making provision for the debt of the United States;" and the other, entitled "An act making provision for the reduction of the public debt;" borrowing of the bank an equal sum, to be applied to the purposes for which the said moneys shall have been procured, reimburseable in ten years, by equal annual instalments; or at any time sooner, or in any greater proportions, that the Government may think fit. . . .

The Secretary begs leave to conclude with this general observation: That, if the Bank of North America shall come forward with any propositions which have for their objects the engrafting upon that institution, the characteristics which shall appear to the Legislature necessary to the due extent and safety of a National Bank, there are, in his judgment, weighty inducements to giving every reasonable facility to the measure. Not only the pretensions of that institution, from its original relation to the Government of the United States, and from the services it has rendered, are such as to claim a disposition favorable to it, if those who are interested in it are willing, on their part, to place it on a footing satisfactory to the Government, and equal to the purposes of a bank of the United States, but its co-operation would materially accelerate the accomplishment of the great object, and the collision, which might otherwise arise, might, in a variety of ways, prove equally disagreeable and injurious. The incorporation or union here contemplated, may be effected in different modes, under the auspices of an act of the United States, if it shall be

desired by the Bank of North America, upon terms which shall appear expedient to the Government. . . .

No. 10. Jefferson's Opinion on the Constitutionality of a National Bank

February 15, 1791

THE doubts awakened in Washington's mind by the strong opposition to the bank bill, both in and out of Congress, led him to require the written opinions of the members of the Cabinet as to the constitutionality of the measure. Jefferson and Randolph decided against the bank. Randolph's views are not important, but Jefferson's opinion still remains one of the best concise statements of the "strict constructionist" view of the powers of the Federal Government.

REFERENCES.— *Text* in Jefferson's *Works* (ed. 1854), VII., 555–561.

The bill for establishing a National Bank undertakes among other things: —

1. To form the subscribers into a corporation.

2. To enable them in their corporate capacities to receive grants of land; and so far is against the laws of *Mortmain.**

3. To make alien subscribers capable of holding lands; and so far is against the laws of *alienage.*

4. To transmit these lands, on the death of a proprietor, to a certain line of successors; and so far changes the course of *Descents.*

5. To put the lands out of the reach of forfeiture or escheat; and so far is against the laws of *Forfeiture and Escheat.*

6. To transmit personal chattels to successors in a certain line; and so far is against the laws of *Distribution.*

7. To give them the sole and exclusive right of banking under the national authority; and so far is against the laws of Monopoly.

8. To communicate to them a power to make laws paramount to the laws of the States; for so they must be construed, to protect the institution from the control of the State legislatures; and so, probably, they will be construed.

* Though the Constitution controls the laws of Mortmain so far as to permit Congress itself to hold land for certain purposes, yet not so far as to permit them to communicate a similar right to other corporate bodies.

I consider the foundation of the Constitution as laid on this ground: That "all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the people." [XIIth amendment.] To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition.

The incorporation of a bank, and the powers assumed by this bill, have not, in my opinion, been delegated to the United States, by the Constitution.

I. They are not among the powers specially enumerated: for these are: 1st. A power to lay taxes for the purpose of paying the debts of the United States; but no debt is paid by this bill, nor any tax laid. Were it a bill to raise money, its origination in the Senate would condemn it by the Constitution.

2d. "To borrow money." But this bill neither borrows money nor ensures the borrowing it. The proprietors of the bank will be just as free as any other money holders, to lend or not to lend their money to the public. The operation proposed in the bill, first, to lend them two millions, and then to borrow them back again, cannot change the nature of the latter act, which will still be a payment, and not a loan, call it by what name you please.

3. To "regulate commerce with foreign nations, and among the States, and with the Indian tribes." To erect a bank, and to regulate commerce, are very different acts. He who erects a bank, creates a subject of commerce in its bills; so does he who makes a bushel of wheat, or digs a dollar out of the mines; yet neither of these persons regulates commerce thereby. To make a thing which may be bought and sold, is not to prescribe regulations for buying and selling. Besides, if this was an exercise of the power of regulating commerce, it would be void, as extending as much to the internal commerce of every State, as to its external. For the power given to Congress by the Constitution does not extend to the internal regulation of the commerce of a State, (that is to say of the commerce between citizen and citizen,) which remain exclusively with its own legislature; but to its external commerce only, that is to say, its commerce with another State, or with foreign nations, or with the Indian tribes. Accordingly the bill does not propose the measure as a regulation of trade, but as "produc-

tive of considerable advantages to trade." Still less are these powers covered by any other of the special enumerations.

II. Nor are they within either of the general phrases, which are the two following: —

1. To lay taxes to provide for the general welfare of the United States, that is to say, "to lay taxes for *the purpose* of providing for the general welfare." For the laying of taxes is the *power*, and the general welfare the *purpose* for which the power is to be exercised. They are not to lay taxes *ad libitum for any purpose they please;* but only *to pay the debts or provide for the welfare of the Union.* In like manner, they are not *to do anything they please* to provide for the general welfare, but only to *lay taxes* for that purpose. To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless.

It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be the sole judges of the good or evil, it would be also a power to do whatever evil they please.

It is an established rule of construction where a phrase will bear either of two meanings, to give it that which will allow some meaning to the other parts of the instrument, and not that which would render all the others useless. Certainly no such universal power was meant to be given them. It was intended to lace them up straitly within the enumerated powers, and those without which, as means, these powers could not be carried into effect. It is known that the very power now proposed *as a means* was rejected as *an end* by the Convention which formed the Constitution. A proposition was made to them to authorize Congress to open canals, and an amendatory one to empower them to incorporate. But the whole was rejected, and one of the reasons for rejection urged in debate was, that then they would have a power to erect a bank, which would render the great cities, where there were prejudices and jealousies on the subject, adverse to the reception of the Constitution.

2. The second general phrase is, "to make all laws *necessary* and proper for carrying into execution the enumerated powers."

But they can all be carried into execution without a bank. A bank therefore is not *necessary*, and consequently not authorized by this phrase.

It has been urged that a bank will give great facility or convenience in the collection of taxes. Suppose this were true: yet the Constitution allows only the means which are "*necessary*," not those which are merely "convenient" for effecting the enumerated powers. If such a latitude of construction be allowed to this phrase as to give any non-enumerated power, it will go to every one, for there is not one which ingenuity may not torture into a *convenience* in some instance *or other*, to *some one* of so long a list of enumerated powers. It would swallow up all the delegated powers, and reduce the whole to one power, as before observed. Therefore it was that the Constitution restrained them to the *necessary* means, that is to say, to those means without which the grant of power would be nugatory.

But let us examine this convenience and see what it is. The report on this subject, page 3, states the only *general* convenience to be, the preventing the transportation and re-transportation of money between the States and the treasury, (for I pass over the increase of circulating medium, ascribed to it as a want, and which, according to my ideas of paper money, is clearly a demerit.) Every State will have to pay a sum of tax money into the treasury; and the treasury will have to pay, in every State, a part of the interest on the public debt, and salaries to the officers of government resident in that State. In most of the States there will still be a surplus of tax money to come up to the seat of government for the officers residing there. The payments of interest and salary in each State may be made by treasury orders on the State collector. This will take up the great export of the money he has collected in his State, and consequently prevent the great mass of it from being drawn out of the State. If there be a balance of commerce in favor of that State against the one in which the government resides, the surplus of taxes will be remitted by the bills of exchange drawn for that commercial balance. And so it must be if there was a bank. But if there be no balance of commerce, either direct or circuitous, all the banks in the world could not bring up the surplus of taxes, but in the form of money. Treasury orders then, and bills of exchange may prevent the displacement of the main mass of the money collected,

without the aid of any bank; and where these fail, it cannot b prevented even with that aid.

Perhaps, indeed, bank bills may be a more *convenient* vehicl than treasury orders. But a little *difference* in the degree of *con venience*, cannot constitute the necessity which the constitutio makes the ground for assuming any non-enumerated power.

Besides; the existing banks will, without a doubt, enter int arrangements for lending their agency, and the more favorable as there will be a competition among them for it; whereas th bill delivers us up bound to the national bank, who are free t refuse all arrangement, but on their own terms, and the publi not free, on such refusal, to employ any other bank. That o Philadelphia, I believe, now does this business, by their post notes, which, by an arrangement with the treasury, are paid b any State collector to whom they are presented. This expedien alone suffices to prevent the existence of that *necessity* which ma justify the assumption of a non-enumerated power as a means fo carrying into effect an enumerated one. The thing may be done and has been done, and well done, without this assumption; there fore, it does not stand on that degree of *necessity* which can honestl justify it.

It may be said that a bank whose bills would have a currenc all over the States, would be more convenient than one whos currency is limited to a single State. So it would be still mor convenient that there should be a bank, whose bills should have currency all over the world. But it does not follow from this superio conveniency, that there exists anywhere a power to establish suc a bank; or that the world may not go on very well without it.

Can it be thought that the Constitution intended that for shade or two of *convenience*, more or less, Congress should b authorized to break down the most ancient and fundamental law of the several States; such as those against Mortmain, the laws o Alienage, the rules of descent, the acts of distribution, the law of escheat and forfeiture, the laws of monopoly? Nothing bu a necessity invincible by any other means, can justify such a pros titution of laws, which constitute the pillars of our whole systen of jurisprudence. Will Congress be too straight-laced to carr the constitution into honest effect, unless they may pass over th foundation-laws of the State government for the slightest con venience of theirs?

The negative of the President is the shield provided by the constitution to protect against the invasions of the legislature: 1. The right of the Executive. 2. Of the Judiciary. 3. Of the States and State legislatures. The present is the case of a right remaining exclusively with the States, and consequently one of those intended by the Constitution to be placed under its protection.

It must be added, however, that unless the President's mind on a view of everything which is urged for and against this bill, is tolerably clear that it is unauthorised by the Constitution; if the pro and the con hang so even as to balance his judgment, just respect for the wisdom of the legislature would naturally decide the balance in favor of their opinion. It is chiefly for cases where they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President.

No. 11. Hamilton's Opinion on the Constitutionality of a National Bank

February 23, 1791

THE opinions of Jefferson and Randolph against the constitutionality of the bank were submitted to Hamilton, and his opinion upholding the bank act, and expounding the doctrine of implied powers, aimed primarily to refute the arguments urged by them.

REFERENCES. — *Text* in Hamilton's *Works* (ed. 1851), IV., 104–138. For Washington's letter to Hamilton, see *ib.*, IV., 103.

The Secretary of the Treasury having perused with attention the papers containing the opinions of the Secretary of State and Attorney-General, concerning the constitutionality of the bill for establishing a National Bank, proceeds, according to the order of the President, to submit the reasons which have induced him to entertain a different opinion. . . .

In entering upon the argument, it ought to be premised that the objections of the Secretary of State and Attorney-General are founded on a general denial of the authority of the United States to erect corporations. The latter, indeed, expressly admits, that if there be any thing in the bill which is not warranted by the Constitution, it is the clause of incorporation.

Now it appears to the Secretary of the Treasury that this *general principle* is *inherent* in the very *definition* of government, and *essential* to every step of the progress to be made by that of the United States, namely: That every power vested in a government is in its nature *sovereign*, and includes, by *force* of the *term*, a right to employ all the *means* requisite and fairly applicable to the attainment of the *ends* of such power, and which are not precluded by restrictions and exceptions specified in the Constitution, or not immoral, or not contrary to the *essential ends* of political society.

This principle, in its application to government in general, would be admitted as an axiom; and it will be incumbent upon those who may incline to deny it, to prove a distinction, and to show that a rule which, in the general system of things, is essential to the preservation of the social order, is inapplicable to the United States.

The circumstance that the powers of sovereignty are in this country divided between the National and State governments, does not afford the distinction required. It does not follow from this, that each of the portion of *powers* delegated to the one or to the other, is not sovereign with *regard to its proper objects*. It will only *follow* from it, that each has sovereign power as to *certain things*, and not as to *other things*. To deny that the government of the United States has sovereign power, as to its declared purposes and trusts, because its power does not extend to all cases, would be equally to deny that the State governments have sovereign power in any case, because their power does not extend to every case. The tenth section of the first article of the Constitution exhibits a long list of very important things which they may not do. And thus the United States would furnish the singular spectacle of a *political society* without *sovereignty*, or of a *people governed*, without *government*.

If it would be necessary to bring proof to a proposition so clear, as that which affirms that the powers of the federal government, as to *its objects*, were sovereign, there is a clause of its Constitution which would be decisive. It is that which declares that the Constitution, and the laws of the United States made in pursuance of it, and all treaties made, or which shall be made, under their authority, shall be the *supreme law of the land*. The power which can create the *supreme law of the land* in *any case*, is doubtless *sovereign* as to such case.

This general and indisputable principle puts at once an end to the *abstract* question, whether the United States have power to erect a *corporation;* that is to say, to give a *legal* or *artificial capacity* to one or more persons, distinct from the *natural.* For it is unquestionably incident to *sovereign power* to erect corporations, and consequently to *that* of the United States, in *relation* to the *objects* intrusted to the management of the government. The difference is this: where the authority of the government is general, it can create corporations in *all cases;* where it is confined to certain branches of legislation, it can create corporations *only* in those cases.

Here then, as far as concerns the reasonings of the Secretary of State and the Attorney-General, the affirmative of the constitutionality of the bill might be permitted to rest. It will occur to the President, that the principle here advanced has been untouched by either of them.

For a more complete elucidation of the point, nevertheless, the arguments which they had used against the power of the government to erect corporations, however foreign they are to the great and fundamental rule which has been stated, shall be particularly examined. And after showing that they do not tend to impair its force, it shall also be shown that the power of incorporation, incident to the government in certain cases, does fairly extend to the particular case which is the object of the bill.

The first of these arguments is, that the foundation of the Constitution is laid on this ground: "That all powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved for the States, or to the people." Whence it is meant to be inferred, that Congress can in no case exercise any power not included in those not enumerated in the Constitution. And it is affirmed, that the power of erecting a corporation is not included in any of the enumerated powers.

The main proposition here laid down, in its true signification is not to be questioned. . . . But how much is delegated in each case, is a question of fact, to be made out by fair reasoning and construction, upon the particular provisions of the Constitution, taking as guides the general principles and general ends of governments.

It is not denied that there are *implied,* as well as *express powers,* and that the *former* are as effectually delegated as the *latter.* And

for the sake of accuracy it shall be mentioned, that there is another class of powers, which may be properly denominated *resulting powers*. It will not be doubted, that if the United States should make a conquest of any of the territories of its neighbors, they would possess sovereign jurisdiction over the conquered territory. This would be rather a result, from the whole mass of the powers of the government, and from the nature of political society, than a consequence of either of the powers specially enumerated. . . .

To return: — It is conceded that *implied powers* are to be considered as delegated equally with *express ones*. Then it follows, that as a power of erecting a corporation may as well be *implied* as any other thing, it may as well be employed as an *instrument* or *mean* of carrying into execution any of the specified powers, as any other *instrument* or *mean* whatever. The only question must be, in this, as in every other case, whether the mean to be employed, or in this instance, the corporation to be erected, has a natural relation to any of the acknowledged objects or lawful ends of the government. Thus a corporation may not be erected by Congress for superintending the police of the city of Philadelphia, because they are not authorized to *regulate* the *police* of that city. But one may be erected in relation to the collection of taxes, or to the trade with foreign countries, or to the trade between the States, or with the Indian tribes; because it is the province of the federal government to *regulate* those objects, and because it is incident to a general *sovereign* or *legislative* power to *regulate* a thing, to employ all the means which relate to its regulation to the best and greatest advantage. . . .

Through this mode of reasoning respecting the right of employing all the means requisite to the execution of the specified powers of the government, it is objected, that none but necessary and proper means are to be employed; and the Secretary of State maintains, that no means are to be considered as *necessary* but those without which the grant of the power would be *nugatory*. Nay, so far does he go in his restrictive interpretation of the *word*, as even to make the case of *necessity* which shall warrant the constitutional exercise of the power to depend on *casual* and *temporary* circumstances; an idea which alone refutes the construction. The *expediency* of exercising a particular power, at a particular time, must, indeed, depend on circumstances; but the constitu-

tional right of exercising it must be uniform and invariable, the same to-day as to-morrow.

All the arguments, therefore, against the constitutionality of the bill derived from the accidental existence of certain State banks, — institutions which happen to exist to-day, and, for aught that concerns the government of the United States, may disappear to-morrow, — must not only be rejected as fallacious, but must be viewed as demonstrative that there is a *radical* source of error in the reasoning.

It is essential to the being of the national government, that so erroneous a conception of the meaning of the word *necessary* should be exploded.

It is certain, that neither the grammatical nor popular sense of the term requires that construction. According to both, *necessary* often means no more than *needful, requisite, incidental, useful,* or *conducive to.* It is a common mode of expression to say, that it is *necessary* for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interests of the government or person require, or will be promoted by, the doing of this or that thing. The imagination can be at no loss for exemplifications of the use of the word in this sense. And it is the true one in which it is to be understood as used in the Constitution. The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. They are, "to make all *laws* necessary and proper for *carrying into execution* the *foregoing powers,* and *all other powers* vested by the Constitution in the *government* of the United States, or in any *department* or *officer* thereof."

To understand the word as the Secretary of State does, would be to depart from its obvious and popular sense, and to give it a restrictive operation, an idea never before entertained. It would be to give it the same force as if the word *absolutely* or *indispensably* had been prefixed to it.

Such a construction would beget endless uncertainty and embarrassment. The cases must be palpable and extreme, in which it could be pronounced, with certainty, that a measure was absolutely necessary, or one, without which, the exercise of a given power would be nugatory. There are few measures of any gov-

ernment which would stand so severe a test. To insist upon it, would be to make the criterion of the exercise of any implied power, a *case of extreme necessity;* which is rather a rule to justify the overleaping of the bounds of constitutional authority, than to govern the ordinary exercise of it. . . .

The *degree* in which a measure is necessary, can never be a *test* of the legal right to adopt it; that must be a matter of opinion, and can only be a *test* of expediency. The *relation* between the *measure* and the *end;* between the *nature* of the *mean* employed towards the execution of a power, and the object of that power, must be the criterion of constitutionality, not the more or less of *necessity* or *utility.*

The practice of the government is against the rule of construction advocated by the Secretary of State. Of this, the Act concerning light-houses, beacons, buoys, and public piers, is a decisive example. This, doubtless, must be referred to the powers of regulating trade, and is fairly relative to it. But it cannot be affirmed that the exercise of that power in this instance was strictly *necessary*, or that the power itself would be *nugatory*, without that of regulating establishments of this nature.

This restrictive interpretation of the word *necessary* is also contrary to this sound maxim of construction; namely, that the powers contained in a constitution of government, especially those which concern the general administration of the affairs of a country, its finances, trade, defence, &c., ought to be construed liberally in advancement of the public good. This rule does not depend on the particular form of a government, or on the particular demarkation of the boundaries of its powers, but on the nature and objects of government itself. The means by which national exigencies are to be provided for, national inconveniences obviated, national prosperity promoted, are of such infinite variety, extent, and complexity, that there must of necessity be great latitude of discretion in the selection and application of those means. Hence, consequently, the necessity and propriety of exercising the authorities intrusted to a government on principles of liberal construction. . . .

But while on the one hand the construction of the Secretary of State is deemed inadmissible, it will not be contended, on the other, that the clause in question gives any *new* or *independent* power. But it gives an explicit sanction to the doctrine of *implied*

powers, and is equivalent to an admission of the proposition that the government, as to its *specified powers* and *objects*, has plenary and sovereign authority, in some cases paramount to the States; in others, co-ordinate with it. For such is the plain import of the declaration, that it may pass all *laws* necessary and proper to carry into execution those powers.

It is no valid objection to the doctrine to say, that it is calculated to extend the power of the general government throughout the entire sphere of State legislation. The same thing has been said, and may be said, with regard to every exercise of power by *implication* or *construction*. . . .

But the doctrine which is contended for is not chargeable with the consequences imputed to it. It does not affirm that the national government is sovereign in all respects, but that it is sovereign to a certain extent; that is, to the extent of the objects of its specified powers.

It leaves, therefore, a criterion of what is constitutional, and of what is not so. This criterion is the *end*, to which the measure relates as a *mean*. If the *end* be clearly comprehended within any of the specified powers, and if the measure have an obvious relation to that *end*, and is not forbidden by any particular provision of the Constitution, it may safely be deemed to come within the compass of the national authority. There is also this further criterion, which may materially assist the decision: Does the proposed measure abridge a pre-existing right of any State or of any individual? If it does not, there is a strong presumption in favor of its constitutionality, and slighter relations to any declared object of the Constitution may be permitted to turn the scale.

The general objections, which are to be inferred from the reasonings of the Secretary of State and Attorney-General, to the doctrine which has been advanced, have been stated, and it is hoped satisfactorily answered. Those of a more particular nature shall now be examined.

The Secretary of State introduces his opinion with an observation, that the proposed incorporation undertakes to create certain capacities, properties, or attributes, which are against the laws of *alienage*, *descents*, *escheat*, and *forfeiture*, *distribution* and *monopoly*, and to confer a power to make laws paramount to those of the States. And nothing, says he, in another place, but *necessity*, *invincible* by *other means*, can justify such a *prostration* of laws,

which constitute the pillars of our whole system of jurisprudence, and are the foundation laws of the State governments. If these are truly the foundation laws of the several States, then have most of them subverted their own foundations. For there is scarcely one of them which has not, since the establishment of its particular constitution, made material alterations in some of those branches of its jurisprudence, especially the law of descents. But it is not conceived how anything can be called the fundamental law of a State government which is not established in its constitution, unalterable by the ordinary legislature. And, with regard to the question of necessity, it has been shown that this can only constitute a question of expediency, not of right. . . .

It is certainly not accurate to say, that the erection of a corporation is *against* those different *heads* of the State laws; because it is rather to create a kind of person or entity, to which they are inapplicable, and to which the general rule of those laws assign a different regimen. The laws of alienage cannot apply to an artificial person, because it can have no country; those of descent cannot apply to it, because it can have no heirs; those of escheat are foreign from it, for the same reason; those of forfeiture, because it cannot commit a crime; those of distribution, because, though it may be dissolved, it cannot die. . . .

But if it were even to be admitted that the erection of a corporation is a direct alteration of the stated laws, in the enumerated particulars, it would do nothing towards proving that the measure was unconstitutional. If the government of the United States can do no act which amounts to an alteration of a State law, all its powers are nugatory; for almost every new law is an alteration, in some way or other, of an *old law*, either *common* or *statute*. . . .

It can therefore never be good reasoning to say this or that act is unconstitutional, because it alters this or that law of a State. It must be shown that the act which makes the alteration is unconstitutional on other accounts; not *because* it makes the alteration.

There are two points in the suggestions of the Secretary of State, which have been noted, that are peculiarly incorrect. One is, that the proposed incorporation is against the laws of monopoly, because it stipulates an exclusive right of banking under the national authority; the other, that it gives power to the institution to make laws paramount to those of the States.

But, with regard to the first point: The bill neither prohibits

any State from erecting as many banks as they please, nor any number of individuals from associating to carry on the business, and consequently, is free from the charge of establishing a monopoly; for monopoly implies a *legal impediment* to the carrying on of the trade by others than those to whom it is granted.

And with regard to the second point, there is still less foundation. The by-laws of such an institution as a bank can operate only on its own members — can only concern the disposition of its own property, and must essentially resemble the rules of a private mercantile partnership. They are expressly not to be contrary to law; and law must here mean the law of a State, as well as of the United States. There never can be a doubt, that a law of a corporation, if contrary to a law of a State, must be overruled as void, unless the law of the State is contrary to that of the United States, and then the question will not be between the law of the State and that of the corporation, but between the law of the State and that of the United States.

Another argument made use of by the Secretary of State is, the rejection of a proposition by the Convention to empower Congress to make corporations, either generally, or for some special purpose.

What was the precise nature or extent of this proposition, or what the reasons for refusing it, is not ascertained by any authentic document, or even by accurate recollection. As far as any such document exists, it specifies only canals. . . . It must be confessed, however, that very different accounts are given of the import of the proposition, and of the motives for rejecting it. . . . In this state of the matter, no inference whatever can be drawn from it.

But whatever may have been the nature of the proposition, or the reasons for rejecting it, includes nothing in respect to the real merits of the question. The Secretary of State will not deny, that, whatever may have been the intention of the framers of a constitution, or of a law, that intention is to be sought for in the instrument itself, according to the usual and established rules of construction. Nothing is more common than for laws to *express* and *effect* more or less than was intended. If, then, a power to erect a corporation in any case be deducible, by fair inference, from the whole or any part of the numerous provisions of the Constitution of the United States, arguments drawn from extrinsic

circumstances regarding the intention of the Convention must be rejected.

Most of the arguments of the Secretary of State, which have not been considered in the foregoing remarks, are of a nature rather to apply to the expediency than to the constitutionality of the bill. They will, however, be noticed in the discussions which will be necessary in reference to the particular heads of the powers of the government which are involved in the question.

Those of the Attorney-General will now properly come under view.

His first objection is, that the power of incorporation is not *expressly* given to Congress. This shall be conceded, but in *this sense only*, that it is not declared in *express terms* that Congress may erect a corporation. But this cannot mean, that there are not certain *express powers* which *necessarily* include it. For instance, Congress have express power 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 of the United States; and to exercise *like authority* over all places purchased, by consent of the legislature of the State in which the same shall be, for the erection of forts, arsenals, dock-yards, and other needful buildings. Here, then, is express power to exercise *exclusive legislation*, in *all cases whatsoever*, over *certain places;* that is, to do, in respect to those places, all that any government whatsoever may do. . . .

Surely it can never be believed that Congress, with *exclusive powers of legislation in all cases* whatsoever, cannot erect a corporation within the district which shall become the seat of government, for the better regulation of its police. And yet there is an unqualified denial of the power to erect corporations in every case, on the part both of the Secretary of State and of the Attorney-General; the former, indeed, speaks of that power in these emphatical terms: That it is a *right remaining exclusively with the States*.

As far, then, as there is an *express power* to do any *particular act of legislation*, there is an *express one* to erect a corporation in the case above described. But, accurately speaking, no *particular power* is more than *that implied in a general one*. Thus the power to lay a duty on a *gallon of rum* is only a particular *implied*

in the general power to lay and collect taxes, duties, imposts, and excises. This serves to explain in what sense it may be said that Congress have not an express power to make corporations. . . .

Having observed that the power of erecting corporations is not expressly granted to Congress, the Attorney-General proceeds thus: —

"If it can be exercised by them, it must be —

"1. Because the nature of the federal government implies it.

"2. Because it is involved in some of the specified powers of legislation.

"3. Because it is necessary and proper to carry into execution some of the specified powers."

To be implied in the *nature* of the *federal government*, says he, would beget a doctrine so indefinite as to grasp at every power. . . .

To this objection an answer has been already given. It is this, that the doctrine is stated with this *express qualification*, that the right to erect corporations does *only* extend to *cases* and *objects* within the *sphere* of the *specified powers* of the *government*. A *general* legislative authority implies a power to erect corporations in *all cases*. A *particular* legislative power implies authority to erect corporations in relation to cases arising under *that power only*. Hence the affirming that, as *incident* to sovereign power, Congress may erect a corporation in relation to the *collection* of their taxes, is no more than to affirm that they may do whatever else they please, — than the saying that they have a power to regulate trade, would be to affirm that they have a power to regulate religion; or than the maintaining that they have sovereign power as to taxation, would be to maintain that they have sovereign power as to every thing else.

The Attorney-General undertakes in the next place to show, that the power of erecting corporations is not involved in any of the specified powers of legislation confided to the national government. In order to this, he has attempted an enumeration of the particulars, . . . The design of which enumeration is to show, *what* is included under those different heads of power, and negatively, that the power of erecting corporations is not included.

The truth of this inference or conclusion must depend on the accuracy of the enumeration. If it can be shown that the enumeration is *defective*, the inference is destroyed. To do this will be attended with no difficulty.

The heads of the power to lay and collect taxes are stated to be:

1. To stipulate the sum to be lent.
2. An interest or no interest to be paid.
3. The time and manner of repaying, unless the loan be placed on an irredeemable fund.

This enumeration is liable to a variety of objections. It omits in the first place, the *pledging* or *mortgaging* of a fund for the security of the money lent, an usual, and in most cases an essential ingredient.

The idea of a stipulation of an *interest* or no *interest* is too confined. It should rather have been said, to stipulate the *consideration* of the loan. Individuals often borrow on considerations other than the payment of interest, so may governments, and so they often find it necessary to do. . . .

It is also known that a lottery is a common expedient for borrowing money, which certainly does not fall under either of the enumerated heads.

The heads of the power to regulate commerce with foreign nations, are stated to be:

1. To prohibit them or their commodities from our ports.
2. To impose duties on *them*, where none existed before, or to increase *existing* duties on them.
3. To subject *them* to any species of custom-house regulation.
4. To grant *them* any exemptions or privileges which policy may suggest.

This enumeration is far more exceptionable than either of the former. It omits *every thing* that relates to the *citizens' vessels*, or *commodities* of the United States.

The following palpable omissions occur at once:

1. Of the power to prohibit the exportation of commodities, which not only exists at all times, but which in time of war it would be necessary to exercise, particularly with relation to naval and warlike stores.
2. Of the power to prescribe rules concerning the *characteristics* and privileges of an American bottom; how she shall be navigated, or whether by citizens or foreigners, or by a proportion of each.
3. Of the power of regulating the manner of contracting with seamen; the police of ships on their voyages, &c., of which the

Act for the government and regulation of seamen, in the merchants' service, is a specimen.

That the three preceding articles are omissions, will not be doubted — there is a long list of items in addition, which admit of little, if any question, of which a few samples shall be given.

1. The granting of bounties to certain kinds of vessels, and certain species of merchandise of this nature, is the allowance on dried and pickled fish and salted provisions.

2. The prescribing of rules concerning the *inspection* of commodities to be exported. Though the States individually are competent to this regulation, yet there is no reason, in point of authority at least, why a general system might not be adopted by the United States.

3. The regulation of policies of insurance; of salvage upon goods found at sea, and the disposition of such goods.

4. The regulation of pilots.

5. The regulation of bills of exchange drawn by a merchant of *one State* upon a merchant of *another State*. This last rather belongs to the regulation of trade between the States, but is equally omitted in the specification under that head.

The last enumeration relates to the power to dispose of, and make all *needful rules* and *regulations* respecting the territory or *other property* belonging to the United States.

The heads of this power are said to be:

1. To exert an ownership over the territory of the United States, which may be properly called the property of the United States, as in the western territory, and to *institute a government therein*, or

2. To exert an ownership over the other property of the United States.

The idea of exerting an ownership over the territory or other property of the United States, is particularly indefinite and vague. It does not at all satisfy the conception of what must have been intended by a power to make all *needful rules* and *regulations*, nor would there have been any use for a special clause, which authorized nothing more. For the right of exerting an ownership is implied in the very definition of property. It is admitted, that in regard to the western territory, something more is intended; even the institution of a government, that is, the creation of a body politic, or corporation of the highest nature; one which, in

its maturity, will be able itself to create other corporations. Why, then, does not the same clause authorize the erection of a corporation, in respect to the regulation or disposal of any other of the property of the United States?

This idea will be enlarged upon in another place.

Hence it appears, that the enumerations which have been attempted by the Attorney-General, are so imperfect, as to authorize no conclusion whatever; they therefore have no tendency to disprove that each and every of the powers, to which they relate, includes that of erecting corporations, which they certainly do, as the subsequent illustrations will more and more evince.

It is presumed to have been satisfactorily shown in the course of the preceding observations:

1. That the power of the government, *as* to the objects intrusted to its management, is, in its nature, sovereign.

2. That the right of erecting corporations is one inherent in, and inseparable from, the idea of sovereign power.

3. That the position, that the government of the United States can exercise no power but such as is delegated to it by its Constitution, does not militate against this principle.

4. That the word *necessary*, in the general clause, can have no *restrictive* operation derogating from the force of this principle; indeed, that the degree in which a measure is or is not *necessary*, cannot be a *test* of *constitutional right*, but of *expediency only*.

5. That the power to erect corporations is not to be considered as an *independent* or *substantive* power, but as an *incidental* and *auxiliary* one, and was therefore more properly left to implication, than expressly granted.

6. That the principle in question does not extend the power of the government beyond the prescribed limits, because it only affirms a power to *incorporate* for purposes *within the sphere* of the *specified powers*.

And lastly, that the right to exercise such a power in certain cases is unequivocally granted in the most *positive* and *comprehensive* terms. To all which it only remains to be added, that such a power has actually been exercised in two very eminent instances; namely, in the erection of two governments; one northwest of the River Ohio, and the other southwest — the last independent of any antecedent compact. And these result in a

full and complete demonstration, that the Secretary of State and Attorney-General are mistaken when they deny generally the power of the national government to erect corporations.

It shall now be endeavored to be shown that there is a power to erect one of the kind proposed by the bill. This will be done by tracing a natural and obvious relation between the institution of a bank and the objects of several of the enumerated powers of the government; and by showing that, *politically* speaking, it is necessary to the effectual execution of one or more of those powers. . . .

. . . Accordingly it is affirmed that it has a relation, more or less direct, to the power of collecting taxes, to that of borrowing money, to that of regulating trade between the States, and to those of raising and maintaining fleets and armies. To the two former the relation may be said to be immediate; and in the last place it will be argued, that it is clearly within the provision which authorizes the making of all *needful rules and regulations* concerning the *property* of the United States, as the same has been practised upon by the government.

A bank relates to the collection of taxes in two ways — *indirectly*, by increasing the quantity of circulating medium and quickening circulation, which facilitates the means of paying directly, by creating a *convenient species* of medium in which they are to be paid. . . .

A bank has a direct relation to the power of borrowing money, because it is an usual, and in sudden emergencies an essential, instrument in the obtaining of loans to government. . . .

The institution of a bank has also a natural relation to the regulation of trade between the States, in so far as it is conducive to the creation of a convenient medium of *exchange* between them, and to the keeping up a full circulation, by preventing the frequent displacement of the metals in reciprocal remittances. Money is the very hinge on which commerce turns. And this does not merely mean gold and silver; many other things have served the purpose, with different degrees of utility. Paper has been extensively employed.

It cannot, therefore, be admitted, with the Attorney-General, that the regulation of trade between the States, as it concerns the medium of circulation and exchange, ought to be considered as confined to coin. It is even supposable that the whole, or

the greatest part, of the coin of the country might be carried out of it. . . .

The relation of a bank to the execution of the powers that concern the common defence, has been anticipated. It has been noted, that, at this very moment, the aid of such an institution is essential to the measures to be pursued for the protection of our frontiers.

It now remains to show, that the incorporation of a bank is within the operation of the provision which authorizes Congress to make all needful rules and regulations concerning the property of the United States. But it is previously necessary to advert to a distinction which has been taken by the Attorney-General.

He admits that the word *property* may signify personal property, however acquired, and yet asserts that it cannot signify money arising from the sources of revenue pointed out in the Constitution, "because," says he, "the disposal and regulation of money is the final cause for raising it by taxes."

But it would be more accurate to say that the *object* to which money is intended to be applied is the *final cause* for raising it, than that the disposal and regulation of it is *such*.

The support of government — the support of troops for the common defence — the payment of the public debt, are the true *final causes* for raising money. The disposition and regulation of it, when raised, are the steps by which it is applied to the *ends* for which it was raised, not the *ends* themselves. Hence, therefore, the money to be raised by taxes, as well as any other personal property, must be supposed to come within the meaning, as they certainly do within the letter, of authority to make all needful rules and regulations concerning the property of the United States. . . .

It is admitted, that with regard to the western territory they give a power to erect a corporation — that is, to institute a government; and by what rule of construction can it be maintained, that the same words in a constitution of government will not have the same effect when applied to one species of property as to another, as far as the subject is capable of it? — Or that a legislative power to make all needful rules and regulations, or to pass all laws necessary and proper, concerning the public property, which is admitted to authorize an incorporation in one case, will not authorize it in another? — will justify the institution of a

government over the western territory, and will not justify the incorporation of a bank for the more useful management of the moneys of the United States? If it will do the last, as well as the first, then, under this provision alone, the bill is constitutional, because it contemplates that the United States shall be joint proprietors of the stock of the bank.

There is an observation of the Secretary of State to this effect, which may require notice in this place: — Congress, says he, are not to lay taxes *ad libitum, for any purpose they please,* but only to pay the debts or provide for the welfare of the Union. Certainly no inference can be drawn from this against the power of applying their money for the institution of a bank. It is true that they cannot without breach of trust lay taxes for any other purpose than the general welfare; but so neither can any other government. The welfare of the community is the only legitimate end for which money can be raised on the community. Congress can be considered as under only one restriction which does not apply to other governments, — they cannot rightfully apply the money they raise to any purpose merely or purely local. But, with this exception, they have as large a discretion in relation to the application of money as any legislature whatever. The constitutional *test* of a right application must always be, whether it be for a purpose of *general* or *local* nature. If the former, there can be no want of constitutional power. The quality of the object, as how far it will really promote or not the welfare of the Union, must be matter of conscientious discretion, and the arguments for or against a measure in this light must be arguments concerning expediency or inexpediency, not constitutional right. Whatever relates to the general order of the finances, to the general interests of trade, &c., being general objects, are constitutional ones for the *application of money.*

A bank, then, whose bills are to circulate in all the revenues of the country, is *evidently* a *general* object, and, for that very reason, a constitutional one, as far as regards the appropriation of money to it. Whether it will really be a beneficial one or not, is worthy of careful examination, but is no more a constitutional point, in the particular referred to, than the question, whether the western lands shall be sold for twenty or thirty cents per acre.

A hope is entertained that it has, by this time, been made to appear, to the satisfaction of the President, that a bank has a natural

relation to the power of collecting taxes — to that of regulating trade — to that of providing for the common defence — and that, as the bill under consideration contemplates the government in the light of a joint proprietor of the stock of the bank, it brings the case within the provision of the clause of the Constitution which immediately respects the property of the United States.

Under a conviction that such a relation subsists, the Secretary of the Treasury, with all deference, conceives, that it will result as a necessary consequence from the position, that all the specified powers of government are sovereign, as to the proper objects; that the incorporation of a bank is a constitutional measure; and that the objections taken to the bill, in this respect, are ill-founded. . . .

No. 12. Hamilton's Report on Manufactures

December 5, 1791

JANUARY 8, 1790, in his address to Congress, Washington recommended early provision for the defence of the country, and urged the "promotion of such manufactories" as would render the United States "independent of others for essential, particularly for military, supplies." On the 15th, this part of the address was referred by the House to the Secretary of the Treasury, with instructions to prepare a plan in conformity to the recommendations of the President. The resulting report on manufactures — "the strongest presentation of the case for protection which has been made by any American statesman" — was not sent in until Dec. 5, 1791. January 23 it was committed to the Committee of the Whole House for the 30th, but no further action in regard to it seems to have been taken. The report paved the way, however, for Hamilton's report of March 16, 1792, recommending an increase of duties to meet the expense of additional troops for the defence of the frontier; and the act of May 2, 1792, followed in the main his suggestions.

The report on manufactures is very long. The extracts following show only the outline of the argument.

REFERENCES. — *Text* in *Amer. State Papers, Finance*, I., 123–144. For the report of March 16, 1792, see *ib.*, I., 158–161. The act of May 2, 1792, is in *U. S. Stat. at Large*, I., 259–263.

The Secretary of the Treasury, in obedience to the order of the House of Representatives of the 15th day of January, 1790, has applied his attention, at as early a period as his other duties would permit, to the subject of Manufactures, and particularly to the means of promoting such as will tend to render the United States independent on foreign nations, for military and other es-

sential supplies; and he thereupon respectfully submits the following report:

The expediency of encouraging manufactures in the United States, which was not long since deemed very questionable, appears at this time to be pretty generally admitted. The embarrassments which have obstructed the progress of our external trade, have led to serious reflections on the necessity of enlarging the sphere of our domestic commerce. The restrictive regulations, which, in foreign markets, abridge the vent of the increasing surplus of our agricultural produce, serve to beget an earnest desire, that a more extensive demand for that surplus may be created at home; and the complete success which has rewarded manufacturing enterprise, in some valuable branches, conspiring with the promising symptoms which attend some less mature essays in others, justify a hope, that the obstacles to the growth of this species of industry are less formidable than they were apprehended to be; and that it is not difficult to find, in its further extension, a full indemnification for any external disadvantages, which are or may be experienced, as well as an accession of resources, favorable to national independence and safety.

There still are, nevertheless, respectable patrons of opinions unfriendly to the encouragement of manufactures. The following are, substantially, the arguments by which these opinions are defended.

"In every country, (say those who entertain them) agriculture is the most beneficial and productive object of human industry. This position, generally, if not universally true, applies with peculiar emphasis to the United States, on account of their immense tracts of fertile territory, uninhabited and unimproved. Nothing can afford so advantageous an employment for capital and labor, as the conversion of this extensive wilderness into cultivated farms. Nothing, equally with this, can contribute to the population, strength, and real riches of the country.

"To endeavor, by the extraordinary patronage of government, to accelerate the growth of manufactures, is, in fact, to endeavor, by force and art, to transfer the natural current of industry from a more to a less beneficial channel. Whatever has such a tendency, must necessarily be unwise; indeed, it can hardly ever be wise in a government to attempt to give a direction to the industry

of its citizens. This, under the quick-sighted guidance of private interest, will, if left to itself, infallibly find its own way to the most profitable employment; and it is by such employment, that the public prosperity will be most effectually promoted. To leave industry to itself, therefore, is, in almost every case, the soundest as well as the simplest policy.

"This policy is not only recommended to the United States by considerations which affect all nations; it is, in a manner, dictated to them by the imperious force of a very peculiar situation. The smallness of their population compared with their territory; the constant allurements to emigration from the settled to the unsettled parts of the country; the facility with which the less independent condition of an artisan can be exchanged for the more independent condition of a farmer; these, and similar causes, conspire to produce, and, for a length of time, must continue to occasion, a scarcity of hands for manufacturing occupation, and dearness of labor generally. To these disadvantages for the prosecution of manufactures, a deficiency of pecuniary capital being added, the prospect of a successful competition with the manufactures of Europe, must be regarded as little less than desperate. Extensive manufactures can only be the offspring of a redundant, at least of a full population. Till the latter shall characterize the situation of this country, 'tis vain to hope for the former.

"If, contrary to the natural course of things, an unseasonable and premature spring can be given to certain fabrics, by heavy duties, prohibitions, bounties, or by other forced expedients, this will only be to sacrifice the interests of the community to those of particular classes. Besides the misdirection of labor, a virtual monopoly will be given to the persons employed on such fabrics; and an enhancement of price, the inevitable consequence of every monopoly, must be defrayed at the expense of the other parts of the society. It is far preferable, that those persons should be engaged in the cultivation of the earth, and that we should procure, in exchange for its productions, the commodities with which foreigners are able to supply us in greater perfection, and upon better terms."

This mode of reasoning is founded upon facts and principles which have certainly respectable pretensions. If it had governed the conduct of nations more generally than it has done, there is room to suppose that it might have carried them faster to pros-

perity and greatness than they have attained by the pursuit of maxims too widely opposite. Most general theories, however, admit of numerous exceptions, and there are few, if any, of the political kind, which do not blend a considerable portion of error with the truths they inculcate.

In order to an accurate judgment how far that which has been just stated ought to be deemed liable to a similar imputation, it is necessary to advert carefully to the considerations which plead in favor of manufactures, and which appear to recommend the special and positive encouragement of them in certain cases, and under certain reasonable limitations.

It ought readily to be conceded that the cultivation of the earth, as the primary and most certain source of national supply; as the immediate and chief source of subsistence to man; as the principal source of those materials which constitute the nutriment of other kinds of labor; as including a state most favorable to the freedom and independence of the human mind, — one, perhaps, most conducive to the multiplication of the human species; has intrinsically a strong claim to pre-eminence over every other kind of industry.

But, that it has a title to anything like an exclusive predilection, in any country, ought to be admitted with great caution; that it is even more productive than every other branch of industry, requires more evidence than has yet been given in support of the position. That its real interests, precious and important as, without the help of exaggeration, they truly are, will be advanced, rather than injured, by the due encouragement of manufactures, may, it is believed, be satisfactorily demonstrated. And it is also believed, that the expediency of such encouragement, in a general view, may be shown to be recommended by the most cogent and persuasive motives of national policy.

It has been maintained, that agriculture is not only the most productive, but the only productive species of industry. The reality of this suggestion, in either respect, has, however, not been verified by any accurate detail of facts and calculations; and the general arguments which are adduced to prove it, are rather subtile and paradoxical, than solid or convincing. . . .

But, while the exclusive productiveness of agricultural labor has been thus denied and refuted, the superiority of its productiveness has been conceded without hesitation. As this concession involves

a point of considerable magnitude, in relation to maxims of public administration, the grounds on which it rests are worthy of a distinct and particular examination.

One of the arguments made use of in support of the idea, may be pronounced both quaint and superficial. It amounts to this: That, in the productions of the soil, nature co-operates with man; and that the effect of their joint labor must be greater than that of the labor of man alone. . . .

Another, and that which seems to be the principal argument offered for the superior productiveness of agricultural labor, turns upon the allegation, that labor employed on manufactures, yields nothing equivalent to the rent of land; or to that nett surplus, as it is called, which accrues to the proprietor of the soil.

But this distinction, important as it has been deemed, appears rather verbal than substantial. . . .

The foregoing suggestions are not designed to inculcate an opinion that manufacturing industry is more productive than that of agriculture. They are intended rather to show that the reverse of this proposition is not ascertained; that the general arguments, which are brought to establish it, are not satisfactory; and consequently, that a supposition of the superior productiveness of tillage ought to be no obstacle to listening to any substantial inducements to the encouragement of manufactures, which may be otherwise perceived to exist, through an apprehension that they may have a tendency to divert labor from a more to a less profitable employment.

It is extremely probable, that, on a full and accurate development of the matter, on the ground of fact and calculation, it would be discovered that there is no material difference between the aggregate productiveness of the one, and of the other kind of industry; and that the propriety of the encouragements, which may, in any case, be proposed to be given to either, ought to be determined upon considerations irrelative to any comparison of that nature. . . .

It is now proper to proceed a step further, and to enumerate the principal circumstances from which it may be inferred that manufacturing establishments not only occasion a positive augmentation of the produce and revenue of the society, but that they contribute essentially to rendering them greater than they could possibly be, without such establishments. These circumstances are:

1. The division of labor.

2. An extension of the use of machinery.

3. Additional employment to classes of the community not ordinarily engaged in the business.

4. The promoting of emigration from foreign countries.

5. The furnishing greater scope for the diversity of talents and dispositions, which discriminate men from each other.

6. The affording a more ample and various field for enterprise.

7. The creating, in some instances, a new, and securing, in all, a more certain and steady demand for the surplus produce of the soil. . . .

The foregoing considerations seem sufficient to establish, as general propositions, that it is the interest of nations to diversify the industrious pursuits of the individuals who compose them. That the establishment of manufactures is calculated not only to increase the general stock of useful and productive labor, but even to improve the state of agriculture in particular; certainly to advance the interests of those who are engaged in it. There are other views that will be hereafter taken of the subject, which it is conceived will serve to confirm these inferences.

III. Previously to a further discussion of the objections to the encouragement of manufactures, which have been stated, it will be of use to see what can be said in reference to the particular situation of the United States, against the conclusions appearing to result from what has been already offered.

It may be observed, and the idea is of no inconsiderable weight, that, however true it might be, that a State which, possessing large tracts of vacant and fertile territory, was, at the same time, secluded from foreign commerce, would find its interest and the interest of agriculture, in diverting a part of its population from tillage to manufactures; yet it will not follow, that the same is true of a State which, having such vacant and fertile territory, has, at the same time, ample opportunity of procuring from abroad, on good terms, all the fabrics of which it stands in need, for the supply of its inhabitants. The power of doing this, at least secures the great advantage of a division of labor, leaving the farmer free to pursue, exclusively, the culture of his land, and enabling him to procure with its products the manufactured supplies requisite either to his wants or to his enjoyments. . . .

To these observations, the following appears to be a satisfactory answer:

1st. If the system of perfect liberty to industry and commerce were the prevailing system of nations, the arguments which dissuade a country, in the predicament of the United States, from the zealous pursuit of manufactures, would doubtless have great force. . . .

But the system which has been mentioned, is far from characterizing the general policy of nations. The prevalent one has been regulated by an opposite spirit. The consequence of it is, that the United States are, to a certain extent, in the situation of a country precluded from foreign commerce. They can indeed, without difficulty, obtain from abroad the manufactured supplies of which they are in want; but they experience numerous and very injurious impediments to the emission and vent of their own commodities. . . .

In such a position of things, the United States cannot exchange with Europe on equal terms; and the want of reciprocity would render them the victim of a system which should induce them to confine their views to agriculture, and refrain from manufactures. . . .

2d. The conversion of their waste into cultivated lands, is certainly a point of great moment, in the political calculations of the United States. But the degree in which this may possibly be retarded, by the encouragement of manufactories, does not appear to countervail the powerful inducements to affording that encouragement. . . .

The remaining objections to a particular encouragement of manufactures in the United States, now require to be examined.

One of these turns on the proposition, that industry, if left to itself, will naturally find its way to the most useful and profitable employment. Whence it is inferred, that manufactures, without the aid of government, will grow up as soon and as fast as the natural state of things and the interest of the community may require.

Against the solidity of this hypothesis, in the full latitude of the terms, very cogent reasons may be offered. These have relation to the strong influence of habit and the spirit of imitation; the fear of want of success in untried enterprises; the intrinsic difficulties incident to first essays towards a competition with those

who have previously attained to perfection in the business to be attempted; the bounties, premiums, and other artificial encouragements, with which foreign nations second the exertions of their own citizens, in the branches in which they are to be rivalled. . . .

Whatever room there may be for an expectation, that the industry of a people, under the direction of private interest, will, upon equal terms, find out the most beneficial employment for itself, there is none for a reliance, that it will struggle against the force of unequal terms, or will, of itself, surmount all the adventitious barriers to a successful competition, which may have been erected, either by the advantages naturally acquired by practice, and previous possession of the ground, or by those which may have sprung from positive regulations and an artificial policy. This general reflection might alone suffice as an answer to the objection under examination, exclusively of the weighty considerations which have been particularly urged.

The objections to the pursuit of manufactures in the United States, which next present themselves to discussion, represent an impracticability of success, arising from three causes: scarcity of hands, dearness of labor, want of capital.

The two first circumstances are, to a certain extent, real; and, within due limits, ought to be admitted as obstacles to the success of manufacturing enterprise in the United States. But there are various considerations which lessen their force, and tend to afford an assurance, that they are not sufficient to prevent the advantageous prosecution of many very useful and extensive manufactories. . . .

It may be affirmed . . . in respect to hands for carrying on manufactures, that we shall, in a great measure, trade upon a foreign stock, reserving our own for the cultivation of our lands and the manning of our ships, as far as character and circumstances shall incline. It is not unworthy of remark, that the objection to the success of manufactures, deduced from the scarcity of hands, is alike applicable to trade and navigation, and yet these are perceived to flourish, without any sensible impediment from that cause.

As to the dearness of labor, (another of the obstacles alleged) this has relation principally to two circumstances: one, that which has been just discussed, or the scarcity of hands; the other, the greatness of profits.

As far as it is a consequence of the scarcity of hands, it is mitigated by all the considerations which have been adduced as lessening that deficiency. . . .

So far as the dearness of labor may be a consequence of the greatness of profits in any branch of business, it is no obstacle to its success. The undertaker can afford to pay the price.

There are grounds to conclude, that undertakers of manufactures in this country, can, at this time, afford to pay higher wages to the workmen they may employ, than are paid to similar workmen in Europe. . . .

The supposed want of capital for the prosecution of manufactures in the United States, is the most indefinite of the objections which are usually opposed to it. . . .

It is not obvious why the same objection might not as well be made to external commerce as to manufactures: since it is manifest, that our immense tracts of land, occupied and unoccupied, are capable of giving employment to more capital than is actually bestowed on them. It is certain that the United States offer a vast field for the advantageous employment of capital; but it does not follow that there will not be found, in one way or another, a sufficient fund for the successful prosecution of any species of industry which is likely to prove truly beneficial. . . .

To all the arguments which are brought to evince the impracticability of success in manufacturing establishments in the United States, it might have been a sufficient answer to have referred to the experience of what has been already done. It is certain that several important branches have grown up and flourished, with a rapidity which surprises, affording an encouraging assurance of success in future attempts. Of these it may not be improper to enumerate the most considerable:

1. *Of Skins.* — Tanned and tawed leather, dressed skins, shoes, boots, and slippers, harness and saddlery of all kinds, portmanteaux and trunks, leather breeches, gloves, muffs, and tippets, parchment and glue.

2. *Of Iron.* — Bar and sheet iron, steel, nail rods and nails, implements of husbandry, stoves, pots, and other household utensils, the steel and iron work of carriages, and for ship building, anchors, scale beams and weights, and various tools of artificers, arms of different kinds; though the manufacture of these last has of late diminished for want of demand.

3. *Of Wood.* — Ships, cabinet wares, and turnery, wool and cotton cards, and other machinery for manufactures and husbandry, mathematical instruments, coopers' wares of every kind.

4. *Of Flax and Hemp.* — Cables, sail cloth, cordage, twine, and pack thread.

5. Bricks and coarse tiles, and potters' wares.

6. Ardent spirits and malt liquors.

7. Writing and printing paper, sheathing and wrapping paper, paste boards, fullers' or press papers, paper hangings.

8. Hats of fur and wool, and of mixtures of both; women's stuff and silk shoes.

9. Refined sugars.

10. Oils of animals and seeds, soap, spermaceti and tallow candles.

11. Copper and brass wares, particularly utensils for distillers, sugar refiners, and brewers; andirons and other articles for household use, philosophical apparatus.

12. Tin wares for most purposes of ordinary use.

13. Carriages of all kinds.

14. Snuff, chewing and smoking tobacco.

15. Starch and hair-powder.

16. Lampblack, and other painters' colors.

17. Gunpowder.

Besides manufactories of these articles, which are carried on as regular trades, and have attained to a considerable degree of maturity, there is a vast scene of household manufacturing, which contributes more largely to the supply of the community than could be imagined, without having made it an object of particular inquiry. This observation is the pleasing result of the investigation to which the subject of this report has led, and is applicable as well to the Southern as to the Middle and Northern States. Great quantities of coarse cloths, coatings, serges, and flannels, linsey woolseys, hosiery of wool, cotton, and thread, coarse fustians, jeans, and muslins, checked and striped cotton and linen goods, bed ticks, coverlets and counterpanes, tow linens, coarse shirtings, sheetings, towelling, and table linen, and various mixtures of wool and cotton, and of cotton and flax, are made in the household way, and, in many instances, to an extent not only sufficient for the supply of the families in which they are made, but for sale, and, even, in some cases, for exportation. It is computed in a

number of districts that two-thirds, three-fourths, and even four-fifths, of all the clothing of the inhabitants, are made by themselves. The importance of so great a progress as appears to have been made in family manufactures, within a few years, both in a moral and political view, renders the fact highly interesting. . . .

There remains to be noticed an objection to the encouragement of manufactures, of a nature different from those which question the probability of success. This is derived from its supposed tendency to give a monopoly of advantages to particular classes, at the expense of the rest of the community, who, it is affirmed, would be able to procure the requisite supplies of manufactured articles on better terms from foreigners than from our own citizens; and who, it is alleged, are reduced to necessity of paying an enhanced price for whatever they want, by every measure which obstructs the free competition of foreign commodities.

It is not an unreasonable supposition, that measures which serve to abridge the free competition of foreign articles, have a tendency to occasion an enhancement of prices; and it is not to be denied that such is the effect, in a number of cases; but the fact does not uniformly correspond with the theory. A reduction of prices has, in several instances, immediately succeeded the establishment of a domestic manufacture. Whether it be that foreign manufacturers endeavor to supplant, by underselling our own, or whatever else be the cause, the effect has been such as is stated, and the reverse of what might have been expected.

But, though it were true that the immediate and certain effect of regulations controlling the competition of foreign with domestic fabrics, was an increase of price, it is universally true that the contrary is the ultimate effect with every successful manufacture. When a domestic manufacture has attained to perfection, and has engaged in the prosecution of it a competent number of persons, it invariably becomes cheaper. Being free from the heavy charges which attend the importation of foreign commodities, it can be afforded, and accordingly seldom or never fails to be sold, cheaper, in process of time, than was the foreign article for which it is a substitute. The internal competition which takes place, soon does away every thing like monopoly, and by degrees reduces the price of the article to the minimum of a reasonable profit on the capital employed. This accords with the reason of the thing, and with experience.

Whence it follows, that it is the interest of a community, with a view to eventual and permanent economy, to encourage the growth of manufactures. In a national view, a temporary enhancement of price must always be well compensated by a permanent reduction of it. . . .

The objections which are commonly made to the expediency of encouraging, and to the probability of succeeding in manufacturing pursuits, in the United States, having now been discussed, the considerations, which have appeared in the course of the discussion, recommending that species of industry to the patronage of the Government, will be materially strengthened by a few general, and some particular topics, which have been naturally reserved for subsequent notice.

I. There seems to be a moral certainty that the trade of a country, which is both manufacturing and agricultural, will be more lucrative and prosperous than that of a country which is merely agricultural. . . .

Not only the wealth, but the independence and security of a country, appear to be materially connected with the prosperity of manufactures. Every nation, with a view to those great objects, ought to endeavor to possess within itself, all the essentials of national supply. These comprise the means of subsistence, habitation, clothing, and defense.

The possession of these is necessary to the perfection of the body politic; to the safety as well as to the welfare of the society. The want of either is the want of an important organ of political life and motion; and in the various crises which await a State, it must severely feel the effects of any such deficiency. The extreme embarrassments of the United States, during the late war, from an incapacity of supplying themselves, are still matter of keen recollection; a future war might be expected again to exemplify the mischiefs and dangers of a situation, to which that incapacity is still, in too great a degree, applicable, unless changed by timely and vigorous exertions. To effect this change, as fast as shall be prudent, merits all the attention and all the zeal of our public councils; 'tis the next great work to be accomplished. . . .

One more point of view only remains, in which to consider the expediency of encouraging manufactures in the United States.

It is not uncommon to meet with an opinion, that, though the

promoting of manufactures may be the interest of a part of the Union, it is contrary to that of another part. The Northern and Southern regions are sometimes represented as having adverse interests in this respect. Those are called manufacturing, these agricultural States; and a species of opposition is imagined to subsist between the manufacturing and agricultural interests. . . .

Ideas of a contrariety of interests between the Northern and Southern regions of the Union, are, in the main, as unfounded as they are mischievous. The diversity of circumstances, on which such contrariety is usually predicated, authorizes a directly contrary conclusion. Mutual wants constitute one of the strongest links of political connection; and the extent of these bears a natural proportion to the diversity in the means of mutual supply.

Suggestions of an opposite complexion are ever to be deplored, as unfriendly to the steady pursuit of one great common cause, and to the perfect harmony of all the parts.

In proportion as the mind is accustomed to trace the intimate connection of interest which subsists between all the parts of a society, united under the same government, the infinite variety of channels which serve to circulate the prosperity of each, to and through the rest — in that proportion will it be little apt to be disturbed by solicitudes and apprehensions, which originate in local discriminations.

It is a truth, as important as it is agreeable, and one to which it is not easy to imagine exceptions, that every thing tending to establish substantial and permanent order in the affairs of a country, to increase the total mass of industry and opulence, is ultimately beneficial to every part of it. To the credit of this great truth, an acquiescence may safely be challenged, from every quarter, to all institutions and arrangements which promise a confirmation of public order and an augmentation of national resource.

But there are more particular considerations which serve to fortify the idea that the encouragement of manufactures is the interest of all parts of the Union. If the Northern and Middle States should be the principal scenes of such establishments, they would immediately benefit the more Southern, by creating a demand for productions, some of which they have in common with the other States, and others, which are either peculiar to them, or more abundant, or of better quality, than elsewhere. These productions, principally, are timber, flax, hemp, cotton, wool, raw

silk, indigo, iron, lead, furs, hides, skins, and coals; of these articles, cotton and indigo are peculiar to the Southern States, as are, hitherto lead and coal; flax and hemp are, or may be, raised in greater abundance there, than in the more Northern States; and the wool of Virginia is said to be of better quality than that of any other State — a circumstance rendered the more probable, by the reflection, that Virginia embraces the same latitudes with the finest wool countries of Europe. The climate of the South is also better adapted to the production of silk.

The extensive cultivation of cotton, can, perhaps, hardly be expected but from the previous establishment of domestic manufactories of the article; and the surest encouragement and vent for the others, would result from similar establishments in respect to them. . . .

A full view having now been taken of the inducements to the promotion of manufactures in the United States, accompanied with an examination of the principal objections which are commonly urged in opposition, it is proper, in the next place, to consider the means by which it may be effected, as introductory to a specification of the objects, which, in the present state of things, appear the most fit to be encouraged, and of the particular measures which it may be advisable to adopt, in respect to each.

In order to a better judgment of the means proper to be resorted to by the United States, it will be of use to advert to those which have been employed with success in other countries. The principal of these are:

1. *Protecting duties — duties on those foreign articles which are the rivals of the domestic ones intended to be encouraged. . . .*
2. *Prohibitions of rival articles, or duties equivalent to prohibitions. . . .*
3. *Prohibitions of the exportation of the materials of manufactures. . . .*
4. *Pecuniary bounties. . . .*
5. *Premiums. . . .*
6. *The exemption of the materials of manufactures from duty. . . .*
7. *Drawbacks of the duties which are imposed on the materials of manufactures. . . .*
8. *The encouragement of new inventions and discoveries at home, and of the introduction into the United States of such as*

may have been made in other countries; particularly, those which relate to machinery. . . .

9. *Judicious regulations for the inspection of manufactured commodities. . . .*

10. *The facilitating of pecuniary remittances from place to place — . . .*

11. *The facilitating of the transportation of commodities. . . .*

. . . It appeared proper to investigate principles, to consider objections, and to endeavor to establish the utility of the thing proposed to be encouraged, previous to a specification of the objects which might occur, as meriting or requiring encouragement, and of the measures which might be proper in respect to each. The first purpose having been fulfilled, it remains to pursue the second.

In the selection of objects, five circumstances seem entitled to particular attention. The capacity of the country to furnish the raw material; the degree in which the nature of the manufacture admits of a substitute for manual labor in machinery; the facility of execution; the extensiveness of the uses to which the article can be applied; its subserviency to other interests, particularly the great one of national defence. There are, however, objects to which these circumstances are little applicable, which, for some special reasons, may have a claim to encouragement. . . .

[The report then considers, as objects the production or manufacture of which should be encouraged, iron, copper, lead, coal, wood, skins, grain, flax and hemp, cotton, wool, silk, glass, gunpowder, paper, printed books, refined sugars, and chocolate. The report concludes with the suggestion that the anticipated surplus of receipts from the additional duties proposed be applied, first, "to constitute a fund for paying the bounties which have been decreed," and, second, "to constitute a fund for the operations of a board to be established for promoting arts, agriculture, manufactures, and commerce."]

No. 13. Proclamation of Neutrality

April 22, 1793

THE declaration of war made by France against Great Britain and Holland reached the United States early in April, 1793. Washington was at Mount Vernon. April 12 he addressed letters to the Secretaries of State and of the

Treasury, "requesting their immediate attention to the question of privateering"; on the 17th he reached Philadelphia. On the following day Washington sent to the members of the Cabinet a circular letter containing thirteen questions, framed by Hamilton, relative to the proper conduct of the United States in view of a European war. The members of the Cabinet, with the Attorney-General, met on the 19th at Washington's house, and unanimously decided in favor of the issuance of a proclamation of neutrality. Randolph was directed to draw up the proclamation; on the 22d it was submitted to the President, approved, signed, and ordered to be published. The proclamation was communicated to Congress Dec. 3.

REFERENCES. — *Text* in *Amer. State Papers, Foreign Relations*, I., 140. Washington's letter to the Cabinet, and the accompanying questions, are given in Sparks, *Writings of Washington*, X., 337, 533, 534. Jefferson's account of the Cabinet meeting at which the proclamation was discussed is in his *Works* (ed. 1854), IX., 142, 143; for his own views on the subject, *ib.*, IV., 17–20, 29–31. For the controversy between Hamilton and Madison, under the names of "Pacificus" and "Helvidius," see Hamilton's *Works* (ed. 1851), VII., 76–117, and Madison's *Writings* (ed. 1865), I., 611–654.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, of the one part, and France on the other; and 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 toward the belligerent Powers:

I have therefore thought fit by these presents to declare the disposition of the United States to observe the conduct aforesaid towards those Powers respectively; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatsoever, which may in any manner tend to contravene such disposition.

And I do hereby also make known, that whosoever of the citizens of the United States shall render himself liable to punishment or forfeiture under the law of nations, by committing, aiding, or abetting hostilities against any of the said Powers, or by carrying to any of them those articles which are deemed contraband by the *modern* usage of nations, will not receive the protection of the United States, against such punishment or forfeiture; and further, that I have given instructions to those officers, to whom it belongs, to cause prosecutions to be instituted against all per-

sons, who shall, within the cognizance of the courts of the United States, violate the law of nations, with respect to the Powers at war, or any of them.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the twenty-second day of April, one thousand seven hundred and ninety-three, and of the Independence of the United States of America the seventeenth.

GEO. WASHINGTON.

No. 14. Treaty with Great Britain

November 19, 1794

THE non-observance by Great Britain of the provisions of the treaty of 1783 in regard to the carrying away of slaves and the withdrawal of troops led to extended but fruitless diplomatic correspondence. In the autumn of 1793 relations between the two countries were further strained by the admiralty orders for the seizure of neutral vessels laden with provisions destined for French ports. April 16, 1794, Washington nominated John Jay, chief justice of the Supreme Court, as envoy extraordinary to negotiate with Great Britain. By a vote of 18 to 8 the nomination was confirmed. Jay reached London June 15, and Nov. 19 the treaty was concluded. The treaty was submitted to the Senate, in special session, June 8, 1795; on the 24th ratification was advised, with a special reservation as to the twelfth article. An act of May 8, 1796, made appropriations for carrying the treaty into effect.

REFERENCES. — *Text* in *Revised Statutes relating to District of Columbia*, etc. (ed. 1875), 269–282. Jay's instructions and the diplomatic correspondence are in *Amer. State Papers, Foreign Relations*, I., 472–520. The proceedings of the Senate are in the *Annals*, 3d Cong., 854–868; discussions in the House are in the *Annals*, 4th Cong., 1st Sess., 426–783, and in Benton's *Abridgment*, I., 639–754. Washington's message refusing compliance with the request of the House for papers relating to the treaty is in *Amer. State Papers* (Wait's ed., 1817), II., 102–105. For Hamilton's objections to the treaty when first made known, see Gibbs's *Administrations of Washington and Adams*, I., 223, 224; for his later views, over names of "Horatius" and "Camillus," see his *Works* (ed. 1851), VII., 169–528. See also *Works of Fisher Ames* (ed. 1809), 58–93, speech on the treaty; Wharton's *Digest of Intern. Law* (ed. 1887), II., 161–163; and *ib.*, II., 158, 159, for references to judicial decisions involving the treaty; Jay's *Life of John Jay*, I., 305–315, 322–354.

His Britannic Majesty and the United States of America, being desirous, by a treaty of amity, commerce, and navigation, to ter-

minate their differences in such a manner, as, without reference to the merits of their respective complaints and pretentions, may be the best calculated to produce mutual satisfaction and good understanding; and also to regulate the commerce and navigation between their respective countries, territories, and people, in such a manner as to render the same reciprocally beneficial and satisfactory; they have, respectively, named their Plenipotentiaries, and given them full powers to treat of, and conclude the said treaty, that is to say:

His Britannic Majesty has named for his Plenipotentiary, the Right Honorable William Wyndham Baron Grenville of Wotton, one of His Majesty's Privy Council, and His Majesty's Principal Secretary of State for Foreign Affairs; and the President of the United States, by and with the advice and consent of the Senate thereof, hath appointed for their Plenipotentiary, the Honorable John Jay, Chief Justice of the said United States, and their Envoy Extraordinary to His Majesty;

Who have agreed on and concluded the following articles:

ARTICLE I.

There shall be a firm, inviolable and universal peace, and a true and sincere friendship between His Britannic Majesty, his heirs and successors, and the United States of America; and between their respective countries, territories, cities, towns and people of every degree, without exception of persons or places.

ARTICLE II.

His Majesty will withdraw all his troops and garrisons from all posts and places within the boundary lines assigned by the treaty of peace to the United States. This evacuation shall take place on or before the first day of June, one thousand seven hundred and ninety-six, and all the proper measures shall in the interval be taken by concert between the Government of the United States and His Majesty's Governor-General in America, for settling the previous arrangements which may be necessary respecting the delivery of the said posts: The United States in the mean time, at their discretion, extending their settlements to any part within the said boundary line, except within the precincts or jurisdiction of any of the said posts. All settlers and traders, within the precincts or jurisdicion of the said posts,

shall continue to enjoy, unmolested, all their property of every kind, and shall be protected therein. They shall be at full liberty to remain there, or to remove with all or any part of their effects; and it shall also be free to them to sell their lands, houses, or effects, or to retain the property thereof, at their discretion; such of them as shall continue to reside within the said boundary lines, shall not be compelled to become citizens of the United States, or to take any oath of allegiance to the Government thereof; but they shall be at full liberty so to do if they think proper, and they shall make and declare their election within one year after the evacuation aforesaid. And all persons who shall continue there after the expiration of the said year, without having declared their intention of remaining subjects of His Britannic Majesty, shall be considered as having elected to become citizens of the United States.

ARTICLE III.*

It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America, (the country within the limits of the Hudson's Bay Company only excepted,) and to navigate all the lakes, rivers, and waters thereof, and freely to carry on trade and commerce with each other. But it is understood that this article does not extend to the admission of vessels of the United States into the sea-ports, harbours, bays, or creeks of His Majesty's said territories; nor into such parts of the rivers in His Majesty's said territories as are between the mouth thereof, and the highest port of entry from the sea, except in small vessels trading bona fide between Montreal and Quebec, under such regulations as shall be established to prevent the possibility of any frauds in this respect. Nor to the admission of British vessels from the sea into the rivers of the United States, beyond the highest ports of entry for foreign vessels from the sea. The river Mississippi shall, however, according to the treaty of peace, be entirely open to both parties; and it is further agreed, that all the ports and

* See explanatory article, May 4, 1796. *Revised Statutes relating to District of Columbia* (ed. 1875), 282, 283; *Treaties and Conventions* (ed. 1889), 295, 296. — ED.

places on its eastern side, to whichsoever of the parties belonging, may freely be resorted to and used by both parties, in as ample a manner as any of the Atlantic ports or places of the United States, or any of the ports or places of His Majesty in Great Britain.

All goods and merchandize whose importation into His Majesty's said territories in America shall not be entirely prohibited, may freely, for the purposes of commerce, be carried into the same in the manner aforesaid, by the citizens of the United States, and such goods and merchandize shall be subject to no higher or other duties than would be payable by His Majesty's subjects on the importation of the same from Europe into the said territories. And in like manner, all goods and merchandize whose importation into the United States shall not be wholly prohibited, may freely, for the purposes of commerce, be carried into the same, in the manner aforesaid, by His Majesty's subjects, and such goods and merchandize shall be subject to no higher or other duties than would be payable by the citizens of the United States on the importation of the same in American vessels into the Atlantic ports of the said States. And all goods not prohibited to be exported from the said territories respectively, may in like manner be carried out of the same by the two parties respectively, paying duty as aforesaid.

No duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

No higher or other tolls or rates of ferriage than what are or shall be payable by natives, shall be demanded on either side; and no duties shall be payable on any goods which shall merely be carried over any of the portages or carrying-places on either side, for the purpose of being immediately re-imbarked and carried to some other place or places. But as by this stipulation it is only meant to secure to each party a free passage across the portages on both sides, it is agreed that this exemption from duty shall extend only to such goods as are carried in the usual and direct road across the portage, and are not attempted to be in

any manner sold or exchanged during their passage across the same, and proper regulations may be established to prevent the possibility of any frauds in this respect.

As this article is intended to render in a great degree the local advantages of each party common to both, and thereby to promote a disposition favorable to friendship and good neighborhood, it is agreed that the respective Governments will mutually promote this amicable intercourse, by causing speedy and impartial justice to be done, and necessary protection to be extended to all who may be concerned therein.

ARTICLE IV.

Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace between His Majesty and the United States: it is agreed that measures shall be taken in concert between His Majesty's Government in America and the Government of the United States, for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony, to the principal source or sources of the said river, and also of the parts adjacent thereto; and that if, on the result of such survey, it should appear that the said river would not be intersected by such a line as is above mentioned, the two parties will thereupon proceed, by amicable negotiation, to regulate the boundary line in that quarter, as well as all other points to be adjusted between the said parties, according to justice and mutual convenience and in conformity to the intent of the said treaty.

ARTICLE V.*

Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described; that question shall be referred to the final decision of commissioners to be appointed in the following manner, viz: [Each party to choose one commissioner, and these two to choose a third. The commissioner to "decide what river is the river St. Croix, intended by the treaty," and the decision to be final.]

* See explanatory article, March 15, 1798. *Revised Statutes relating to District of Columbia* (ed. 1875), 283, 284; *Treaties and Conventions* (ed. 1889), 396, 397. — ED.

ARTICLE VI.

Whereas it is alledged by divers British merchants and others His Majesty's subjects, that debts, to a considerable amount, which were bona fide contracted before the peace, still remain owing to them by citizens or inhabitants of the United States, and that by the operation of various lawful impediments since the peace, not only the full recovery of the said debts has been delayed, but also the value and security thereof have been, in several instances, impaired and lessened, so that, by the ordinary course of judicial proceedings, the British creditors cannot now obtain, and actually have and receive full and adequate compensation for the losses and damages which they have thereby sustained: It is agreed, that in all such cases, where full compensation for such losses and damages cannot, for whatever reason, be actually obtained, had and received by the said creditors in the ordinary course of justice, the United States will make full and complete compensation for the same to the said creditors: But it is distinctly understood, that this provision is to extend to such losses only as have been occasioned by the lawful impediments aforesaid, and is not to extend to losses occasioned by such insolvency of the debtors or other causes as would equally have operated to produce such loss, if the said impediments had not existed; nor to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

[Claims to be adjudicated by five commissioners, with powers and duties as herein prescribed. The awards of the commissioners to be final, "both as to the justice of the claim, and to the amount of the sum to be paid to the creditor or claimant."]

ARTICLE VII.

Whereas complaints have been made by divers merchants and others, citizens of the United States, that during the course of the war in which His Majesty is now engaged, they have sustained considerable losses and damage, by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from His Majesty, and that from various circumstances belonging to the said cases, adequate compensation for the losses and damages so sustained

cannot now be actually obtained, had, and received by the ordinary course of judicial proceedings; it is agreed, that in all such cases, where adequate compensation cannot, for whatever reason, be now actually obtained, had, and received by the said merchants and others, in the ordinary course of justice, full and complete compensation for the same will be made by the British Government to the said complainants. But it is distinctly understood that this provision is not to extend to such losses or damages as have been occasioned by the manifest delay or negligence, or wilful omission of the claimant.

[Claims to be adjudicated by five commissioners, under like conditions to those stated in Art. VI.] *

And whereas certain merchants and others, His Majesty's subjects, complain that, in the course of the war, they have sustained loss and damage by reason of the capture of their vessels and merchandise, taken within the limits and jurisdiction of the States and brought into the ports of the same, or taken by vessels originally armed in ports of the said States:

It is agreed that in all such cases where restitution shall not have been made agreeably to the tenor of the letter from Mr. Jefferson to Mr. Hammond, dated at Philadelphia, Sept. 5, 1793, a copy of which is annexed to this treaty; † the complaints of the parties shall be and hereby are referred to the commissioners to be appointed by virtue of this article, who are hereby authorized and required to proceed in the like manner relative to these as to the other cases committed to them. . . .

ARTICLE VIII.

[Provides for the expenses of the commissioners and the filling of vacancies.]

ARTICLE IX.

It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominions of His Majesty, shall continue to hold them according to the nature and tenure of their respective

* A convention providing for payment of indemnity under Articles VI. and VII., and debts under Article IV. of the treaty of Sept. 3, 1783, was concluded Jan. 8, 1802. *Revised Statutes relating to District of Columbia* (ed. 1875), 285–287; *Treaties and Conventions* (ed. 1889), 398, 399. — ED.

† *Revised Statutes relating to District of Columbia* (ed. 1875), 284, 285; *Treaties and Conventions* (ed. 1889), 394, 395. — ED.

estates and titles therein; and may grant, sell, or devise the same to whom they please, in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens.

ARTICLE X.

Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor monies, which they may have in the public funds, or in the public or private banks, shall ever in any event of war or national differences be sequestered or confiscated, it being unjust and impolitic that debts and engagements contracted and made by individuals, having confidence in each other and in their respective Governments, should ever be destroyed or impaired by national authority on account of national differences and discontents.

ARTICLE XI.

It is agreed between His Majesty and the United States of America, that there shall be a reciprocal and entirely perfect liberty of navigation and commerce between their respective people, in the manner, under the limitations, and on the conditions specified in the following articles.

ARTICLE XII.

[Art. XII., relating to trade with the West Indies, was suspended by the resolution of the Senate advising ratification, and the suspension was agreed to by Great Britain.]

ARTICLE XIII.

His Majesty consents that the vessels belonging to the citizens of the United States of America shall be admitted and hospitably received in all the sea-ports and harbors of the British territories in the East Indies. And that the citizens of the said United States may freely carry on a trade between the said territories and the said United States, in all articles of which the importation or exportation respectively, to or from the said territories, shall not be entirely prohibited. Provided only, that it shall not be lawful for them in any time of war between the British

Government and any other Power or State whatever, to export from the said territories, without the special permission of the British Government there, any military stores, or naval stores, or rice. The citizens of the United States shall pay for their vessels when admitted into the said ports no other or higher tonnage duty than shall be payable on British vessels when admitted into the ports of the United States. And they shall pay no other or higher duties or charges, on the importation or exportation of the cargoes of the said vessels, than shall be payable on the same articles when imported or exported in British vessels. But it is expressly agreed that the vessels of the United States shall not carry any of the articles exported by them from the said British territories to any port or place, except to some port or place in America, where the same shall be unladen, and such regulations shall be adopted by both parties as shall from time to time be found necessary to enforce the due and faithful observance of this stipulation. It is also understood that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of the said British territories; but vessels going with their original cargoes, or part thereof, from one port of discharge to another, are not to be considered as carrying on the coasting trade. Neither is this article to be construed to allow the citizens of the said States to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British Government established there; and if any transgression should be attempted against the regulations of the British Government in this respect, the observance of the same shall and may be enforced against the citizens of America in the same manner as against British subjects or others transgressing the same rule. And the citizens of the United States, whenever they arrive in any port or harbour in the said territories, or if they should be permitted, in manner aforesaid, to go to any other place therein, shall always be subject to the laws, government, and jurisdiction of what nature established in such harbor, port, or place, according as the same may be. The citizens of the United States may also touch for refreshment at the island of St. Helena, but subject in all respects to such regulations as the British Government may from time to time establish there.

ARTICLE XIV.

There shall be between all the dominions of His Majesty in Europe and the territories of the United States a reciprocal and perfect liberty of commerce and navigation. The people and inhabitants of the two countries, respectively, shall have liberty, freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places, and rivers within the dominions and territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time. Also to hire and possess houses and warehouses for the purposes of their commerce, and generally the merchants and traders on each side shall enjoy the most complete protection and security for their commerce; but subject always as to what respects this article to the laws and statutes of the two countries respectively.

ARTICLE XV.

It is agreed that no other or higher duties shall be paid by the ships or merchandize of the one party in the ports of the other than such as are paid by the like vessels or merchandize of all other nations. Nor shall any other or higher duty be imposed in one country on the importation of any articles the growth, produce, or manufacture of the other, than are or shall be payable on the importation of the like articles being of the growth, produce, or manufacture of any other foreign country. Nor shall any prohibition be imposed on the exportation or importation of any articles to or from the territories of the two parties respectively, which shall not equally extend to all other nations.

But the British Government reserves to itself the right of imposing on American vessels entering into the British ports in Europe a tonnage duty equal to that which shall be payable by British vessels in the ports of America; and also such duty as may be adequate to countervail the difference of duty now payable on the importation of European and Asiatic goods, when imported into the United States in British or in American vessels.

The two parties agree to treat for the more exact equalization of the duties on the respective navigation of their subjects and people, in such manner as may be most beneficial to the two countries. The arrangements for this purpose shall be made at

the same time with those mentioned at the conclusion of the twelfth article of this treaty, and are to be considered as a part thereof. In the interval it is agreed that the United States will not impose any new or additional tonnage duties on British vessels, nor increase the now-subsisting difference between the duties payable on the importation of any articles in British or in American vessels.

ARTICLE XVI.

[Provides for the appointment of consuls.]

ARTICLE XVII.

It is agreed that in all cases where vessels shall be captured or detained on just suspicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war, the said vessel shall be brought to the nearest or most convenient port; and if any property of an enemy should be found on board such vessel, that part only which belongs to the enemy shall be made prize, and the vessel shall be at liberty to proceed with the remainder without any impediment. And it is agreed that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes so brought in for adjudication, and in the payment or recovery of any indemnification, adjudged or agreed to be paid to the masters or owners of such ships.

ARTICLE XVIII.

In order to regulate what is in future to be esteemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket-rests, bandoliers, gun-powder, match, saltpetre, ball, pikes, swords, head-pieces, cuirasses, halberts, lances, javelins, horse-furniture, holsters, belts, and generally all other implements of war, as also timber for ship-building, tar or rozin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted; and all the above articles are hereby declared to be just objects of confiscation whenever they are attempted to be carried to an enemy.

And whereas the difficulty of agreeing on the precise cases in

which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed that whenever any such articles so becoming contraband, according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or, in their default, the Government under whose authority they act, shall pay to the masters or owners of such vessels the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place; but she shall not be detained, nor her cargo, if not contraband, be confiscated, unless after notice she shall again attempt to enter, but she shall be permitted to go to any other port or place she may think proper; nor shall any vessel or goods of either party that may have entered into such port or place before the same was besieged, blockaded, or invested by the other, and be found therein after the reduction or surrender of such place, be liable to confiscation, but shall be restored to the owners or proprietors thereof.

ARTICLE XIX.

And that more abundant care may be taken for the security of the respective subjects and citizens of the contracting parties, and to prevent their suffering injuries by the men-of-war, or privateers of either party, all commanders of ships of war and privateers, and all others the said subjects and citizens, shall forbear doing any damage to those of the other party or committing any outrage against them, and if they act to the contrary they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.

[Commanders of privateers to give bonds, and authentic copies of proceedings in prize cases to be furnished to commanders if required.]

ARTICLE XX.

[Neither party to aid pirates.]

ARTICLE XXI.

It is likewise agreed that the subjects and citizens of the two nations shall not do any acts of hostility or violence against each other, nor accept commissions or instructions so to act from any foreign Prince or State, enemies to the other party; nor shall the enemies of one of the parties be permitted to invite, or endeavor to enlist in their military service, any of the subjects or citizens of the other party; and the laws against all such offences and aggressions shall be punctually executed. And if any subject or citizen of the said parties respectively shall accept any foreign commission or letters of marque for arming any vessel to act as a privateer against the other party, and be taken by the other party, it is hereby declared to be lawful for the said party to treat and punish the said subject or citizen having such commission or letters of marque as a pirate.

ARTICLE XXII.

It is expressly stipulated that neither of the said contracting parties will order or authorize any acts of reprisal against the other, on complaints of injuries or damages, until the said party shall first have presented to the other a statement thereof, verified by competent proof and evidence, and demanded justice and satisfaction, and the same shall either have been refused or unreasonably delayed.

ARTICLE XXIII.

The ships of war of each of the contracting parties shall, at all times, be hospitably received in the ports of the other, their officers and crews paying due respect to the laws and Government of the country. The officers shall be treated with that respect which is due to the commissions which they bear, and if any insult should be offered to them by any of the inhabitants, all offenders in this respect shall be punished as disturbers of the peace and amity between the two countries. And His Majesty consents that in case an American vessel should, by stress of weather, danger from enemies, or other misfortune, be reduced to the necessity of seeking shelter in any of His Majesty's ports,

into which such vessel could not in ordinary cases claim to be admitted, she shall, on manifesting that necessity to the satisfaction of the Government of the place, be hospitably received, and be permitted to refit and to purchase at the market price such necessaries as she may stand in need of, conformably to such orders and regulations as the Government of the place, having respect to the circumstances of each case, shall prescribe. She shall not be allowed to break bulk or unload her cargo, unless the same should be bona fide necessary to her being refitted. Nor shall be permitted to sell any part of her cargo, unless so much only as may be necessary to defray her expences, and then not without the express permission of the Government of the place. Nor shall she be obliged to pay any duties whatever, except only on such articles as she may be permitted to sell for the purpose aforesaid.

ARTICLE XXIV.

It shall not be lawful for any foreign privateers (not being subjects or citizens of either of the said parties) who have commissions from any other Prince or State in enmity with either nation to arm their ships in the ports of either of the said parties, nor to sell what they have taken, nor in any other manner to exchange the same; nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest port of that Prince or State from whom they obtained their commissions.

ARTICLE XXV.

It shall be lawful for the ships of war and privateers belonging to the said parties respectively to carry whithersoever they please the ships and goods taken from their enemies, without being obliged to pay any fee to the officers of the admiralty, or to any judges whatever; nor shall the said prizes, when they arrive at and enter the ports of the said parties, be detained or seized, neither shall the searchers or other officers of those places visit such prizes, (except for the purpose of preventing the carrying of any part of the cargo thereof on shore in any manner contrary to the established laws of revenue, navigation, or commerce,) nor shall such officers take cognizance of the validity of such prizes; but they shall be at liberty to hoist sail and depart as speedily as may be, and carry their said prizes to the place mentioned in their commissions or patents, which the commanders of the said

ships of war or privateers shall be obliged to show. No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties; but if forced by stress of weather, or the dangers of the sea, to enter therein, particular care shall be taken to hasten their departure, and to cause them to retire as soon as possible. Nothing in this treaty contained shall, however, be construed or operate contrary to former and existing public treaties with other sovereigns or States. But the two parties agree that while they continue in amity neither of them will in future make any treaty that shall be inconsistent with this or the preceding article.

Neither of the said parties shall permit the ships or goods belonging to the subjects or citizens of the other to be taken within cannon shot of the coast, nor in any of the bays, ports, or rivers of their territories, by ships of war or others having commission from any Prince, Republic, or State whatever. But in case it should so happen, the party whose territorial rights shall thus have been violated shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

Article XXVI.

If at any time a rupture should take place (which God forbid) between His Majesty and the United States, the merchants and others of each of the two nations residing in the dominions of the other shall have the privilege of remaining and continuing their trade, so long as they behave peaceably and commit no offence against the laws; and in case their conduct should render them suspected, and the respective Governments should think proper to order them to remove, the term of twelve months from the publication of the order shall be allowed them for that purpose, to remove with their families, effects, and property, but this favor shall not be extended to those who shall act contrary to the established laws; and for greater certainty, it is declared that such rupture shall not be deemed to exist while negotiations for accommodating differences shall be depending, nor until the respective Ambassadors or Ministers, if such there shall be, shall be recalled or sent home on account of such differences, and not on account of personal misconduct, according to the nature and

degrees of which both parties retain their rights, either to request the recall, or immediately to send home the Ambassador or Minister of the other, and that without prejudice to their mutual friendship and good understanding.

ARTICLE XXVII.

[Provides for the extradition of persons charged with murder or forgery.]

ARTICLE XXVIII.

It is agreed that the first ten articles of this treaty shall be permanent, and that the subsequent articles, except the twelfth, shall be limited in their duration to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged, but subject to this condition, That whereas the said twelfth article will expire by the limitation therein contained, at the end of two years from the signing of the preliminary or other articles of peace, which shall terminate the present war in which His Majesty is engaged, it is agreed that proper measures shall by concert be taken for bringing the subject of that article into amicable treaty and discussion, so early before the expiration of the said term as that new arrangements on that head may by that time be perfected and ready to take place. But if it should unfortunately happen that His Majesty and the United States should not be able to agree on such new arrangements, in that case all the articles of this treaty, except the first ten, shall then cease and expire together.

Lastly. This treaty, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be binding and obligatory on His Majesty and on the said States, and shall be by them respectively executed and observed with punctuality and the most sincere regard to good faith; and whereas it will be expedient, in order the better to facilitate intercourse and obviate difficulties, that other articles be proposed and added to this treaty, which articles, from want of time and other circumstances, cannot now be perfected, it is agreed that the said parties will, from time to time, readily treat of and concerning such articles, and will sincerely endeavor so to form them as that they may conduce to mutual convenience and tend to promote

mutual satisfaction and friendship; and that the said articles, after having been duly ratified, shall be added to and make a part of this treaty. In faith whereof we, the undersigned Ministers Plenipotentiary of His Majesty the King of Great Britain and the United States of America, have signed this present treaty, and have caused to be affixed thereto the seal of our arms.

Done at London this nineteenth day of November, one thousand seven hundred and ninety-four.

GRENVILLE. [L.S.]
JOHN JAY. [L.S.]

No. 15. Washington's Message on the Insurrection in Pennsylvania

November 19, 1794

THE excise law of March 3, 1791, was especially obnoxious in the four western counties of Pennsylvania, where whiskey was an ordinary medium of exchange in business transactions. A reduction of the duties by act of May 8, 1792, failed to check the growing discontent. In July, 1794, attempts to serve writs of the district court of Pennsylvania led to riotous demonstrations. The insurrection was the principal subject of Washington's address to Congress, Nov. 19, of which an extract follows.

REFERENCES. — *Text* in *Journals of Senate and House*, 3d Cong., 2d Sess.; extract in *Amer. State Papers, Miscellaneous*, I., 83–85, where are also the proclamations of Aug. 7 and Sept. 25, 1794, and papers accompanying the message. Hamilton's report on the opposition to internal duties is in his *Works* (ed. 1851), IV., 578–599. Gallatin's account of the insurrection is in his *Writings*, III., 3–67. See also Hamilton's letters to Mifflin, *Works*, V., 1–11, 16–20; to Lee, *ib.*, V., 38–42; correspondence with Washington while Hamilton was with the troops, *ib.*, V., 42–55; Johnston, in *Lalor's Cyclopædia*, III., 1108-1112; McMaster's *United States*, II., 189–204.

Fellow Citizens of the Senate and of the House of Representatives:

WHEN we call to mind the gracious indulgence of Heaven, by which the American People became a nation; when we survey the general prosperity of our country, and look forward to the riches, power, and happiness, to which it seems destined; with the deepest regret do I announce to you that, during your recess, some of the citizens of the United States have been found capable of an insurrection. It is due, however, to the character of our Government, and to its stability, which cannot be shaken by the enemies of order, freely to unfold the course of this event.

During the session of the year one thousand seven hundred and ninety, it was expedient to exercise the legislative power, granted by the Constitution of the United States, "to lay and collect excises." In a majority of the States, scarcely an objection was made to this mode of taxation. In some, indeed, alarms were at first conceived, until they were banished by reason and patriotism. In the four Western counties of Pennsylvania, a prejudice, fostered and embittered by the artifice of men, who labored for an ascendency over the will of others, by the guidance of their passions, produced symptoms of riot and violence. It is well known that Congress did not hesitate to examine the complaints which were presented, and to relieve them, as far as justice dictated, or general convenience would permit. But the impression which this moderation made on the discontented, did not correspond with what it deserved. The arts of delusion were no longer confined to the efforts of designing individuals. The very forbearance to press prosecutions was misinterpreted into a fear of urging the execution of the laws; and associations of men began to denounce threats against the officers employed. From a belief that, by a more formal concert, their operation might be defeated, certain self-created societies assumed the tone of condemnation. Hence, while the greater part of Pennsylvania itself were conforming themselves to the acts of excise, a few counties were resolved to frustrate them. It was now perceived that every expectation from the tenderness which had been hitherto pursued, was unavailing, and that further delay could only create an opinion of impotency or irresolution in the Government. Legal process, was, therefore, delivered to the Marshal, against the rioters and delinquent distillers. No sooner was he understood to be engaged in this duty, than the vengeance of armed men was aimed at *his* person, and the person and property of the Inspector of the Revenue. They fired upon the Marshal, arrested him, and detained him for some time as a prisoner. He was obliged, by the jeopardy of his life, to renounce the service of other process, on the West side of the Allegheny Mountain; and a deputation was afterwards sent to him to demand a surrender of that which he *had* served. A numerous body repeatedly attacked the house of the Inspector — seized his papers of office — and, finally destroyed, by fire, his buildings, and whatsoever they contained. Both of these officers, from a just regard to their safety, fled to the Seat of Government;

it being avowed, that the motives to such outrages were to compel the resignation of the Inspector — to withstand, by force of arms, the authority of the United States, and thereby to extort a repeal of the laws of excise, and an alteration in the conduct of Government.

Upon the testimony of these facts, an Associate Justice of the Supreme Court of the United States notified to me that, "in the counties of Washington and Allegheny, in Pennsylvania, laws of the United States were opposed, and the execution thereof obstructed by combinations, too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the Marshal of that District." On this call, momentous in the extreme, I sought and weighed what might best subdue the crisis. On the one hand, the judiciary was pronounced to be stripped of its capacity to enforce the laws; crimes, which reached the very existence of social order, were perpetrated without control; the friends of Government were insulted, abused, and overawed into silence, or an apparent acquiescence; and to yield to the treasonable fury of so small a portion of the United States, would be to violate the fundamental principle of our Constitution, which enjoins that the will of the majority shall prevail. On the other, to array citizen against citizen — to publish the dishonor of such excesses — to encounter the expense, and other embarrassments of so distant an expedition, were steps too delicate, too closely interwoven with many affecting considerations, to be lightly adopted. I postponed, therefore, the summoning of the Militia immediately into the field. But I required them to be held in readiness, that, if my anxious endeavors to reclaim the deluded, and to convince the malignant of their danger, should be fruitless, military force might be prepared to act before the season should be too far advanced.

My proclamation of the seventh of August last, was accordingly issued, and accompanied by the appointment of Commissioners, who were charged to repair to the scene of insurrection. They were authorized to confer with any bodies of men, or individuals. They were instructed to be candid and explicit in stating the sensations which had been excited in the Executive, and its earnest wish to avoid a resort to coercion. To represent, however, that, without submission, coercion *must* be the resort; but to invite them, at the same time, to return to the demeanor of faithful citizens, by such accommodations as lay within the sphere of Executive power. Pardon, too, was tendered to them by the Government

of the United States, and that of Pennsylvania, upon no other condition, than a satisfactory assurance of obedience to the laws.

Although the report of the Commissioners marks their firmness and abilities, and must unite all virtuous men, by shewing that the means of conciliation have been exhausted, all of those who had committed or abetted the tumults, did not subscribe the mild form which was proposed, as the atonement; and the indications of a peaceable temper, were neither sufficiently general nor conclusive, to recommend or warrant the farther suspension of the march of the Militia.

Thus, the painful alternative could not be discarded. I ordered the Militia to march, after once more admonishing the insurgents, in my proclamation of the twenty-fifth of September last.

It was a task too difficult to ascertain with precision the lowest degree of force, competent to the quelling of the insurrection. From a respect, indeed, to economy, and the ease of my fellow citizens belonging to the Militia, it would have gratified me to accomplish such an estimate. My very reluctance to ascribe too much importance to the opposition, had its extent been accurately seen, would have been a decided inducement to the smallest efficient numbers. In this uncertainty, therefore, I put into motion fifteen thousand men, as being an army which, according to all human calculation, would be prompt, and adequate in every view; and might, perhaps, by rendering resistance desperate, prevent the effusion of blood. Quotas had been assigned to the States of New Jersey, Pennsylvania, Maryland, and Virginia; the Governor of Pennsylvania having declared, on this occasion, an opinion which justified a requisition to the other States.

As Commander in Chief of the Militia, when called into the actual service of the United States, I have visited the places of general rendezvous, to obtain more exact information, and to direct a plan for ulterior movements. Had there been room for a persuasion, that the laws were secure from obstruction; that the Civil Magistrate was able to bring to justice such of the most culpable, as have not embraced the proffered terms of amnesty, and may be deemed fit objects of example; that the friends to peace and good government were not in need of that aid and countenance, which they ought always to receive, and I trust, ever will receive, against the vicious and turbulent, I should have caught, with avidity, the opportunity of restoring the Militia to

their families and home. But succeeding intelligence has tended to manifest the necessity of what has been done; it being now confessed by those who were not inclined to exaggerate the ill conduct of the insurgents, that their malevolence was not pointed merely to a particular law, but that a spirit, inimical to all order, has actuated many of the offenders. If the state of things had afforded reason for the continuance of my presence with the Army, it would not have been withholden. But every appearance assuring such an issue as will redound to the reputation and strength of the United States, I have judged it most proper to resume my duties at the Seat of Government, leaving the chief command with the Governor of Virginia.

Still, however, as it is probable, that, in a commotion like the present, whatsoever may be the pretence, the purposes of mischief and revenge may not be laid aside, the stationing of a small force for a certain period in the four Western counties of Pennsylvania, will be indispensable, whether we contemplate the situation of those who are connected with the execution of the laws, or of others who may have exposed themselves by an honorable attachment to them. Thirty days from the commencement of this session being the legal limitation of the employment of the Militia,* Congress cannot be too early occupied with this subject.

* * * * * * * * * * *

While there is cause to lament that occurrences of this nature should have disgraced the name, or interrupted the tranquillity of any part of our community, or should have diverted to a new application any portion of the public resources, there are not wanting real and substantial consolations for the misfortune. It has demonstrated that our prosperity rests on solid foundations; by furnishing an additional proof that my fellow citizens understand the true principles of government and liberty: that they feel their inseparable union: that, notwithstanding all the devices which have been used to sway them from their interest and duty, they are now as ready to maintain the authority of the laws against licentious invasions, as they were to defend their rights against usurpation. It has been a spectacle, displaying to the highest advantage the value of Republican Government, to behold the most and the least wealthy of our citizens standing in the same ranks as private soldiers, pre-eminently distinguished by being the

* Act of May 2, 1792, sec 2; Stat. at Large, I., 264. — ED.

army of the constitution, undeterred by a march of three hundred miles over rugged mountains, by the approach of an inclement season, or by any other discouragement. Nor ought I to omit to acknowledge the efficacious and patriotic co-operation which I have experienced from the Chief Magistrates of the States to which my requisitions have been addressed.

To every description, indeed, of citizens, let praise be given. But let them persevere in their affectionate vigilance over that precious depository of American happiness, the Constitution of the United States. Let them cherish it, too, for the sake of those who, from every clime, are daily seeking a dwelling in our land. And when, in the calm moments of reflection, they shall have retraced the origin and progress of the insurrection, let them determine whether it has not been fomented by combinations of men, who, careless of consequences, and disregarding the unerring truth that those who rouse cannot always appease a civil convulsion, have disseminated, from an ignorance or perversion of facts, suspicions, jealousies, and accusations, of the whole Government.*

Having thus fulfilled the engagement which I took when I entered into office, "to the best of my ability to preserve, protect, and defend the constitution of the United States," on you, Gentlemen, and the People by whom you are deputed, I rely for support. . . .

No. 16. Adams's Message on the Negotiations with France

March 19, 1798

IN June, 1796, Pinckney succeeded Monroe as American minister to France. He presented his credentials in December, but was refused recognition by the Directory, and in January received notice to leave France, and went to Holland. In May, 1797, Adams nominated Pinckney, Marshall, and Dana a special mission to France; Dana declined, and Gerry was substituted. The commissioners met in Paris in October. March 5, 1798, the President announced to Congress the receipt of dispatches from the commissioners, and on the 19th summarized the situation in the message which follows. A call for the papers was introduced in the Senate March 20, but was laid over. A call for all the papers was made by the House April 2; the next day the President communicated them to both Houses, "omitting only some names, and a

* This was understood to refer to the Democratic clubs, which had been in existence since 1793. — ED.

few expressions, descriptive of the persons." Adams's own feeling in regard to the treatment of the American commissioners is best expressed in the closing sentence of his message of June 21: "I will never send another minister to France without assurances that he will be received, respected, and honored as the representative of a great, free, powerful, and independent nation."

REFERENCES. — *Text* in *Journals of Senate and House*, 5th Cong., 2d Sess. The papers transmitted April 3 are in *Amer. State Papers*, *Foreign Relations*, II., 153–168, and in *Amer. State Papers* (Wait's ed., 1817), III., 456–IV., 25. For the discussions in Congress, see the *Annals*, 5th Cong., or Benton's *Abridgment*, II. On the opinions of the Cabinet, March 13, as to the advisability of presenting all the dispatches to Congress immediately, see Adams's *Works* (ed. 1853), VIII., 568, 569; Wolcott's answer, which was made the basis of the message, is in Gibbs's *Administrations of Washington and Adams*, II., 14, 15. For Adams's view of the negotiations, see his letters to Gerry, in his *Works*, VIII., 546–549; for the Democratic view, Jefferson's *Works* (ed. 1854), IV., 238–240, and Randall's *Jefferson*, II., 381–394. See also Monroe's *View of the Conduct of the Executive* (Phila., 1797); Hamilton's *Public Conduct and Character of John Adams*, in *Works* (ed. 1851), VII., 687–713; Johnston, in *Lalor's Cyclopædia*, III., 1122–1127.

Gentlemen of the Senate and Gentlemen of the House of Representatives:

THE despatches from the Envoys Extraordinary of the United States to the French Republic, which were mentioned in my message to both Houses of Congress of the fifth instant, have been examined and maturely considered.

While I feel a satisfaction in informing you that their exertions for the adjustment of the differences between the two nations have been sincere and unremitted, it is incumbent on me to declare that I perceive no ground of expectation that the objects of their mission can be accomplished on terms compatible with the safety, honor, or the essential interests of the nation.

This result cannot, with justice, be attributed to any want of moderation on the part of this Government, or to any indisposition to forego secondary interests for the preservation of peace. Knowing it to be my duty, and believing it to be your wish, as well as that of the great body of the People, to avoid, by all reasonable concessions, any participation in the contentions of Europe, the powers vested in our Envoys were commensurate with a liberal and pacific policy, and that high confidence which might justly be reposed in the abilities, patriotism, and integrity, of the characters to whom the negotiation was committed. After a careful review of the whole subject, with the aid of all the information

I have received, I can discern nothing which could have insured, or contributed to success, that has been omitted on my part, and nothing further which can be attempted, consistently with maxims for which our country has contended, at every hazard, and which constitute the basis of our national sovereignty.

Under these circumstances, I cannot forbear to reiterate the recommendations which have been formerly made, and to exhort you to adopt, with promptitude, decision, and unanimity, such measures as the ample resources of the country afford, for the protection of our sea-faring and commercial citizens; for the defence of any exposed portions of our territory; for the replenishing our arsenals, establishing foundries and military manufactories; and to provide such efficient revenue, as will be necessary to defray extraordinary expenses, and supply the deficiencies which may be occasioned by depredations on our commerce.

The present state of things is so essentially different from that in which instructions were given to Collectors to restrain vessels of the United States from sailing in an armed condition,* that the principle on which those orders were issued has ceased to exist: I therefore deem it proper to inform Congress that I no longer feel myself justifiable in continuing them, unless in particular cases, where there may be reasonable ground of suspicion that such vessels are intended to be employed contrary to law.

In all your proceedings, it will be important to manifest a zeal, vigor, and concert, in defence of the national rights, proportioned to the danger with which they are threatened.

JOHN ADAMS.

Alien and Sedition Acts

1798

THE papers relating to the mission to France, communicated to Congress April 3, 1798, were printed by order of the Senate April 9. The publication of the dispatches "solidified opposition to France, and gave both houses to Federalist control. Leading republican journalists were chiefly foreigners, and

* See circular to the Collectors of Customs, April 8, 1797, in *Amer. State Papers, Foreign Relations*, II., 78. — ED.

one of the first objects of the Federalists was to muzzle these aliens" (Johnston). The result of these efforts was the passage of the four acts following, known collectively as the alien and sedition acts.

REFERENCES. — For the *texts* of the acts, and their legislative history, see under each act, following. For the proceedings in Congress, see *House and Senate Journals*, 5th Cong., 2d Sess.; for the debates, see the *Annals*, 5th Cong., or Benton's *Abridgment*, II. On the general effect of the acts consult any larger history of the United States; see also Johnston, [illegible]*alor's Cyclopædia*, I., 56–58; Story's *Commentaries* (ed. 1833), III., 164–166, and notes. The adverse report of a committee of the House, Feb. 21, 1799, on petitions for the repeal of the laws, is in *Amer. State Papers, Miscellaneous*, I., 181–184.

No. 17. Naturalization Act

June 18, 1798

APRIL 19, 1798, Coit of Connecticut introduced in the House a resolution for the appointment of a committee to consider the expediency of suspending or amending the existing law regarding naturalization. With the addition of a clause calling upon the committee "to consider and report upon the expediency of establishing by law regulations respecting aliens arriving or residing within the United States," the resolution was adopted. May 3 the committee reported three resolutions, the first of which favored a longer term of residence for aliens before naturalization. The first two resolutions were agreed to by the House, and referred to a committee, who on May 15 brought in a bill to amend the naturalization law. The bill was taken up on the 21st, discussed at length, and on the 22d passed, after an unsuccessful attempt to incorporate a provision suspending for a limited time the operation of the act. In the Senate the bill was referred to a committee of three, who reported an amended bill June 8. The bill as reported was agreed to on the 11th, and on the 12th, after further amendments, passed by a vote of 13 to 8. June 13 the House agreed to the Senate amendments; on the 18th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, I., 566–569. The act was repealed by the act of April 14, 1802 (*Stat. at Large*, II., 153–155).

An Act supplementary to and to amend the act, intituled "An act to establish an uniform rule of naturalization; and to repeal the act heretofore passed on that subject.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no alien shall be admitted to become a citizen of the United

States, or of any state, unless in the manner prescribed by the act, intituled "An act to establish an uniform rule of naturalization; and to repeal the act heretofore passed on that subject," * he shall have declared his intention to become a citizen of the United States, five years, at least, before his admission, and shall, at the time of his application to be admitted, declare and prove, to the satisfaction of the court having jurisdiction in the case, that he has resided within the United States fourteen years, at least, and within the state or territory where, or for which such court is at the time held, five years, at least, besides conforming to the other declarations, renunciations and proofs, by the said act required, any thing therein to the contrary hereof notwithstanding: *Provided*, that any alien, who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may, within one year after the passing of this act — and any alien who shall have made the declaration of his intention to become a citizen of the United States, in conformity to the provisions of the act [of Jan. 29, 1795], may, within four years after having made the declaration aforesaid, be admitted to become a citizen, in the manner prescribed by the said act, upon his making proof that he has resided five years, at least, within the limits, and under the jurisdiction of the United States: *And provided also*, that no alien, who shall be a native, citizen, denizen or subject of any nation or state with whom the United States shall be at war, at the time of his application, shall be then admitted to become a citizen of the United States.

SEC. 2. [Abstracts of the declarations of aliens seeking naturalization to be sent to the Secretary of State by clerks of courts, under penalty for refusal.]

SEC. 3. [Certified copies of records of naturalization, including all cases before the passage of this act, to be sent to the Secretary of State by clerks of courts, under penalty for wilful neglect.]

SEC. 4. *And be it further enacted*, That all white persons, aliens, (accredited foreign ministers, consuls, or agents, their families and domestics, excepted) who, after the passing of this act, shall continue to reside, or who shall arrive, or come to reside in any port or place within the territory of the United States, shall be reported,

* Act of Jan. 29, 1795 (*Stat. at Large*, I., 414, 415), repealing act of March 26, 1790 (*Stat. at Large*, I., 103, 104). — ED.

That it shall be lawful for the President of the United States at any time during the continuance of this act, to *order* all such *aliens* as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time as shall be expressed in such order, which order shall be served on such alien by delivering him a copy thereof, or leaving the same at his usual abode, and returned to the office of the Secretary of State, by the marshal or other person to whom the same shall be directed. And in case any alien, so ordered to depart, shall be found at large within the United States after the time limited in such order for his departure, and not having obtained a *license* from the President to reside therein, or having obtained such *license* shall not have conformed thereto, every such alien shall, on conviction ther. be imprisoned for a term not exceeding three years, and shall never after be admitted to become a citizen of the United States. *Provided always, and be it further enacted*, that if any alien so ordered to depart shall prove to the satisfaction of the President, by evidence to be taken before such person or persons as the President shall direct, who are for that purpose hereby authorized to administer oaths, that no injury or danger to the United States will arise from suffering such alien to reside therein, the President may grant a *license* to such alien to remain within the United States for such time as he shall judge proper, and at such place as he may designate. And the President may also require of such alien to enter into a bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties to the satisfaction of the person authorized by the President to take the same, conditioned for the good behavior of such alien during his residence in the United States, and not violating his license, which license the President may revoke, whenever he shall think proper.

SEC. 2. *And be it further enacted*, That it shall be lawful for the President of the United States, whenever he may deem it necessary for the public safety, to order to be removed out of the territory thereof, any alien who may or shall be in prison in pursuance of this act; and to cause to be arrested and sent out of the United States such of those aliens as shall have been ordered to depart therefrom and shall not have obtained a license as aforesaid, in

all cases where, in the opinion of the President, the public safety requires a speedy removal. And if any alien so removed or sent out of the United States by the President shall voluntarily return thereto, unless by permission of the President of the United States, such alien on conviction thereof, shall be imprisoned so long as, in the opinion of the President, the public safety may require.

SEC. 3. *And be it further enacted*, That every master or commander of any ship or vessel which shall come into any port of the United States after the first day of July next, shall immediately on his arrival make report in writing to the collector or other chief officer of the customs of such port, of all aliens, if any, on board his vessel, specifying their names, age, the place of nativity, the country from which they shall have come, the nation to which they belong and owe allegiance, their occupation and a description of their persons, as far as he shall be informed thereof, and on failure, every such master and commander shall forfeit and pay three hundred dollars, for the payment whereof on default of such master or commander, such vessel shall also be holden, and may by such collector or other officer of the customs be detained. And it shall be the duty of such collector or other officer of the customs, forthwith to transmit to the office of the department of state true copies of all such returns.

SEC. 4. *And be it further enacted*, That the circuit and district courts of the United States, shall respectively have cognizance of all crimes and offences against this act. And all marshals and other officers of the United States are required to execute all precepts and orders of the President of the United States issued in pursuance or by virtue of this act.

SEC. 5. *And be it further enacted*, That it shall be lawful for any alien who may be ordered to be removed from the United States, by virtue of this act, to take with him such part of his goods, chattels, or other property, as he may find convenient; and all property left in the United States by any alien, who may be removed, as aforesaid, shall be, and remain subject to his order and disposal, in the same manner as if this act had not been passed.

SEC. 6. *And be it further enacted*, That this act shall continue and be in force for and during the term of two years from the passing thereof.*

* The act was not renewed. — ED.

No. 19. Alien Enemies Act

July 6, 1798

A "bill respecting alien enemies" was introduced in the House May 18, 1798, considered in Committee of the Whole House on the 22d, and the next day, by a vote of 46 to 44, recommitted. The committee reported an amended bill June 8; on the same day the "act concerning aliens" was received from the Senate, and both bills were made the order of the day for June 11. The alien enemies bill was not reached until the 25th; the next day it passed the House. On the 27th the Senate referred the bill to the committee having also in charge the sedition bill; this committee reported an amended bill July 2, which passed the Senate on the 3d. On the same day the House agreed to the Senate amendments, and on the 6th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, I., 577, 578. Compare *Revised Statutes* (ed. 1878), secs. 4067–4070. The text of the bill introduced May 18 is in the *Annals*, 5th Cong., under date of May 22.

An Act respecting Alien Enemies.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the United States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in

the premises and for the public safety: Provided, that aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crime against the public safety, shall be allowed, for the recovery, disposal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States, and the hostile nation or government, of which they shall be natives, citizens, denizens or subjects: and when no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

SEC. 2. *And be it further enacted*, That after any proclamation shall be made as aforesaid, it shall be the duty of the several courts of the United States, and of each state, having criminal jurisdiction, and of the several judges and justices of the courts of the United States, and they shall be, and are hereby respectively, authorized upon complaint, against any alien or alien enemies, as aforesaid, who shall be resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President of the United States shall and may establish in the premises, to cause such alien or aliens to be duly apprehended and convened before such court, judge or justice; and after a full examination and hearing on such complaint, and sufficient cause therefor appearing, shall and may order such alien or aliens to be removed out of the territory of the United States, or to give sureties of their good behaviour, or to be otherwise restrained, conformably to the proclamation or regulations which shall or may be established as aforesaid, and may imprison, or otherwise secure such alien or aliens, until the order which shall and may be made, as aforesaid, shall be performed.

SEC. 3. *And be it further enacted*, That it shall be the duty of the marshal of the district in which any alien enemy shall be apprehended, who by the President of the United States, or by order of any court, judge or justice, as aforesaid, shall be required to depart, and to be removed, as aforesaid, to provide therefor, and to execute such order, by himself or his deputy, or other discreet person or persons to be employed by him, by causing a

removal of such alien out of the territory of the United States; and for such removal the marshal shall have the warrant of the President of the United States, or of the court, judge or justice ordering the same, as the case may be.

No. 20. Sedition Act

July 14, 1798

JUNE 23, 1798, Senator Lloyd of Maryland gave notice of his intention to ask for leave to bring in a bill "to define more particularly the crime of treason, and to define and punish the crime of sedition." When the matter came up on the 26th, a motion was made to refer the request to a committee; the motion was lost, the vote being 4 to 17, and by a vote of 14 to 8 leave was given to introduce the bill. The next day the bill, by a vote of 15 to 6, was referred to a committee. Amendments to the bill were reported by the committee July 2, agreed to on the 3d, and the bill, by a vote of 18 to 5, ordered to a third reading. On the 4th the bill passed, the vote being 18 to 6. In the House the following day a motion to reject the bill was defeated, 36 to 47. July 6 an attempt to refer the bill to a select committee also failed, and a set of resolutions for the punishment of seditious writers, submitted by Harper of South Carolina, was referred to the Committee of the Whole House. The sedition bill was considered July 9; all except the first section of the Senate bill was stricken out and new sections inserted; on the 10th the amended bill, by vote of 44 to 41, passed the House. On the 12th the Senate concurred in the House amendments; on the 14th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, I., 596, 597. An abstract of the Senate bill is in the *Annals*, 5th Cong., II., 2093. Harper's resolutions are in the *House Journal*, also in the *Annals*. For prosecutions under the sedition act, see Wharton's *State Trials*, 333, 659, 684, 688.

An Act in addition to the act, entitled "An Act for the punishment of certain crimes against the United States."

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That if any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the government of the United States, which are or shall be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or

office in or under the government of the United States, from undertaking, performing or executing his trust or duty; and if any person or persons, with intent as aforesaid, shall counsel, advise or attempt to procure any insurrection, riot, unlawful assembly, or combination, whether such conspiracy, threatening, counsel, advice, or attempt shall have the proposed effect or not, he or they shall be deemed guilty of a high misdemeanor, and on conviction, before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months nor exceeding five years; and further, at the discretion of the court may be holden to find sureties for his good behaviour in such sum, and for such time, as the said court may direct.

SEC. 2. *And be it further enacted*, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of the Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of the said Congress, or the said President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, or to stir up sedition within the United States, or to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of any such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage or abet any hostile designs of any foreign nation against the United States, their people or government, then such person, being thereof convicted before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years.

SEC. 3. *And be it further enacted and declared*, That if any person shall be prosecuted under this act, for the writing or publishing any libel aforesaid, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defence, the

truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause, shall have a right to determine the law and the fact, under the direction of the court, as in other cases.

SEC. 4. *And be it further enacted*, That this act shall continue and be in force until the third day of March, one thousand eight hundred and one, and no longer:* *Provided*, that the expiration of the act shall not prevent or defeat a prosecution and punishment of any offence against the law, during the time it shall be in force.

Kentucky and Virginia Resolutions

1798, 1799

THE Virginia resolutions of 1798 and the Kentucky resolutions of 1798 and 1799 were outcomes of the discussion over the alien and sedition laws. The legislature of Kentucky met Nov. 7, 1798, and on the following day John Breckinridge introduced in the House a set of resolutions, the original draft of which had been prepared by Jefferson. The resolutions, with amendments, were adopted by the House on the 10th; on the 13th the Senate concurred, and on the 16th the resolutions received the approval of the governor. A set of resolutions prepared by Madison, then a member of the Virginia legislature, was presented in that body Dec. 13, 1798, by John Taylor. The resolutions were debated until the 21st, when, by a vote of 100 to 63, they were adopted; on the 24th they passed the Senate, the vote being 14 to 3, and were approved by the governor. Copies of each set of resolutions were transmitted to the governors of the various States to be laid before the legislatures. Replies were made by the legislatures of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, and Delaware, and in each case were "decidedly unfavorable." In 1799 Kentucky reaffirmed its adherence to the doctrine of the resolutions of 1798, and added another resolution. In Virginia the replies of the State legislatures were referred to a committee, of which Madison was chairman, which made an elaborate report Jan. 7, 1800.

REFERENCES. — For the *texts*, see under each set of resolutions, following. The answers of the State legislatures are in Elliot's *Debates* (ed. 1836), IV., 558–565, where are also Madison's report of 1800, and extracts from an "address to the people" accompanying the Virginia resolutions. Madison's report is also in his *Writings* (ed. 1865), IV., 515–555; see also various letters of Madison, *ib.*, II., 151–156; IV., 95–111. Warfield's *Kentucky Resolutions of 1798* is of special importance; *cf.* review in *Nation*, XLV., 528, 529, and correspondence in *ib.*, XLIV., 382–384, 467, 468. See also Johnston, in *Lalor's Cyclopædia*, II., 672–677; Von Holst's *United States*, I., chap. 4.

* The act was not renewed. — ED.

No. 21. Kentucky Resolutions

November 16, 1798

REFERENCES. — *Text* in Shaler's *Kentucky*, 409–416, certified as a true copy of the original in the Massachusetts archives. The formal endorsements at the end are omitted. Jefferson's draft is in his *Works* (ed. 1856), IX., 464–471.

KENTUCKY LEGISLATURE.

In the House of Representatives, November 10, 1798.

The House, according to the standing order of the day, resolved itself into a Committee of the Whole on the state of the Commonwealth, Mr. Caldwell in the chair. And after some time spent therein the Speaker resumed the chair, and Mr. Caldwell reported that the Committee had, according to order, had under consideration the Governor's Address, and had come to the following Resolutions thereupon, which he delivered in at the clerk's table, where they were twice read and agreed to by the House.

I. *Resolved*, that the several States composing the United States of America, are not united on the principle of unlimited submission to their general government; but that by compact under the style and title of a Constitution for the United States and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each State acceded as a State, and is an integral party, its co-States forming, as to itself, the other party: That the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the Constitution, the measure of its powers; but that as in all other cases of compact among parties having no common Judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

II. *Resolved*, that the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and

felonies committed on the high seas, and offenses against the laws of nations, and no other crimes whatever: and it being true as a general principle, and one of the amendments to the Constitution having also declared, "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," therefore also the same act of Congress passed on the 14th day of July, 1798, and entitled "An act in addition to the act entitled an act for the punishment of certain crimes against the United States;" as also the act passed by them on the 27th day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States" (and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution), are altogether void and of no force, and that the power to create, define, and punish such other crimes is reserved, and of right appertains solely and exclusively to the respective States, each within its own Territory.

III. *Resolved*, that it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution 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;" and that no power over the freedom of religion, freedom of speech, or freedom of the press being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved to the States, or to the people: That thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated rather than the use be destroyed; and thus also they guarded against all abridgment by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this State by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference: And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution which expressly declares, that "Congress shall make no law respecting

an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press," thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch, that whatever violates either, throws down the sanctuary which covers the others, and that libels, falsehoods, defamation equally with heresy and false religion, are withheld from the cognizance of Federal tribunals. That therefore the act of the Congress of the United States passed on the 14th day of July, 1798, entitled "An act in addition to the act for the punishment of certain crimes against the United States," which does abridge the freedom of the press, is not law, but is altogether void and of no effect.

IV. *Resolved*, that alien friends are under the jurisdiction and protection of the laws of the State wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual States distinct from their power over citizens; and it being true as a general principle, and one of the amendments to the Constitution having also declared 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 act of the Congress of the United States passed on the 22d day of June, 1798, entitled "An act concerning aliens," which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

V. *Resolved*, that in addition to the general principle as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution has declared, "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 the Congress prior to the year 1808." That this Commonwealth does admit the migration of alien friends described as the subject of the said act concerning aliens; that a provision against prohibiting their migration is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the Constitution, and void.

VI. *Resolved*, that the imprisonment of a person under the pro-

tection of the laws of this Commonwealth on his failure to obey the simple order of the President to depart out of the United States, as is undertaken by the said act entitled "An act concerning aliens," is contrary to the Constitution, one amendment to which has provided, that "no person shall be deprived of liberty without due process of law," and that another having provided "that in all criminal prosecutions, the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defense," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favour, without defense, without counsel, is contrary to these provisions also of the Constitution, is therefore not law, but utterly void and of no force. That transferring the power of judging any person who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides, that "the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices during good behavior," and that the said act is void for that reason also; and it is further to be noted, that this transfer of judiciary power is to that magistrate of the general government who already possesses all the executive, and a qualified negative in all the legislative powers.

VII. *Resolved*, that the construction applied by the general government (as is evinced by sundry of their proceedings) to those parts of the Constitution of the United States which delegate to Congress a 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, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution: That words meant by that instrument to be subsiduary

only to the execution of the limited powers ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken as to destroy the whole residue of the instrument: That the proceedings of the general government under color of these articles will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

VIII. *Resolved*, that the preceding Resolutions be transmitted to the Senators and Representatives in Congress from this Commonwealth, who are hereby enjoined to present the same to their respective Houses, and to use their best endeavors to procure, at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

IX. *Resolved*, lastly, that the Governor of this Commonwealth be, and is hereby authorized and requested to communicate the preceding Resolutions to the Legislatures of the several States, to assure them that this Commonwealth considers Union for specified National purposes, and particularly for those specified in their late Federal Compact, to be friendly to the peace, happiness, and prosperity of all the States: that faithful to that compact according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government, and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these States: And that, therefore, this Commonwealth is determined, as it doubts not its co-States are, tamely to submit to undelegated and consequently unlimited powers in no man or body of men on earth: that if the acts before specified should stand, these conclusions would flow from them; that the general government may place any act they think proper on the list of crimes and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them: that they may transfer its cognizance to the President or any other person, who may himself be the accuser, counsel, judge, and jury, whose suspicions may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: that a very numerous and valuable description of the inhabitants of these

States being by this precedent reduced as outlaws to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the powers of a majority of Congress, to protect from a like exportation or other more grievous punishment the minority of the same body, the legislatures, judges, governors, and counselors of the States, nor their other peaceable inhabitants who may venture to reclaim the constitutional rights and liberties of the State and people, or who for other causes, good or bad, may be obnoxious to the views or marked by the suspicions of the President, or be thought dangerous to his or their elections or other interests, public or personal: that the friendless alien has indeed been selected as the safest subject of a first experiment, but the citizen will soon follow, or rather has already followed: for, already has a sedition act marked him as its prey: that these and successive acts of the same character, unless arrested on the threshold, may tend to drive these States into revolution and blood, and will furnish new calumnies against Republican governments, and new pretexts for those who wish it to be believed, that man cannot be governed but by a rod of iron: that it would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism: free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited Constitutions to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which and no further our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits; let him say what the government is if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted over the friendly strangers, to whom the mild spirit of our country and its laws had pledged hospitality and protection: that the men of our choice have more respected the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power then let no more be heard of confidence in

man, but bind him down from mischief by the claims of the Constitution. That this Commonwealth does therefore call on its co-States for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring whether these acts are or are not authorized by the Federal Compact. And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited government, whether general or particular, and that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked on a common bottom with their own: That they will concur with this Commonwealth in considering the said acts so palpably against the Constitution as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the general government, but that it will proceed in the exercise over these States of all powers whatsoever: That they will view this as seizing the rights of the States and consolidating them in the hands of the general government with a power assumed to bind the States (not merely in cases made Federal) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and not from our authority; and that the co-States, recurring to their natural right in cases not made Federal, will concur in declaring these acts void and of no force, and will each unite with this Commonwealth in requesting their repeal at the next session of Congress.

No. 22. Virginia Resolutions

December 24, 1798

REFERENCES. — *Text* in Madison's *Writings* (ed. 1865), IV., 506, 507, certified as a true copy of the original on file in the Virginia archives.

IN THE HOUSE OF DELEGATES,
Friday, December 21, 1798.

Resolved, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the Constitution of this State, against every aggression either foreign or domestic; and that

they will support the Government of the United States in all measures warranted by the former.

That this Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges all its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness.

That this Assembly doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them.

That the General Assembly doth also express its deep regret, that a spirit has in sundry instances been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases; and so as to consolidate the States, by degrees, into one sovereignty, the obvious tendency and inevitable consequence of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late cases of the "Alien and Sedition Acts," passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of [the] executive, subvert the general principles of free government, as well as the

particular organization and positive provisions of the Federal Constitution: and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto, — a power which, more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

That this State having by its Convention which ratified the Federal Constitution expressly declared that, among other essential rights, "the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry or ambition, having, with other States, recommended an amendment for that purpose, which amendment was in due time annexed to the Constitution, — it would mark a reproachful inconsistency and criminal degeneracy, if an indifference were now shown to the palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

That the good people of this Commonwealth, having ever felt and continuing to feel the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness, the General Assembly doth solemnly appeal to the like dispositions of the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each for co-operating with this State, in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people.

That the Governor be desired to transmit a copy of the foregoing resolutions to the Executive authority of each of the other States, with a request that the same may be communicated to the Legislature thereof; and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States.

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No. 23. Kentucky Resolutions

November 22, 1799

REFERENCES. — *Text* in Elliot's *Debates* (ed. 1836), IV., 570–572. Corrections of a number of obvious typographical errors are enclosed in square brackets. The formal endorsements at the end are omitted.

HOUSE OF REPRESENTATIVES, *Thursday, Nov. 14th*, 1799.

The House, according to the standing order of the day, resolved itself into a Committee of the Whole House, on the state of the Commonwealth, Mr. Desha in the Chair; and, after some time spent therein, the speaker resumed the Chair, and Mr. Desha reported, that the Committee had taken under consideration sundry resolutions passed by several State Legislatures, on the subject of the Alien and Sedition Laws, and had come to a resolution thereupon, which he delivered in at the Clerk's table, where it was read an [and] *unanimously* agreed to by the House, as follows:

The representatives of the good people of this Commonwealth, in General Assembly convened, having maturely considered the answers of sundry States in the Union, to their resolutions passed the last session, respecting certain unconstitutional laws of Congress, commonly called the Alien and Sedition Laws, would be faithless, indeed, to themselves and to those they represent, were they silently to acquiesce in the principles and doctrines attempted to be maintained in all those answers, that of Virginia only excepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended, be as unnecessary as unavailing. We cannot, however, but lament, that, in the discussion of those interesting subjects, by sundry of the Legislatures of our sister States, unfounded suggestions, and uncandid insinuations, derogatory to the true character and principles of this Commonwealth has been substituted in place of fair reasoning and sound argument. Our opinions of these alarming measures of the General Government, together with our reasons for those opinions, were detailed with decency, and with temper, and submitted to the discussion and judgment of our fellow-citizens throughout the Union. Whether the like decency and temper have been observed in the answers of most of those States, who have denied or attempted to obviate the great truths contained in those resolutions, we have

now only to submit to a candid world. Faithful to the true principles of the federal Union, unconscious of any designs to disturb the harmony of that Union, and anxious only to escape the fangs of despotism, the good people of this Commonwealth are regardless of censure or calumniation. Least [Lest], however, the silence of this Commonwealth should be construed into an acquiescence in the doctrines and principles advanced and attempted to be maintained by the said answers, or at least those of our fellow-citizens throughout the Union who so widely differ from us on those important subjects, should be deluded by the expectation, that we shall be deterred from what we conceive our duty, or shrink from the principles contained in those resolutions — therefore,

Resolved, That this Commonwealth considers the Federal Union, upon the terms and for the purposes specified in the late compact, conducive to the liberty and happiness of the several States: That it does now unequivocally declare its attachment to the Union, and to that compact, agreeably to its obvious and real intention, and will be among the last to seek its dissolution: That if those who administer the General Government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the State Governments, and the creation upon their ruins of a General Consolidated Government, will be the inevitable consequence: That the principle and construction contended for by sundry of the state legislatures, that the General Government is the exclusive judge of the extent of the powers delegated to it, stop nothing [short] of *despotism* — since the discretion of those who administer the government, and not the *Constitution*, would be the measure of their powers: That the several states who formed that instrument being sovereign and independent, have the unquestionable right to judge of the infraction; and, *That a Nullification by those sovereignties, of all unauthorized acts done under color of that instrument is the rightful remedy*: That this Commonwealth does, under the most deliberate reconsideration, declare, that the said Alien and Sedition Laws are, in their opinion, palpable violations of the said Constitution; and, however cheerfully it may be disposed to surrender its opinion to a majority of its sister states, in matters of ordinary or doubtful policy, yet, in no [*omit*] momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a

silent acquiescence as highly criminal: That although this commonwealth, as a party to the federal compact, will bow to the laws of the Union, yet, it does, at the same [time] declare, that it will not now, or ever hereafter, cease to oppose in a constitutional manner, every attempt at what quarter soever offered, to violate that compact. And, finally, in order that no pretext or arguments may be drawn from a supposed acquiescence, on the part of this Commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the Federal compact — this Commonwealth does now enter against them its solemn PROTEST.

No. 24. Treaty with France for the Cession of Louisiana

April 30, 1803

THE region known as Louisiana belonged to France until 1762, when it was ceded to Spain. By the treaty of Paris in 1763, a portion of Louisiana east of the Mississippi was ceded to Great Britain, and in 1783 the eastern bank of the Mississippi as far south as the 31st parallel passed into the control of the United States. By the third article of the secret treaty of San Ildefonso, Oct. 1, 1800, Spain agreed to cede Louisiana to France. October 16, 1802, the Spanish intendant of Louisiana by proclamation forbade citizens of the United States the further use of New Orleans "as a place of deposit for merchandise, and free transit for our ships down the river to the sea." An appropriation of $2,000,000 was made by Congress for the purchase of New Orleans. January 11, 1803, Jefferson nominated Monroe as minister extraordinary to co-operate with Livingston, the minister to France, in negotiations for "a treaty or convention with the First Consul of France, for the purpose of enlarging, and more effectually securing, our rights and interests in the river Mississippi, and in the territories eastward thereof." The outcome of the negotiations was the purchase of Louisiana by the United States. A treaty and two conventions, dated April 30, 1803, were signed early in May. A special session of Congress was called for Oct. 17; on the 20th the Senate, by a vote of 24 to 7, ratified the treaty. The House declared in favor of the treaty on the 25th, by a vote of 90 to 25.

REFERENCES. — English *text*, followed here, in *Revised Statutes relating to District of Columbia*, etc. (ed. 1875), 232–235; English and French *text* in *U. S. Stat. at Large*, VIII., 200–206. The message of Jan. 11, 1803, is in *Amer. State Papers, Foreign Relations*, II., 475; for the two conventions and diplomatic correspondence, *ib.*, II., 508–583, or *Annals*, 7th Cong., 2d Sess., 1007–1210. The discussions in the House may be followed in the *Annals*, or in Benton's *Abridgment*, II. The best account of events is in Henry

Adams's *United States*, I., chaps. 13–17, II., chaps. 1–6. See also Johnston, in *Lalor's Cyclopædia*, I., 93–96; Barbé-Marbois's *Hist. of Louisiana* (ed. 1830), parts II., III.; Jefferson's *Works* (ed. 1854), IV., 431–434, 456–459, 498–501, and further correspondence in V., VII., and VIII.

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, to wit: the President of the United States, by and with the advice and consent of the Senate of the said States, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said States, near the Government of the French Republic; and the First Consul, in the name of the French people, Citizen Francis Barbé Marbois, Minister of the Public Treasury; who, after having respectively exchanged their full powers, have agreed to the following articles:

ARTICLE I.

Whereas by the article the third of the treaty concluded at St. Idelfonso, the 9th Vendémiaire, an 9 (1st October, 1800,) between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows: "His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States." And whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said

territory: The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with His Catholic Majesty.

ARTICLE II.

In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana and its dependences, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them.

ARTICLE III.

The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

ARTICLE IV.

There shall be sent by the Government of France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of His Catholic Majesty the said country and its dependences, in the name of the French Republic, if it has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States.

ARTICLE V.

Immediately after the ratification of the present treaty by the President of the United States, and in case that of the First

Consul shall have been previously obtained, the commissary of the French Republic shall remit all military posts of New Orleans, and other parts of the ceded territory, to the commissary or commissaries named by the President to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months after the ratification of this treaty.

ARTICLE VI.

The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ARTICLE VII.

As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandize, or other or greater tonnage than that paid by the citizens of the United States.

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory; the twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French Government, if it shall take place in the United States; it is however well understood that the object of the above article

is to favor the manufactures, commerce, freight, and navigation of France and of Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandize of the United States, or any right they may have to make such regulations.

ARTICLE VIII.

In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favoured nations in the ports above mentioned.

ARTICLE IX.

The particular convention signed this day by the respective ministers,* having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic prior to the 30th Septr., 1800, (8th Vendémiaire, an 9,) is approved, and to have its execution in the same manner as if it had been inserted in this present treaty; and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another particular convention† signed at the same date as the present treaty relative to a definitive rule between the contracting parties is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly.

ARTICLE X.

The present treaty shall be ratified in good and due form, and the ratifications shall be exchanged in the space of six months after the date of the signature by the Ministers Plenipotentiary, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed these articles in the French and English languages; declaring nevertheless that the present treaty was originally agreed to in the French language; and have thereunto affixed their seals.

* *Text* in *Revised Statutes relating to District of Columbia* (ed. 1875), 236–238; *Treaties and Conventions* (ed. 1889), 335–338. — ED.

† *Text* in *Revised Statutes relating to District of Columbia* (ed. 1875), 235, 236; *Treaties and Conventions* (ed. 1889), 334, 335. — ED.

Done at Paris the tenth day of Floréal, in the eleventh year of the French Republic, and the 30th of April, 1803.

ROBT. R. LIVINGSTON. [L.S.]
JAS. MONROE. [L.S.]
F. BARBÉ MARBOIS. [L.S.]

No. 25. Jefferson's Message regarding the Burr Conspiracy

January 22, 1807

ALTHOUGH Jefferson was not ignorant of the grave danger attending Burr's movements, he delayed taking any decisive steps. In a proclamation of Nov. 27, 1806, and in his annual message of Dec. 2, he spoke of the conspiracy as directed chiefly against Spanish territory. January 16, 1807, John Randolph of Virginia offered in the House a resolution requesting the President "to lay before this House any information, in possession of the Executive, except such as he may deem the public welfare to require not to be disclosed, touching any illegal combination of private individuals against the peace and safety of the Union, or any military expedition planned by such individuals against the Territories of any Power in amity with the United States; together with the measures which the Executive has pursued, and proposes to take for suppressing or defeating the same." The first part of the resolution was agreed to by a vote of 109 to 14; the second part, with the words "and proposes to take" stricken out, by a vote of 67 to 52. The message was sent in on the 22d. The Senate immediately passed, by unanimous consent, a bill to suspend for three months the privilege of the writ of *habeas corpus;* but the bill was rejected by the House Jan. 26, by a vote of 113 to 19. February 19, Jefferson informed Congress that Burr had surrendered to the authorities of Mississippi Territory.

REFERENCES. — *Text* in *Senate and House Journals*, 9th Cong., 2d Sess.; with accompanying papers, *Amer. State Papers, Miscellaneous*, I., 468–471. For the discussions in the House over Randolph's resolution and the suspension of the writ of *habeas corpus*, see the *Annals*, or Benton's *Abridgment*, III. The proceedings and papers connected with the trial of Burr are in *Amer. State Papers, Miscellaneous*, I., 486–645; see further, on Wilkinson's connection with the conspiracy, *ib.*, II., 79–127; on the attempt to remove Senator John Smith of Ohio, *ib.*, I., 701–703, and discussions in *Annals*, or Benton, III. The best general account is in Adams's *United States*, III.; see also Parton's *Life and Times of Burr*, II., chaps. 21–26; Davis's *Memoirs of Burr*, II., chaps. 18, 19; Randall's *Jefferson*, III., chap. 5; Jefferson's *Works* (ed. 1853), V., 65–69, 81–88, 94–100, 174, 175.

ing with the Spanish commandant on the Sabine, as permitted him to withdraw his force across the Mississippi, and to enter on measures for opposing the projected enterprise.

The General's letter, which came to hand on the twenty-fifth of November, as has been mentioned, and some other information received a few days earlier, when brought together, developed Burr's general designs, different parts of which only had been revealed to different informants. It appeared that he contemplated two distinct objects, which might be carried on either jointly or separately, and either the one or the other first, as circumstances should direct. One of these was the severance of the Union of these States by the Alleghany mountains; the other an attack on Mexico. A third object was provided, merely ostensible, to wit: the settlement of a pretended purchase of a tract of country on the Washita, claimed by a Baron Bastrop. This was to serve as the pretext for all his preparations, an allurement for such followers as really wished to acquire settlements in that country, and a cover under which to retreat in the event of a final discomfiture of both branches of his real design.

He found, at once, that the attachment of the Western country to the present Union was not to be shaken; that its dissolution could not be effected with the consent of its inhabitants, and that his resources were inadequate, as yet, to effect it by force. He took his course, then, at once, determined to seize on New Orleans, plunder the Bank there, possess himself of the military and naval stores, and proceed on his expedition to Mexico; and to this object all his means and preparations were now directed. He collected from all the quarters, where himself or his agents possessed influence, all the ardent, restless, desperate, and disaffected persons, who were ready for any enterprise analogous to their characters. He seduced good and well meaning citizens, some by assurances that he possessed the confidence of the Government, and was acting under its secret patronage; a pretence which procured some credit from the state of our differences with Spain; and others by offers of land in Bastrop's claim on the Washita.

This was the state of my information of his proceedings about the last of November, at which time, therefore, it was first possible to take specific measures to meet them. The proclamation of November twenty-seventh, two days after the receipt of General Wilkinson's information, was now issued. Orders were despatched

to every interesting point on the Ohio and Mississippi, from Pittsburg to New Orleans, for the employment of such force, either of the regulars or of the militia, and of such proceedings also, of the civil authorities, as might enable them to seize on all boats and stores provided for the enterprise, to arrest the persons concerned, and to suppress effectually the further progress of the enterprise. A little before the receipt of these orders, in the State of Ohio, our confidential agent, who had been diligently employed in investigating the conspiracy, had acquired sufficient information to open himself to the Governor of that State, and to apply for the immediate exertion of the authority and power of the State, to crush the combination. Governor Tiffin, and the Legislature, with a promptitude, an energy, and patriotic zeal, which entitle them to a distinguished place in the affection of their sister States, effected the seizure of all the boats, provisions, and other preparations within their reach, and thus gave a first blow, materially disabling the enterprise in its outset.

In Kentucky, a premature attempt to bring Burr to justice, without sufficient evidence for his conviction, had produced a popular impression in his favor, and a general disbelief of his guilt. This gave him an unfortunate opportunity of hastening his equipments. The arrival of the proclamation and orders, and the application and information of our confidential agent, at length awakened the authorities of that State to the truth, and then produced the same promptitude and energy of which the neighboring State had set the example. Under an act of their Legislature, of December twenty-third, militia was instantly ordered to different important points, and measures taken for doing whatever could yet be done. Some boats (accounts vary from five to double or treble that number) and persons (differently estimated from one to three hundred) had, in the mean time, passed the Falls of the Ohio, to rendezvous at the mouth of Cumberland, with others expected down that river.

Not apprized, till very late, that any boats were building on Cumberland, the effect of the proclamation had been trusted to for some time in the State of Tennessee; but, on the nineteenth of December, similar communications and instructions, with those to the neighboring States, were despatched, by express, to the Governor, and a general officer of the Western division of the State; and, on the twenty-third of December, our confidential

when, after having the previous day been ordered to the third reading, it was recommitted. A new bill was reported Jan. 20, but consideration was postponed on account of the discussion over the Burr conspiracy and the attempted suspension of *habeas corpus*. In the meantime a bill introduced in the Senate Dec. 8 passed that body Jan. 27. February 9 the House took up the Senate bill, and on the 13th passed it, with amendments, by a vote of 113 to 5. The Senate disagreed to one of the House amendments, and the bill received its final form from a conference committee, appointed Feb. 18. The act was approved March 2.

REFERENCES.— *Text* in *U. S. Stat. at Large*, II., 426–430. For the proceedings, see the *House and Senate Journals*, 9th Cong., 2d Sess. Discussions in the Senate are not reported; there are meagre accounts of those in the House in the *Annals*, and Benton's *Abridgment*, III. The best account of the proceedings is in Du Bois's *Suppression of the Slave Trade*, 94–109. See also Adams's *United States*, III., 356–367; Wilson's *Rise and Fall of the Slave Power*, I., chap. 7.

An ACT to prohibit the importation of Slaves into any port or place within the jurisdiction of the United States, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January, one thousand eight hundred and eight, it shall not be lawful to import or bring into the United States or the territories thereof from any foreign kingdom, place, or country, any negro, mulatto, or person of colour, with intent to hold, sell, or dispose of such negro, mulatto, or person of colour, as a slave, or to be held to service or labour.

SEC. 2. *And be it further enacted,* That no citizen or citizens of the United States, or any other person, shall, from and after the first day of January, in the year of our Lord one thousand eight hundred and eight, for himself, or themselves, or any other person whatsoever, either as master, factor, or owner, build, fit, equip, load or otherwise prepare any ship or vessel, in any port or place within the jurisdiction of the United States, nor shall cause any ship or vessel to sail from any port or place within the same, for the purpose of procuring any negro, mulatto, or person of colour, from any foreign kingdom, place, or country, to be transported to any port or place whatsoever, within the jurisdiction of the United States, to be held, sold, or disposed of as slaves, or to be held to service or labour: and if any ship or vessel shall be so fitted out for the purpose aforesaid, or shall be caused to sail so as aforesaid,

every such ship or vessel, her tackle, apparel, and furniture, shall be forfeited to the United States, and shall be liable to be seized, prosecuted, and condemned in any of the circuit courts or district courts, for the district where the said ship or vessel may be found or seized.

SEC. 3. *And be it further enacted*, That all and every person so building, fitting out, equipping, loading, or otherwise preparing or sending away, any ship or vessel, knowing or intending that the same shall be employed in such trade or business, from and after the first day of January, one thousand eight hundred and eight, contrary to the true intent and meaning of this act, or any ways aiding or abetting therein, shall severally forfeit and pay twenty thousand dollars, one moiety thereof to the use of the United States, and the other moiety to the use of any person or persons who shall sue for and prosecute the same to effect.

SEC. 4. *And be it further enacted*, If any citizen or citizens of the United States, or any person resident within the jurisdiction of the same, shall, from and after the first day of January, one thousand eight hundred and eight, take on board, receive or transport from any of the coasts or kingdoms of Africa, or from any other foreign kingdom, place, or country, any negro, mulatto, or person of colour, in any ship or vessel, for the purpose of selling them in any port or place within the jurisdiction of the United States as slaves, or to be held to service or labour, or shall be in any ways aiding or abetting therein, such citizen or citizens, or person, shall severally forfeit and pay five thousand dollars, one moiety thereof to the use of any person or persons who shall sue for and prosecute the same to effect; and every such ship or vessel in which such negro, mulatto, or person of colour, shall have been taken on board, received, or transported as aforesaid, her tackle, apparel, and furniture, and the goods and effects which shall be found on board the same, shall be forfeited to the United States, and shall be liable to be seized, prosecuted, and condemned in any of the circuit courts or district courts in the district where the said ship or vessel may be found or seized. And neither the importer, nor any person or persons claiming from or under him, shall hold any right or title whatsoever to any negro, mulatto, or person of colour, nor to the service or labour thereof, who may be imported or brought within the United States, or territories thereof, in violation of this law, but

the same shall remain subject to any regulations not contravening the provisions of this act, which the legislatures of the several states or territories at any time hereafter may make, for disposing of any such negro, mulatto, or person of colour.

[SEC. 5. Any citizen of the United States bringing any slave from any foreign country, and selling the same, to be imprisoned for not less than five nor more than ten years, and fined not less than $1000 nor more than $10,000.]

SEC. 6. *And be it further enacted*, That if any person or persons whatsoever, shall, from and after the first day of January, one thousand eight hundred and eight, purchase or sell any negro, mulatto, or person of colour, for a slave, or to be held to service or labour, who shall have been imported, or brought from any foreign kingdom, place, or country, or from the dominions of any foreign state, immediately adjoining to the United States, into any port or place within the jurisdiction of the United States, after the last day of December, one thousand eight hundred and seven, knowing at the time of such purchase or sale, such negro, mulatto, or person of colour, was so brought within the jurisdiction of the United States, as aforesaid, such purchaser and seller shall severally forfeit and pay for every negro, mulatto, or person of colour, so purchased or sold as aforesaid, eight hundred dollars; one moiety thereof to the United States, and the other moiety to the use of any person or persons who shall sue for and prosecute the same to effect: *Provided*, that the aforesaid forfeiture shall not extend to the seller or purchaser of any negro, mulatto, or person of colour, who may be sold or disposed of in virtue of any regulation which may hereafter be made by any of the legislatures of the several states in that respect, in pursuance of this act, and the constitution of the United States.

SEC. 7. *And be it further enacted*, That if any ship or vessel shall be found, from and after the first day of January, one thousand eight hundred and eight, in any river, port, bay, or harbor, or on the high seas, within the jurisdictional limits of the United States, or hovering on the coast thereof, having on board any negro, mulatto, or person of colour, for the purpose of selling them as slaves, or with intent to land the same, in any port or place within the jurisdiction of the United States, contrary to the prohibition of this act, every such ship or vessel, together with her tackle, apparel, and furniture, and the goods or effects

which shall be found on board the same, shall be forfeited to the use of the United States, and may be seized, prosecuted, and condemned, in any court of the United States, having jurisdiction thereof. And it shall be lawful for the President of the United States, and he is hereby authorized, should he deem it expedient, to cause any of the armed vessels of the United States to be manned and employed to cruise on any part of the coast of the United States, or territories thereof, where he may judge attempts will be made to violate the provisions of this act, and to instruct and direct the commanders of armed vessels of the United States, to seize, take, and bring into any port of the United States all such ships or vessels, and moreover to seize, take, and bring into any port of the United States all ships or vessels of the United States, wheresoever found on the high seas, contravening the provisions of this act, to be proceeded against according to law, and the captain, master, or commander of every such ship or vessel, so found and seized as aforesaid, shall be deemed guilty of a high misdemeanor, and shall be liable to be prosecuted before any court of the United States, having jurisdiction thereof; and being thereof convicted, shall be fined not exceeding ten thousand dollars, and be imprisoned not less than two years, and not exceeding four years. And the proceeds of all ships and vessels, their tackle, apparel, and furniture, and the goods and effects on board of them, which shall be so seized, prosecuted and condemned, shall be divided equally between the United States and the officers and men who shall make such seizure, take, or bring the same into port for condemnation, whether such seizure be made by an armed vessel of the United States, or revenue cutters thereof, and the same shall be distributed in like manner, as is provided by law, for the distribution of prizes taken from an enemy: *Provided*, that the officers and men, to be entitled to one half of the proceeds aforesaid, shall safe keep every negro, mulatto, or person of colour, found on board of any ship or vessel so by them seized, taken, or brought into port for condemnation, and shall deliver every such negro, mulatto, or person of colour, to such person or persons as shall be appointed by the respective states, to receive the same; and if no such person or persons shall be appointed by the respective states, they shall deliver every such negro, mulatto, or person of colour, to the overseers of the poor of the port or place where such ship or vessel may be

brought or found, and shall immediately transmit to the governor or chief magistrate of the state, an account of their proceedings, together with the number of such negroes, mulattoes, or persons of colour, and a descriptive list of the same, that he may give directions respecting such negroes, mulattoes, or persons of colour.

[The remaining sections prescribe administrative regulations.]

No. 27. Embargo Act

December 22, 1807

THE provisions in the treaty of 1794 with Great Britain relative to neutral commerce expired by limitation in 1806. April 18, 1806, Congress passed an act prohibiting the importation of certain articles from Great Britain and her colonies after Nov. 15; but Dec. 19 the act was suspended until July 1, 1807. Great Britain also refused to give up her asserted right of impressment, and on Oct. 16, 1807, a proclamation was issued "for recalling and prohibiting British seamen from serving foreign Princes and States." In a message of Dec. 18, 1807, transmitting a copy of this proclamation, Jefferson urged the attention of Congress to "the advantages which may be expected from an inhibition of the departure of our vessels from the ports of the United States." A bill for an embargo was at once introduced in the Senate, and passed that body the same day, by a vote of 22 to 6. On the 21st the bill with amendments passed the House, by a vote of 82 to 44; on the 22d the amendments were concurred in by the Senate, and the act was approved. An act of April 22, 1808, authorized the President to suspend the embargo acts in the event of peace or suspension of hostilities between the European belligerents.

REFERENCES. — *Text* in *U. S. Stat. at Large*, II., 451–453. For the discussions in Congress, see the *Annals*, 10th Cong., 1st Sess., I., or Benton's *Abridgment*, III. Numerous documents relating to British depredations on American commerce during this period are in *Amer. State Papers, Foreign Relations*, III.: see particularly the royal proclamation of Oct. 16, 1807, *ib.*, 25, 26; report of the Secretary of State, March 2, 1808, on impressment of American seamen, *ib.*, 36–79; and message of Dec. 28, 1808, transmitting orders and decrees of belligerent Powers affecting neutral commerce since 1791, *ib.*, 262–294. For the various supplementary acts of Jan. 9, March 12, April 22, and April 25, 1808, and Jan. 9, 1809, see *U. S. Stat. at Large*, II., 453, 454, 473–475, 490, 499–502, 506–511; for judicial decisions under the acts, *ib.*, 451, 452. On the effect of the embargo, see Gallatin's annual report, Dec. 16, 1808, in *Amer. State Papers, Finance*, II., 307–309. Carey's *Olive Branch* (ed. 1815) collects numerous documents for this period. The best general account is in Adams's *United States*, IV. See also Hildreth's *United States*, I., chaps. 20, 21; Johnston, in *Lalor's Cyclopædia*, II., 79–85; Randall's *Jefferson*, III., chaps. 6, 7; Jefferson's *Works* (ed. 1853), V., 275, 336, 352, 353; VII., 274, 424–426; Madison's *Writings* (ed. 1865), III., 443–446; IV., 359, 360.

An ACT laying an Embargo on all ships and vessels in the ports and harbors of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an embargo be, and hereby is laid on all ships and vessels in the ports and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; and that no clearance be furnished to any ship or vessel bound to such foreign port or place, except vessels under the immediate direction of the President of the United States: and that the President be authorized to give such instructions to the officers of the revenue, and of the navy and revenue cutters of the United States, as shall appear best adapted for carrying the same into full effect: *Provided,* that nothing herein contained shall be construed to prevent the departure of any foreign ship or vessel, either in ballast, or with the goods, wares and merchandise on board of such foreign ship or vessel, when notified of this act.

SEC. 2. *And be it further enacted,* That during the continuance of this act, no registered, or sea letter vessel, having on board goods, wares and merchandise, shall be allowed to depart from one port of the United States to any other within the same, unless the master, owner, consignee or factor of such vessel shall first give bond, with one or more sureties to the collector of the district from which she is bound to depart, in a sum of double the value of the vessel and cargo, that the said goods, wares, or merchandise shall be relanded in some port of the United States, dangers of the seas excepted, which bond, and also a certificate from the collector where the same may be relanded, shall by the collector respectively be transmitted to the Secretary of the Treasury. All armed vessels possessing public commissions from any foreign power, are not to be considered as liable to the embargo laid by this act.

No. 28. Non-Intercourse Act

March 1, 1809

DURING the early part of the session of 1808–9 the Federalists m successful attempts to secure the repeal of the embargo acts. In spite ruinous effect on American commerce, the embargo was still regarded with fa except in New England. In February, 1809, however, the statement of J

Adams regarding the dangerous condition of public feeling in New England led the Republican leaders to modify their policy. February 8 Wm. B. Giles of Virginia submitted in the Senate a resolution for the repeal of the embargo after March 4, except as to Great Britain and France, and to prohibit commercial intercourse with those nations. February 14, by a vote of 22 to 9, the resolution was agreed to, after an unsuccessful attempt, led by Bayard, to strike out the non-intercourse clause. A bill in conformity with the resolution was introduced on the 16th, and on the 21st passed the Senate by a vote of 21 to 12. A bill to the same effect had been introduced in the House Feb. 11, and was still under discussion; on the 22d, however, it was laid on the table, and the House took up the Senate bill in its place, finally passing it with amendments, on the 27th, by a vote of 81 to 40. The next day the Senate agreed to the House amendments, and March 1 the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, II., 528–533. The proceedings of Congress are in the *Journals*, 10th Cong., 2d Sess.; for the discussions, including debates on the embargo and its enforcement, and British and French aggressions, see the *Annals*, or Benton's *Abridgment*, IV. A digest of decisions under the non-intercourse acts is in *U. S. Stat. at Large*, II., 528. See further, Adams's *United States*, IV., chap. 19; and references under the embargo act, *ante*.

An ACT to interdict the commercial intercourse between the United States and Great Britain and France, and their dependencies; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passing of this act, the entrance of the harbors and waters of the United States and of the territories thereof, be, and the same is hereby interdicted to all public ships and vessels belonging to Great Britain or France, excepting vessels only which may be forced in by distress, or which are charged with despatches or business from the government to which they belong, and also packets having no cargo nor merchandise on board. And if any public ship or vessel as aforesaid, not being included in the exception above mentioned, shall enter any harbor or waters within the jurisdiction of the United States, or of the territories thereof, it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land and naval forces, or of the militia of the United States, or the territories thereof, as he shall deem necessary, to compel such ship or vessel to depart.

SEC. 2. *And be it further enacted*, That it shall not be lawful for any citizen or citizens of the United States or the territories

thereof, nor for any person or persons residing or being in the same, to have any intercourse with, or to afford any aid or supplies to any public ship or vessel as aforesaid, which shall, contrary to the provisions of this act, have entered any harbor or waters within the jurisdiction of the United States or the territories thereof; and if any person shall, contrary to the provisions of this act, have any intercourse with such ship or vessel, or shall afford any aid to such ship or vessel, either in repairing the said vessel or in furnishing her, her officers and crew with supplies of any kind or in any manner whatever, or if any pilot or other person shall assist in navigating or piloting such ship or vessel, unless it be for the purpose of carrying her beyond the limits and jurisdiction of the United States, every person so offending, shall forfeit and pay a sum not less than one hundred dollars, nor exceeding ten thousand dollars; and shall also be imprisoned for a term not less than one month, nor more than one year.

SEC. 3. *And be it further enacted*, That from and after the twentieth day of May next, the entrance of the harbors and waters of the United States and the territories thereof be, and the same is hereby interdicted to all ships or vessels sailing under the flag of Great Britain or France, or owned in whole or in part by any citizen or subject of either; vessels hired, chartered or employed by the government of either country, for the sole purpose of carrying letters or despatches, and also vessels forced in by distress or by the dangers of the sea, only excepted. And if any ship or vessel sailing under the flag of Great Britain or France, or owned in whole or in part by any citizen or subject of either, and not excepted as aforesaid, shall after the said twentieth day of May next, arrive either with or without a cargo, within the limits of the United States or of the territories thereof, such ship or vessel, together with the cargo, if any, which may be found on board, shall be forfeited, and may be seized and condemned in any court of the United States or the territories thereof, having competent jurisdiction, and all and every act and acts heretofore passed, which shall be within the purview of this act, shall be, and the same are hereby repealed.

SEC. 4. *And be it further enacted*, That from and after the twentieth day of May next, it shall not be lawful to import into the United States or the territories thereof, any goods, wares or merchandise whatever, from any port or place situated in Gr

Britain or Ireland, or in any of the colonies or dependencies of Great Britain, nor from any port or place situated in France, or in any of her colonies or dependencies, nor from any port or place in the actual possession of either Great Britain or France. Nor shall it be lawful to import into the United States, or the territories thereof, from any foreign port or place whatever, any goods, wares or merchandise whatever, being of the growth, produce or manufacture of France, or of any of her colonies or dependencies, or being of the growth, produce or manufacture of Great Britain or Ireland, or of any of the colonies or dependencies of Great Britain, or being of the growth, produce or manufacture of any place or country in the actual possession of either France or Great Britain: *Provided*, that nothing herein contained shall be construed to affect the cargoes of ships or vessels wholly owned by a citizen or citizens of the United States, which had cleared for any port beyond the Cape of Good Hope, prior to the twenty-second day of December, one thousand eight hundred and seven, or which had departed for such port by permission of the President, under the acts supplementary to the act laying an embargo on all ships and vessels in the ports and harbors of the United States.

[Sec. 5 provides for the forfeiture of articles imported contrary to the provisions of the act.]

SEC. 6. *And be it further enacted*, That if any article or articles, the importation of which is prohibited by this act, shall, after the twentieth of May, be put on board of any ship or vessel, boat, raft or carriage, with intention to import the same into the United States, or the territories thereof, contrary to the true intent and meaning of this act, and with the knowledge of the owner or master of such ship or vessel, boat, raft or carriage, such ship or vessel, boat, raft or carriage shall be forfeited, and the owner and master thereof shall moreover each forfeit and pay treble the value of such articles.

[Sections 7–10 prescribe administrative regulations.]

SEC. 11. *And be it further enacted*, That the President of the United States be, and he hereby is authorized, in case either France or Great Britain shall so revoke or modify her edicts, as that they shall cease to violate the neutral commerce of the United States, to declare the same by proclamation; after which the trade of the United States, suspended by this act, and by the

act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, may be renewed with the nation so doing: * *Provided*, that all penalties and forfeitures which shall have been previously incurred, by virtue of this or of any other act, the operation of which shall so cease and determine, shall be recovered and distributed, in like manner as if the same had continued in full force and virtue: and vessels bound thereafter to any foreign port or place, with which commercial intercourse shall by virtue of this section be again permitted, shall give bond to the United States, with approved security, in double the value of the vessel and cargo, that they shall not proceed to any foreign port, nor trade with any country other than those with which commercial intercourse shall have been or may be permitted by this act.

SEC. 12. *And be it further enacted*, That so much of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and of the several acts supplementary thereto, as forbids the departure of vessels owned by citizens of the United States, and the exportation of domestic and foreign merchandise to any foreign port or place, be and the same is hereby repealed, after the fifteenth day of March, one thousand eight hundred and nine, except so far as they relate to Great Britain or France, or their colonies or dependencies, or places in the actual possession of either. . . .

SEC. 13. *And be it further enacted*, That during the continuance of so much of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and of the several acts supplementary thereto, as is not repealed by this act, no ship or vessel bound to a foreign port, with which commercial intercourse shall, by virtue of this act, be again permitted, shall be allowed to depart for such port, unless the owner or owners, consignee or factor of such ship or vessel shall, with the master, have given bond with one or more sureties to the United States, in a sum double the value of the vessel and cargo, if the vessel is wholly owned by a citizen or citizens of the United States; and in a sum four times the value, if the vessel is owned in part or in whole by any foreigner or foreigners, that the vessel shall not leave the port without a clearance, nor shall, when leaving the port, proceed to any port or place in Great Britain or France, or

* See act of March 2, 1811 (*Stat. at Large*, II., 651, 652). — ED.

in the colonies or dependencies of either, or in the actual possession of either, nor be directly or indirectly engaged during the voyage in any trade with such port, nor shall put any article on board of any other vessel; nor unless every other requisite and provision of the second section of the act, intituled "An act to enforce and make more effectual an act, intituled An act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto," * shall have been complied with. And the party or parties to the above mentioned bond shall, within a reasonable time after the date of the same, to be expressed in the said bond, produce to the collector of the district, from which the vessel shall have been cleared, a certificate of the landing of the same, in the same manner as is provided by law for the landing of goods exported with the privilege of drawback; on failure whereof, the bond shall be put in suit; and in every such suit judgment shall be given against the defendant or defendants, unless proof shall be produced of such relanding, or of loss at sea.

SEC. 14. *And be it further enacted*, That so much of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and of the several acts supplementary thereto, as compels vessels owned by citizens of the United States, bound to another port of the said States, or vessels licensed for the coasting trade, or boats, either not masted or not decked, to give bond, and to load under the inspection of a revenue officer, or renders them liable to detention, merely on account of the nature of their cargo, (such provisions excepted as relate to collection districts adjacent to the territories, colonies or provinces of a foreign nation, or to vessels belonging or bound to such districts) be, and the same is hereby repealed, from and after the fifteenth day of March, one thousand eight hundred and nine. . . .

SEC. 15. *And be it further enacted*, That during the continuance of so much of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and of the several acts supplementary thereto, as is not repealed by this act, no vessel owned by citizens of the United States, bound to another port of the said States or licensed for the coasting trade, shall be allowed to depart from any port of the United States, or shall receive a clearance, nor shall it be lawful to put on board any

* Act of Jan. 9, 1809 (*Stat. at Large*, II., 506–511). — ED.

such vessel any specie or goods, wares, or merchandise, unless a permit shall have been previously obtained from the proper collector, or from a revenue officer, authorized by the collector to grant such permits; nor unless the owner, consignee, agent, or factor shall, with the master, give bond with one or more sureties, to the United States, in a sum double the value of the vessel and cargo, that the vessel shall not proceed to any foreign port or place, and that the cargo shall be relanded in some port of the United States: *Provided*, that it shall be lawful and sufficient in the case of any such vessel, whose employment has been uniformly confined to rivers, bays and sounds within the jurisdiction of the United States, to give bond in an amount equal to one hundred and fifty dollars, for each ton of said vessel, with condition that such vessel shall not, during the time limited in the condition of the bond, proceed to any foreign port or place, or put any article on board of any other vessel, or be employed in any foreign trade.

[Sec. 16 prescribes penalties.]

[Sec. 17 repeals act of April 18, 1806, and supplementary act, after May 20.]

[Sec. 18 provides for the recovery and mitigation of penalties and forfeitures.]

SEC. 19. *And be it further enacted*, That this act shall continue and be in force until the end of the next session of Congress, and no longer; and that the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several acts supplementary thereto, shall be, and the same are hereby repealed from and after the end of the next session of Congress.

No. 29. Madison's War Message

June 1, 1812

APRIL 19, 1809, Madison, on the strength of Erskine's assurance that the Orders in Council would be withdrawn, issued a proclamation suspending the non-intercourse act as against Great Britain after June 10; but Erskine's action was disavowed, and a proclamation of Aug. 9 again put the act in operation. By act of May 1, 1810, it was provided that if either Great Britain or France revoked or modified its edicts so "that they shall cease to violate the neutral commerce of the United States," the non-intercourse act should be enforced against the other. Madison was shortly led to believe that the

French decrees had been revoked, and Nov. 1 he issued a proclamation declaring trade with Great Britain suspended. It was soon known that he had been deceived. During the next few months a series of acts were passed preparatory to war. March 9, 1812, Madison sent the Henry documents to Congress. April 1 he recommended an embargo for sixty days, to which Congress responded with the act of April 4, laying an embargo for ninety days. In May came a final statement from the British minister that Great Britain "would not recede from its policy toward neutrals." The time for negotiation and delay had passed, and June 1 Madison sent to Congress the confidential message following.

REFERENCES. — *Text* in *House Supplementary Journal*, 12th Cong., 1st Sess. (ed. 1826, VIII., 454–457). The journal is also in the *Annals*, 12th Cong., 1587–1694. The diplomatic correspondence of the period is in *Amer. State Papers, Foreign Relations*, III.: see particularly the Erskine correspondence, *ib.*, 295–297, 299–308; report of House committee, Nov. 29, 1811, recommending measures of resistance, *ib.*, 537, 538; the Henry documents, 545–557. There are numerous discussions of the events of 1809–12, and of the attitude of Madison: among recent accounts see especially Adams's *United States*, VI., chaps. 7–11; McMaster's *United States*, III., chaps. 20, 21. For Madison's correspondence during the early part of 1812, see his *Writings* (ed. 1865), II., 523–538.

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

I COMMUNICATE to Congress certain documents, being a continuation of those heretofore laid before them, on the subject of our affairs with Great Britain.

Without going back beyond the renewal, in one thousand eight hundred and three, of the war in which Great Britain is engaged, and omitting unrepaired wrongs of inferior magnitude, the conduct of her Government presents a series of acts, hostile to the United States as an independent and neutral nation.

British cruisers have been in the continued practice of violating the American flag on the great high-way of nations, and of seizing and carrying off persons sailing under it; not in the exercise of a belligerent right founded on the law of nations against an enemy, but of a municipal prerogative over British subjects. British jurisdiction is thus extended to neutral vessels, in a situation where no laws can operate but the law of nations, and the laws of the country to which the vessels belong; and a self-redress is assumed, which, if British subjects were wrongfully detained and alone concerned, is that substitution of force, for a resort to the responsible sovereign, which falls within the definition of war. Could the seizure of British subjects, in such cases, be regarded

as within the exercise of a belligerent right, the acknowledged laws of war, which forbid an article of captured property to be adjudged, without a regular investigation before a competent tribunal, would imperiously demand the fairest trial, where the sacred rights of persons were at issue. In place of such a trial, these rights are subjected to the will of every petty commander.

The practice, hence, is so far from affecting British subjects alone, that, under the pretext of searching for these, thousands of American citizens, under the safeguard of public law, and of their national flag, have been torn from their country, and from everything dear to them; have been dragged on board of ships of war of a foreign nation, and exposed, under the severities of their discipline, to be exiled to the most distant and deadly climes, to risk their lives in the battles of their oppressors, and to be the melancholy instruments of taking away those of their own brethren.

Against this crying enormity, which Great Britain would be so prompt to avenge if committed against herself, the United States have in vain exhausted remonstrances and expostulations; and that no proof might be wanting of their conciliatory disposition, and no pretext left for a continuance of the practice, the British Government was formally assured of the readiness of the United States to enter into arrangements, such as could not be rejected, if the recovery of British subjects were the real and the sole object. The communication passed without effect.

British cruisers have been in the practice also of violating the rights and the peace of our coasts. They hover over and harass our entering and departing commerce. To the most insulting pretentions they have added the most lawless proceedings in our very harbors; and have wantonly spilt American blood within the sanctuary of our territorial jurisdiction. The principles and rules enforced by that nation, when a neutral nation, against armed vessels of belligerents hovering near her coasts and disturbing her commerce, are well known. When called on, nevertheless, by the United States, to punish the greater offences committed by her own vessels, her Government has bestowed on their commanders additional marks of honor and confidence.

Under pretended blockades, without the presence of an adequate force, and sometimes without the practicability of applying one, our commerce has been plundered in every sea; the great staples of our country have been cut off from their legitimate

markets; and a destructive blow aimed at our agricultural and maritime interests. In aggravation of these predatory measures, they have been considered as in force from the dates of their notification; a retrospective effect being thus added, as has been done in other important cases, to the unlawfulness of the course pursued. And to render the outrage the more signal, these mock blockades have been reiterated and enforced in the face of official communications from the British Government, declaring, as the true definition of a legal blockade, "that particular ports must be actually invested, and previous warning given to vessels bound to them, not to enter."

Not content with these occasional expedients for laying waste our neutral trade, the Cabinet of Britain resorted, at length, to the sweeping system of blockades, under the name of Orders in Council; which has been moulded and managed, as might best suit its political views, its commercial jealousies, or the avidity of British cruizers.

To our remonstrances against the complicated and transcendent injustice of this innovation, the first reply was, that the orders were reluctantly adopted by Great Britain, as a necessary retaliation on decrees of her enemy, proclaiming a general blockade of the British Isles, at a time when the naval force of that enemy dared not issue from his own ports. She was reminded, without effect, that her own prior blockades, unsupported by an adequate naval force actually applied and continued, were a bar to this plea: that executed edicts against millions of our property could not be retaliation on edicts confessedly impossible to be executed: that retaliation, to be just, should fall on the party setting the guilty example, not on an innocent party, which was not even chargeable with an acquiescence in it.

When deprived of this flimsy veil for a prohibition of our trade with her enemy, by the repeal of his prohibition of our trade with Great Britain, her Cabinet, instead of a corresponding repeal, or a practical discontinuance of its orders, formally avowed a determination to persist in them against the United States, until the markets of her enemy should be laid open to British products; thus asserting an obligation on a neutral Power to require one belligerent to encourage, by its internal regulations, the trade of another belligerent; contradicting her own practice towards all nations, in peace as well as in war; and betraying the insincerity

of those professions which inculcated a belief, that, having resorted to her orders with regret, she was anxious to find an occasion for putting an end to them.

Abandoning still more all respect for the neutral rights of the United States, and for its own consistency, the British Government now demands, as pre-requisites to a repeal of its orders as they relate to the United States, that a formality should be observed in the repeal of the French decrees, no wise necessary to their termination, nor exemplified by British usage; and that the French repeal, besides including that portion of the decrees which operate within a territorial jurisdiction, as well as that which operates on the high seas, against the commerce of the United States, should not be a single and special repeal in relation to the United States, but should be extended to whatever other neutral nations, unconnected with them, may be affected by those decrees. And, as an additional insult, they are called on for a formal disavowal of conditions and pretensions advanced by the French Government, for which the United States are so far from having made themselves responsible, that, in official explanations which have been published to the world, and in a correspondence of the American Minister at London with the British Minister of Foreign Affairs, such a responsibility was explicitly and emphatically disclaimed.

It has become, indeed, sufficiently certain, that the commerce of the United States is to be sacrificed, not as interfering with the belligerent rights of Great Britain; not as supplying the wants of her enemies, which she herself supplies; but, as interfering with the monopoly which she covets for her own commerce and navigation. She carries on a war against the lawful commerce of a friend, that she may the better carry on a commerce with an enemy; a commerce polluted by the forgeries and perjuries, which are, for the most part, the only passports by which it can succeed.

Anxious to make every experiment short of the last resort of injured nations, the United States have withheld from Great Britain, under successive modifications, the benefits of a free intercourse with her market, the loss of which could not but outweigh the profits accruing from her restrictions of our commerce with other nations. And to entitle these experiments to the more favorable consideration, they were so framed as to enable her to place her adversary under the exclusive operation of them.

To these appeals her Government has been equally inflexible, as if willing to make sacrifices of every sort, rather than yield to the claims of justice, or renounce the errors of a false pride. Nay, so far were the attempts carried to overcome the attachment of the British Cabinet to its unjust edicts, that it received every encouragement within the competency of the Executive branch of our Government, to expect that a repeal of them would be followed by a war between the United States and France, unless the French edicts should also be repealed. Even this communication, although silencing forever the plea of a disposition in the United States to acquiesce in those edicts, originally the sole plea for them, received no attention.

If no other proof existed of a predetermination of the British Government against a repeal of its orders, it might be found in the correspondence of the Minister Plenipotentiary of the United States at London, and the British Secretary of Foreign Affairs, in one thousand eight hundred and ten, on the question whether the blockade of May, one thousand eight hundred and six, was considered as in force, or as not in force. It had been ascertained that the French Government, which urged this blockade as the ground of its Berlin decree, was willing, in the event of its removal, to repeal that decree; which, being followed by alternate repeals of the other offensive edicts, might abolish the whole system on both sides. This inviting opportunity for accomplishing an object so important to the United States, and professed, so often, to be the desire of both the belligerents, was made known to the British Government. As that Government admits that an actual application of an adequate force is necessary to the existence of legal blockade, and it was notorious that, if such a force had ever been applied, its long discontinuance had annulled the blockade in question, there could be no sufficient objection on the part of Great Britain to a formal revocation of it; and no imaginable objection to a declaration of the fact that the blockade did not exist. The declaration would have been consistent with her avowed principles of blockade; and would have enabled the United States to demand from France the pledged repeal of her decrees: either with success, in which case the way would have been opened for a general repeal of the belligerent edicts; or without success, in which case the United States would have been justified in turning their measures exclusively against France. The

British Government would, however, neither rescind the blockade, nor declare its non-existence; nor permit its non-existence to be inferred and affirmed by the American Plenipotentiary. On the contrary, by representing the blockade to be comprehended in the Orders in Council, the United States were compelled so to regard it, in their subsequent proceedings.

There was a period when a favorable change in the policy of the British Cabinet was justly considered as established. The Minister Plenipotentiary of His Britannic Majesty here, proposed an adjustment of the differences more immediately endangering the harmony of the two countries. The proposition was accepted with the promptitude and cordiality corresponding with the invariable professions of this Government. A foundation appeared to be laid for a sincere and lasting reconciliation. The prospect, however, quickly vanished. The whole proceeding was disavowed by the British Government, without any explanations, which could, at that time, repress the belief, that the disavowal proceeded from a spirit of hostility to the commercial rights and prosperity of the United States. And it has since come into proof, that, at the very moment when the Public Minister was holding the language of friendship, and inspiring confidence in the sincerity of the negotiation with which he was charged, a secret Agent of his Government was employed in intrigues, having for their object a subversion of our Government, and a dismemberment of our happy Union.

In reviewing the conduct of Great Britain toward the United States, our attention is necessarily drawn to the warfare, just renewed by the savages, on one of our extensive frontiers; a warfare which is known to spare neither age nor sex, and to be distinguished by features peculiarly shocking to humanity. It is difficult to account for the activity and combinations which have been for some time developing themselves among tribes in constant intercourse with British traders and garrisons, without connecting their hostility with that influence, and without recollecting the authenticated examples of such interpositions, heretofore furnished by the officers and agents of that Government.

Such is the spectacle of injuries and indignities which have been heaped on our country; and such the crisis which its unexampled forbearance and conciliatory efforts have not been able to avert. It might at least have been expected, that an enlightened nation, if less urged by moral obligations, or invited by friendly

disposition on the part of the United States, would have found, in its true interest alone, a sufficient motive to respect their rights and their tranquillity on the high seas; that an enlarged policy would have favored that free and general circulation of commerce in which the British nation is at all times interested, and which, in times of war, is the best alleviation of its calamities to herself, as well as to other belligerents; and, more especially, that the British Cabinet would not, for the sake of a precarious and surreptitious intercourse with hostile markets, have persevered in a course of measures which necessarily put at hazard the invaluable market of a great and growing country, disposed to cultivate the mutual advantages of an active commerce.

Other councils have prevailed. Our moderation and conciliation have had no other effect than to encourage perseverance and to enlarge pretensions. We behold our sea-faring citizens still the daily victims of lawless violence, committed on the great and common highway of nations, even within sight of the country which owes them protection. We behold our vessels, freighted with the products of our soil and industry, or returning with the honest proceeds of them, wrested from their lawful destinations, confiscated by prize courts, no longer the organs of public law, but the instruments of arbitrary edicts, and their unfortunate crews dispersed and lost, or forced or inveigled in British ports into British fleets, whilst arguments are employed in support of these aggressions, which have no foundation but in a principle equally supporting a claim to regulate our external commerce in all cases whatsoever.

We behold, in fine, on the side of Great Britain, a state of war against the United States; and on the side of the United States, a state of peace towards Great Britain.

Whether the United States shall continue passive under these progressive usurpations, and these accumulating wrongs, or, opposing force to force in defence of their national rights, shall commit a just cause into the hands of the Almighty Disposer of events, avoiding all connexions which might entangle it in the contests or views of other Powers, and preserving a constant readiness to concur in an honorable re-establishment of peace and friendship, is a solemn question, which the Constitution wisely confides to the Legislative Department of the Government. In recommending it to their early deliberations, I am happy in the assurance,

that the decision will be worthy the enlightened and patriotic councils of a virtuous, a free, and a powerful nation. . . .

JAMES MADISON.

No. 30. Declaration of War

June 18, 1812

MADISON'S message of June 1 was referred in the House to the committee on Foreign Relations. June 3 Calhoun reported from the committee a bill declaring war between the United States and Great Britain. The bill passed the House the following day, by a vote of 79 to 49, after strong opposition. The bill with amendments was reported by a select committee of the Senate on the 8th; on the 11th, by a vote of 17 to 13, it was recommitted. Several amendments were reported on the 12th, but were rejected by a tie vote; and by vote of 21 to 11 the first report of the committee, with amendments, was agreed to. Determined efforts were made to postpone or further amend the bill, but without success, and on the 17th the bill passed, by a vote of 19 to 13. On the 18th the House concurred in the Senate amendments, and on the same day the act was approved. A proclamation announcing the existence of war was issued June 19.

REFERENCES. — *Text* in *U. S. Stat. at Large*, II., 755. For the proceedings, see the *House and Senate Supplementary Journals*, 12th Cong., 1st Sess. The discussions are reported briefly in the *Annals*, and in Benton's *Abridgment*, IV. Calhoun's report is in *Amer. State Papers, Foreign Relations*, III., 567–570. The Orders in Council were withdrawn June 16; for the announcement, June 23, see *Annual Register*, 1812, pp. 379–381. There is an analysis by States of the vote in the House, June 4, in McMaster's *United States*, III., 457, 458. For the address of the Federalist minority to their constituents, see the *Annals*, 2196–2221.

An Act declaring War between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof, and the United States of America and their territories; and that the President of the United States is hereby authorized to use the whole land and naval force of the United States to carry the same into effect, and to issue to private armed vessels of the United States commissions or letters of marque and general reprisal, in such form as he shall think proper, and under the seal

of the United States, against the vessels, goods, and effects of the government of the said United Kingdom of Great Britain and Ireland, and the subjects thereof.

No. 31. Treaty of Ghent

December 24, 1814

THE offer of the Emperor of Russia to mediate between Great Britain and the United States was accepted by the latter, and on April 15, 1813, instructions were issued to commissioners. Great Britain, however, declined the offer of mediation, and suggested direct negotiation; the suggestion was accepted, additional commissioners were appointed, and new instructions issued Jan. 28, 1814. The commissioners held their first conference at Ghent July 11. The treaty was concluded Dec. 24; Feb. 17, 1815, ratifications were exchanged at Washington. The conclusion of the treaty was announced to Congress Feb. 20.

REFERENCES. — *Text* in *Revised Statutes relating to the District of Columbia*, etc. (ed. 1875), 287–292. The diplomatic correspondence is in *Amer. State Papers, Foreign Relations*, III., 695–748; IV., 808–811. For dispatches and instructions of the British commissioners, see the *Castlereagh Correspondence*, series III., vol. II. The diary of J. Q. Adams during the negotiations is in his *Memoirs*, II., 603–662; III., 3–144. Clay's letters are in Colton's *Private Correspondence of Henry Clay*, 24–44; Gallatin's, in Adams's *Writings of Gallatin*, I., 545–647. See also Adams's *United States*, IX., chaps. 1, 2; Adams's *Gallatin*, 493–547; *Treaties and Conventions* (ed. 1889), 1326–1328, notes on the treaty by J. C. B. Davis.

His Britannic Majesty and the United States of America, desirous of terminating the war which has unhappily subsisted between the two countries, and of restoring, upon principles of perfect reciprocity, peace, friendship, and good understanding between them, have, for that purpose, appointed their respective Plenipotentiaries, that is to say:

His Britannic Majesty, on his part, has appointed the Right Honourable James Lord Gambier, late Admiral of the White, now Admiral of the Red Squadron of His Majesty's fleet, Henry Goulburn, Esquire, a member of the Imperial Parliament, and Under Secretary of State, and William Adams, Esquire, Doctor of Civil Laws; and the President of the United States, by and with the advice and consent of the Senate thereof, has appointed John Quincy Adams, James A. Bayard, Henry Clay, Jonathan Russell, and Albert Gallatin, citizens of the United States;

Who, after a reciprocal communication of their respective full powers, have agreed upon the following articles:

ARTICLE I.

There shall be a firm and universal peace between His Britannic Majesty and the United States, and between their respective countries, territories, cities, towns, and people, of every degree, without exception of places or persons. All hostilities, both by sea and land, shall cease as soon as this treaty shall have been ratified by both parties, as hereinafter mentioned. All territory, places, and possessions whatsoever, taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned, shall be restored without delay, and without causing any destruction or carrying away any of the artillery or other public property originally captured in the said forts or places, and which shall remain therein upon the exchange of the ratifications of this treaty, or any slaves or other private property. And all archives, records, deeds, and papers, either of a public nature or belonging to private persons, which, in the course of the war, may have fallen into the hands of the officers of either party, shall be, as far as may be practicable, forthwith restored and delivered to the proper authorities and persons to whom they respectively belong. Such of the islands in the Bay of Passamaquoddy as are claimed by both parties, shall remain in the possession of the party in whose occupation they may be at the time of the exchange of the ratifications of this treaty, until the decision respecting the title to the said islands shall have been made in conformity with the fourth article of this treaty. No disposition made by this treaty as to such possession of the islands and territories claimed by both parties shall, in any manner whatever, be construed to affect the right of either.

ARTICLE II.

Immediately after the ratifications of this treaty by both parties, as hereinafter mentioned, orders shall be sent to the armies, squadrons, officers, subjects and citizens of the two Powers to cease from all hostilities. And to prevent all causes of complaint which might arise on account of the prizes which may be taken at sea after the said ratifications of this treaty, it is recip-

rocally agreed that all vessels and effects which may be taken after the space of twelve days from the said ratifications, upon all parts of the coast of North America, from the latitude of twenty-three degrees north to the latitude of fifty degrees north, and as far eastward in the Atlantic Ocean as the thirty-sixth degree of west longitude from the meridian of Greenwich, shall be restored on each side: that the time shall be thirty days in all other parts of the Atlantic Ocean north of the equinoctial line or equator, and the same time for the British and Irish Channels, for the Gulf of Mexico, and all parts of the West Indies; forty days for the North Seas, for the Baltic, and for all parts of the Mediterranean; sixty days for the Atlantic Ocean south of the equator, as far as the latitude of the Cape of Good Hope; ninety days for every other part of the world south of the equator; and one hundred and twenty days for all other parts of the world, without exception.

ARTICLE III.

All prisoners of war taken on either side, as well by land as by sea, shall be restored as soon as practicable after the ratifications of this treaty, as hereinafter mentioned, on their paying the debts which they may have contracted during their captivity. The two contracting parties respectively engage to discharge, in specie, the advances which may have been made by the other for the sustenance and maintenance of such prisoners.

ARTICLE IV.

Whereas it was stipulated by the second article in the treaty of peace of one thousand seven hundred and eighty-three, between His Britannic Majesty and the United States of America, that the boundary of the United States should comprehend all islands within twenty leagues of any part of the shores of the United States, and lying between lines to be drawn due east from the points where the aforesaid boundaries, between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such islands as now are, or heretofore have been, within the limits of Nova Scotia; and whereas the several islands in the Bay of Passamaquoddy, which is part of the Bay of Fundy, and the Island of Grand Menan, in the said Bay of Fundy, are

claimed by the United States as being comprehended within their aforesaid boundaries, which said islands are claimed as belonging to His Britannic Majesty, as having been, at the time of and previous to the aforesaid treaty of one thousand seven hundred and eighty-three, within the limits of the Province of Nova Scotia: In order, therefore, finally to decide upon these claims, it is agreed that they shall be referred to two Commissioners to be appointed in the following manner, viz: One Commissioner shall be appointed by His Britannic Majesty, and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two Commissioners so appointed shall be sworn impartially to examine and decide upon the said claims according to such evidence as shall be laid before them on the part of His Britannic Majesty and of the United States respectively. [The commissioners to meet at St. Andrews, N. B. In case of disagreement, the matter to be referred to the decision of some friendly Power.*]

ARTICLE V.

Whereas neither that point of the highlands lying due north from the source of the river St. Croix, and designated in the former treaty of peace between the two Powers as the northwest angle of Nova Scotia, nor the northwesternmost head of Connecticut River, has yet been ascertained; and whereas that part of the boundary line between the dominions of the two Powers which extends from the source of the river St. Croix directly north to the abovementioned northwest angle of Nova Scotia, thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic Ocean to the northwesternmost head of Connecticut River, thence down along the middle of that river to the forty-fifth degree of north latitude; thence by a line due west on said latitude until it strikes the river Iroquois or Cataraquy, has not yet been surveyed: it is agreed that for these several purposes two Commissioners shall be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise

* For the declaration and decision of the commissioners under this article, Nov. 24, 1817, see *Revised Statutes relating to District of Columbia*, etc. (ed. 1875), 296, 297; *Treaties and Conventions* (ed. 1889), 405, 406. — ED.

specified in the present article. [The commissioners to meet at St. Andrews, N. B. Boundary to be surveyed and marked. In case of disagreement, the matter to be referred to the decision of some friendly Power, as in Art. IV.]

ARTICLE VI.

Whereas by the former treaty of peace that portion of the boundary of the United States from the point where the forty-fifth degree of north latitude strikes the river Iroquois or Cataraquy to the Lake Superior, was declared to be "along the middle of said river into Lake Ontario, through the middle of said lake, until it strikes the communication by water between that lake and Lake Erie, thence along the middle of said communication into Lake Erie, through the middle of said lake until it arrives at the water communication into the Lake Huron, thence through the middle of said lake to the water communication between that lake and Lake Superior;" and whereas doubts have arisen what was the middle of the said river, lakes, and water communications, and whether certain islands lying in the same were within the dominions of His Britannic Majesty or of the United States: In order, therefore, finally to decide these doubts, they shall be referred to two Commissioners, to be appointed, sworn, and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in this present article. [The commissioners to meet at Albany. Boundary to be designated. In case of disagreement, the matter to be referred to the decision of some friendly Power, as in Art. IV.*]

ARTICLE VII.

[The commissioners provided for in Art. VI. to determine the boundary between Lakes Huron and Superior and the Lake of the Woods. In case of disagreement, the matter to be referred to the decision of some friendly Power, as in Art. IV.]

ARTICLE VIII.

[Commissioners may employ a secretary, &c. Grants of land by either party prior to the war not to be invalidated by any decision of the commissioners.]

* For the decision of the commissioners under this article, June 22, 1822, see *Revised Statutes relating to District of Columbia* (ed. 1875), 300-302; *Treaties and Conventions* (ed. 1889), 407-409. — ED.

ARTICLE IX.

The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities: Provided always that such tribes or nations shall agree to desist from all hostilities against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly. And His Britannic Majesty engages, on his part, to put an end immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such tribes or nations respectively all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities: Provided always that such tribes or nations shall agree to desist from all hostilities against His Britannic Majesty, and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

ARTICLE X.

Whereas the traffic in slaves is irreconcileable with the principles of humanity and justice, and whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavours to accomplish so desirable an object.

ARTICLE XI.

This treaty, when the same shall have been ratified on both sides, without alteration by either of the contracting parties, and the ratifications mutually exchanged, shall be binding on both parties, and the ratifications shall be exchanged at Washington, in the space of four months from this day, or sooner if practicable.

In faith whereof we, the respective Plenipotentiaries, have signed this treaty, and have thereunto affixed our seals.

Done, in triplicate, at Ghent, the twenty-fourth day of December, one thousand eight hundred and fourteen.

GAMBIER.	[L.S.]
HENRY GOULBURN.	[L.S.]
WILLIAM ADAMS.	[L.S.]
JOHN QUINCY ADAMS.	[L.S.]
J. A. BAYARD.	[L.S.]
H. CLAY.	[L.S.]
JONA. RUSSELL.	[L.S.]
ALBERT GALLATIN.	[L.S.]

No. 32. Report of the Hartford Convention

January 4, 1815

EARLY in 1814 many towns in Massachusetts presented memorials to the legislature, setting forth the dangers to which the war with Great Britain exposed them, and suggesting the appointment of delegates, "to meet delegates from such other States as might think proper to appoint them, for the purpose of devising proper measures to procure the united efforts of the commercial states, to obtain such amendments and explanations of the constitution as will secure them from further evils" (Dwight). The matter was favorably considered by the legislature, and Oct. 18 twelve delegates were elected in a joint session of the two houses, by a vote of 226 to 67. The action of Massachusetts was followed by the election of seven delegates by the legislature of Connecticut, which already had under consideration suggestions of a similar nature, and of four delegates by the legislature of Rhode Island. The delegates thus chosen, together with two from New Hampshire and one from Vermont, representing local conventions in those States, met at Hartford Dec. 15, and remained in session until Jan. 5, 1815. The proceedings of the convention were secret, but the report, from which an extract follows, was published and widely circulated. The legislatures of Massachusetts and Connecticut sent commissioners to Washington to urge the submission of the amendments to the Constitution suggested by the convention; but the war had ended before they arrived, and their recommendations were disregarded. The injunction of secrecy laid upon the members of the convention, and the failure to make public the journal, led to the impression that the proceedings were of a treasonable nature, and had in view a dissolution of the Union.

REFERENCES. — *Text* in Dwight's *History of the Hartford Convention* (ed. 1833), 352–379; the extract here given is on pp. 368–379. The report is also in *Niles's Register*, VII., 305–313, where are also, pp. 328–332, com-

mercial and financial statistics published by order of the convention. The journal is also in Dwight, *op. cit.*, 383–398. R. M. Sherman's account of the convention is in *Niles's Register*, XXXIX., 434, 435; see also *ib.*, VII., 185–189, 193–197, 257, 258, 321–326, 337, 338, 369–371, a series of articles hostile to the convention. The best recent accounts are in Adams's *United States*, VIII., chap. 11, and Lodge's *George Cabot*, chaps. 11–13; see further, Johnston, in *Lalor's Cyclopædia*, I., 624–626; Barry's *Massachusetts*, III., 407–422; and articles in *New Englander*, XXXVII., 145–159, and *New Engl. Mag.*, VI., 181–193 (March, 1834).

[After severe general criticism of the Administration, and of the policy by which "this remote country, once so happy and so envied," is now "involved in a ruinous war, and excluded from intercourse with the rest of the world," the report continues:]

To investigate and explain the means whereby this fatal reverse has been effected, would require a voluminous discussion. Nothing more can be attempted in this report than a general allusion to the principal outlines of the policy which has produced this vicissitude. Among these may be enumerated —

First. — A deliberate and extensive system for effecting a combination among certain states, by exciting local jealousies and ambition, so as to secure to popular leaders in one section of the Union, the controul of public affairs in perpetual succession. To which primary object most other characteristics of the system may be reconciled.

Secondly. — The political intolerance displayed and avowed in excluding from office men of unexceptionable merit, for want of adherence to the executive creed.

Thirdly. — The infraction of the judiciary authority and rights, by depriving judges of their offices in violation of the constitution.

Fourthly. — The abolition of existing taxes, requisite to prepare the country for those changes to which nations are always exposed, with a view to the acquisition of popular favour.

Fifthly. — The influence of patronage in the distribution of offices, which in these states has been almost invariably made among men the least entitled to such distinction, and who have sold themselves as ready instruments for distracting public opinion, and encouraging administration to hold in contempt the wishes and remonstrances of a people thus apparently divided.

Sixthly. — The admission of new states into the Union formed at pleasure in the western region, has destroyed the balance of

power which existed among the original States, and deeply affected their interest.

Seventhly. — The easy admission of naturalized foreigners, to places of trust, honour or profit, operating as an inducement to the malcontent subjects of the old world to come to these States, in quest of executive patronage, and to repay it by an abject devotion to executive measures.

Eighthly. — Hostility to Great Britain, and partiality to the late government of France, adopted as coincident with popular prejudice, and subservient to the main object, party power. Connected with these must be ranked erroneous and distorted estimates of the power and resources of those nations, of the probable results of their controversies, and of our political relations to them respectively.

Lastly and principally. — A visionary and superficial theory in regard to commerce, accompanied by a real hatred but a feigned regard to its interests, and a ruinous perseverance in efforts to render it an instrument of coercion and war.

But it is not conceivable that the obliquity of any administration could, in so short a period, have so nearly consummated the work of national ruin, unless favoured by defects in the constitution.

To enumerate all the improvements of which that instrument is susceptible, and to propose such amendments as might render it in all respects perfect, would be a task which this convention has not thought proper to assume. They have confined their attention to such as experience has demonstrated to be essential, and even among these, some are considered entitled to a more serious attention than others. They are suggested without any intentional disrespect to other states, and are meant to be such as all shall find an interest in promoting. Their object is to strengthen, and if possible to perpetuate, the union of the states, by removing the grounds of existing jealousies, and providing for a fair and equal representation, and a limitation of powers, which have been misused.

The first amendment proposed, relates to the apportionment of representatives among the slave holding states. This cannot be claimed as a right. Those states are entitled to the slave representation, by a constitutional compact. It is therefore merely a subject of agreement, which should be conducted upon principles of mutual interest and accommodation, and upon which no sensi-

bility on either side should be permitted to exist. It has proved unjust and unequal in its operation. Had this effect been foreseen, the privilege would probably not have been demanded; certainly not conceded. Its tendency in future will be adverse to that harmony and mutual confidence which are more conducive to the happiness and prosperity of every confederated state, than a mere preponderance of power, the prolific source of jealousies and controversy, can be to any one of them. The time may therefore arrive, when a sense of magnanimity and justice will reconcile those states to acquiesce in a revision of this article, especially as a fair equivalent would result to them in the apportionment of taxes.

The next amendment relates to the admission of new states into the Union.

This amendment is deemed to be highly important, and in fact indispensable. In proposing it, it is not intended to recognize the right of Congress to admit new states without the original limits of the United States, nor is any idea entertained of disturbing the tranquillity of any state already admitted into the Union. The object is merely to restrain the constitutional power of Congress in admitting new states. At the adoption of the constitution, a certain balance of power among the original parties was considered to exist, and there was at that time, and yet is among those parties, a strong affinity between their great and general interests. — By the admission of these states that balance has been materially affected, and unless the practice be modified, must ultimately be destroyed. The southern states will first avail themselves of their new confederates to govern the east, and finally the western states, multiplied in number, and augmented in population, will control the interests of the whole. Thus for the sake of present power, the southern states will be common sufferers with the east, in the loss of permanent advantages. None of the old states can find an interest in creating prematurely an overwhelming western influence, which may hereafter discern (as it has heretofore) benefits to be derived to them by wars and commercial restrictions.

The next amendments proposed by the convention, relate to the powers of Congress, in relation to embargo and the interdiction of commerce.

Whatever theories upon the subject of commerce have hitherto divided the opinions of statesmen, experience has at last shown

that it is a vital interest in the United States, and that its success is essential to the encouragement of agriculture and manufactures, and to the wealth, finances, defence, and liberty of the nation. Its welfare can never interfere with the other great interests of the state, but must promote and uphold them. Still those who are immediately concerned in the prosecution of commerce, will of necessity be always a minority of the nation. They are, however, best qualified to manage and direct its course by the advantages of experience, and the sense of interest. But they are entirely unable to protect themselves against the sudden and injudicious decisions of bare majorities, and the mistaken or oppressive projects of those who are not actively concerned in its pursuits. Of consequence, this interest is always exposed to be harassed, interrupted, and entirely destroyed, upon pretence of securing other interests. Had the merchants of this nation been permitted by their own government to pursue an innocent and lawful commerce, how different would have been the state of the treasury and of public credit! How short-sighted and miserable is the policy which has annihilated this order of men, and doomed their ships to rot in the docks, their capital to waste unemployed, and their affections to be alienated from the government which was formed to protect them! What security for an ample and unfailing revenue can ever be had, comparable to that which once was realized in the good faith, punctuality, and sense of honour, which attached the mercantile class to the interests of the government! Without commerce, where can be found the aliment for a navy; and without a navy, what is to constitute the defence, and ornament, and glory of this nation! No union can be durably cemented, in which every great interest does not find itself reasonably secured against the encroachment and combinations of other interests. When, therefore, the past system of embargoes and commercial restrictions shall have been reviewed — when the fluctuation and inconsistency of public measures, betraying a want of information as well as feeling in the majority, shall have been considered, the reasonableness of some restrictions upon the power of a bare majority to repeat these oppressions, will appear to be obvious.

The next amendment proposes to restrict the power of making offensive war. In the consideration of this amendment, it is not necessary to inquire into the justice of the present war. But one sentiment now exists in relation to its expediency, and regret for

its declaration is nearly universal. No indemnity can ever be attained for this terrible calamity, and its only palliation must be found in obstacles to its future recurrence. Rarely can the state of this country call for or justify offensive war. The genius of our institutions is unfavourable to its successful prosecution; the felicity of our situation exempts us from its necessity. In this case, as in the former, those more immediately exposed to its fatal effects are a minority of the nation. The commercial towns, the shores of our seas and rivers, contain the population whose vital interests are most vulnerable by a foreign enemy. Agriculture, indeed, must feel at last, but this appeal to its sensibility comes too late. Again, the immense population which has swarmed into the west, remote from immediate danger, and which is constantly augmenting, will not be averse from the occasional disturbances of the Atlantic states. Thus interest may not unfrequently combine with passion and intrigue, to plunge the nation into needless wars, and compel it to become a military, rather than a happy and flourishing people. These considerations, which it would be easy to augment, call loudly for the limitation proposed in the amendment.

Another amendment, subordinate in importance, but still in a high degree expedient, relates to the exclusion of foreigners hereafter arriving in the United States from the capacity of holding offices of trust, honour, or profit.

That the stock of population already in these states is amply sufficient to render this nation in due time sufficiently great and powerful, is not a controvertible question. Nor will it be seriously pretended, that the national deficiency in wisdom, arts, science, arms, or virtue, needs to be replenished from foreign countries. Still, it is agreed, that a liberal policy should offer the rights of hospitality, and the choice of settlement, to those who are disposed to visit the country. But why admit to a participation in the government aliens who were no parties to the compact — who are ignorant of the nature of our institutions, and have no stake in the welfare of the country but what is recent and transitory? It is surely a privilege sufficient, to admit them after due probation to become citizens, for all but political purposes. To extend it beyond these limits, is to encourage foreigners to come to these states as candidates for preferment. The Convention forbear to express their opinion upon the inauspicious effects which have

already resulted to the honour and peace of this nation, from this misplaced and indiscriminate liberality.

The last amendment respects the limitation of the office of President to a single constitutional term, and his eligibility from the same state two terms in succession.

Upon this topic it is superfluous to dilate. The love of power is a principle in the human heart which too often impels to the use of all practicable means to prolong its duration. The office of President has charms and attractions which operate as powerful incentives to this passion. The first and most natural exertion of a vast patronage is directed towards the security of a new election. The interest of the country, the welfare of the people, even honest fame and respect for the opinion of posterity, are secondary considerations. All the engines of intrigue, all the means of corruption are likely to be employed for this object. A President whose political career is limited to a single election, may find no other interest than will be promoted by making it glorious to himself, and beneficial to his country. But the hope of re-election is prolific of temptations, under which these magnanimous motives are deprived of their principal force. The repeated election of the President of the United States from any one state, affords inducements and means for intrigues, which tend to create an undue local influence, and to establish the domination of particular states. The justice, therefore, of securing to every state a fair and equal chance for the election of this officer from its own citizens is apparent, and this object will be essentially promoted by preventing an election from the same state twice in succession.

Such is the general view which this Convention has thought proper to submit, of the situation of these states, of their dangers and their duties. Most of the subjects which it embraces have separately received an ample and luminous investigation, by the great and able assertors of the rights of their country, in the national legislature; and nothing more could be attempted on this occasion than a digest of general principles, and of recommendations suited to the present state of public affairs. The peculiar difficulty and delicacy of performing even this undertaking, will be appreciated by all who think seriously upon the crisis. Negotiations for peace are at this hour supposed to be pending, the issue of which must be deeply interesting to all. No measures should be adopted which might unfavourably affect that

issue; none which should embarrass the administration, if their professed desire for peace is sincere; and none which on supposition of their insincerity, should afford them pretexts for prolonging the war, or relieving themselves from the responsibility of a dishonourable peace. It is also devoutly to be wished, that an occasion may be afforded to all friends of the country, of all parties, and in all places, to pause and consider the awful state to which pernicious counsels and blind passions have brought this people. The number of those who perceive, and who are ready to retrace errors, must, it is believed, be yet sufficient to redeem the nation. It is necessary to rally and unite them by the assurance that no hostility to the constitution is meditated, and to obtain their aid in placing it under guardians who alone can save it from destruction. Should this fortunate change be effected, the hope of happiness and honour may once more dispel the surrounding gloom. Our nation may yet be great, our union durable. But should this prospect be utterly hopeless, the time will not have been lost which shall have ripened a general sentiment of the necessity of more mighty efforts to rescue from ruin, at least some portion of our beloved country.

THEREFORE RESOLVED,

That it be and hereby is recommended to the legislatures of the several states represented in this Convention, to adopt all such measures as may be necessary effectually to protect the citizens of said states from the operation and effects of all acts which have been or may be passed by the Congress of the United States, which shall contain provisions, subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments, not authorised by the constitution of the United States.

Resolved, That it be and hereby is recommended to the said Legislatures, to authorize an immediate and earnest application to be made to the government of the United States, requesting their consent to some arrangement, whereby the said states may, separately or in concert, be empowered to assume upon themselves the defence of their territory against the enemy; and a reasonable portion of the taxes, collected within said States, may be paid into the respective treasuries thereof, and appropriated to the payment of the balance due said states, and to the future defence of the same. The amount so paid into the said treasuries

to be credited, and the disbursements made as aforesaid to be charged to the United States.

Resolved, That it be, and hereby is, recommended to the legislatures of the aforesaid states, to pass laws (where it has not already been done) authorizing the governors or commanders-in-chief of their militia to make detachments from the same, or to form voluntary corps, as shall be most convenient and conformable to their constitutions, and to cause the same to be well armed, equipped, and disciplined, and held in readiness for service; and upon the request of the governor of either of the other states to employ the whole of such detachment or corps, as well as the regular forces of the state, or such part thereof as may be required and can be spared consistently with the safety of the state, in assisting the state, making such request to repel any invasion thereof which shall be made or attempted by the public enemy.

Resolved, That the following amendments of the constitution of the United States be recommended to the states represented as aforesaid, to be proposed by them for adoption by the state legislatures, and in such cases as may be deemed expedient by a convention chosen by the people of each state.

And it is further recommended, that the said states shall persevere in their efforts to obtain such amendments, until the same shall be effected.

First. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers of free persons, including those bound to serve for a term of years, and excluding Indians not taxed, and all other persons.

Second. No new state shall be admitted into the Union by Congress, in virtue of the power granted by the constitution, without the concurrence of two thirds of both houses.

Third. Congress shall not have power to lay any embargo on the ships or vessels of the citizens of the United States, in the ports or harbours thereof, for more than sixty days.

Fourth. Congress shall not have power, without the concurrence of two thirds of both houses, to interdict the commercial intercourse between the United States and any foreign nation, or the dependencies thereof.

Fifth. Congress shall not make or declare war, or authorize acts of hostility against any foreign nation, without the concur-

rence of two thirds of both houses, except such acts of hostility be in defence of the territories of the United States when actually invaded.

Sixth. No person who shall hereafter be naturalized, shall be eligible as a member of the senate or house of representatives of the United States, nor capable of holding any civil office under the authority of the United States.

Seventh. The same person shall not be elected president of the United States a second time; nor shall the president be elected from the same state two terms in succession.

Resolved, That if the application of these states to the government of the United States, recommended in a foregoing resolution, should be unsuccessful, and peace should not be concluded, and the defence of these states should be neglected, as it has been since the commencement of the war, it will, in the opinion of this convention, be expedient for the legislatures of the several states to appoint delegates to another convention, to meet at Boston in the state of Massachusetts, on the third Thursday of June next, with such powers and instructions as the exigency of a crisis so momentous may require.

Resolved, That the Hon. George Cabot, the Hon. Chauncey Goodrich, and the Hon. Daniel Lyman, or any two of them, be authorized to call another meeting of this convention, to be holden in Boston, at any time before new delegates shall be chosen, as recommended in the above resolution, if in their judgment the situation of the country shall urgently require it.*

No. 33. Act for a National Bank

April 10, 1816

THE charter of the first bank of the United States expired in 1811, and the effort to renew it was unsuccessful. A bill to incorporate a bank was vetoed by Madison Jan. 30, 1815. In his annual message Dec. 5, 1815, Madison urged the necessity of an uniform national currency, and suggested a national bank. In the House this part of the message was referred to a select committee, of which Calhoun was chairman, and Jan. 8, 1816, Calhoun reported a bill to incorporate the subscribers to the Bank of the United States. The bill was not taken up until Feb. 26; it was then considered at nearly every session until March 14, when it passed, by a vote of 80 to 71. The bill with

* The names of the members, all of whom signed the report, are omitted. — ED.

amendments passed the Senate April 3, by a vote of 22 to 12. April 5 the House concurred in the Senate amendments; on the 10th the act was approved. Only the significant portions of the act are here given.

REFERENCES. — *Text* in *U. S. Stat. at Large*, III., 266–277. For the proceedings see the *House and Senate Journals*, 14th Cong., 1st Sess.; for the discussions see the *Annals*, or Benton's *Abridgment*, V. The speeches of Calhoun, Clay, and Webster (the latter against the bank) are of especial importance. The letter of Dallas, Secretary of the Treasury, to Calhoun, outlining a plan for a national bank, is in *Amer. State Papers, Finance*, III., 57–61; the act followed in the main Dallas's suggestions. The veto message of Jan. 30, 1815, with the text of the bill, is in *Amer. State Papers, Finance*, II., 891–895; Spencer's report in the House, Jan. 16, 1819, on the conduct of the bank, *ib.*, III., 306–391; the petition of the bank for changes in its charter, Jan. 12, 1821, *ib.*, III., 586–594. On the constitutionality of a national bank the leading case is M'Culloch *v.* Maryland, 4 *Wheaton*, 316–437. Most of the discussion over the bank belongs to a later period.

An Act to incorporate the subscribers to the Bank of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That a bank of the United States of America shall be established, with a capital of thirty-five millions of dollars, divided into three hundred and fifty thousand shares, of one hundred dollars each share. Seventy thousand shares, amounting to the sum of seven millions of dollars, part of the capital of the said bank, shall be subscribed and paid for by the United States, in the manner hereinafter specified; and two hundred and eighty thousand shares, amounting to the sum of twenty-eight millions of dollars, shall be subscribed and paid for by individuals, companies, or corporations, in the manner hereinafter specified. . . .

SEC. 8. *And be it further enacted*, That for the management of the affairs of the said corporation, there shall be twenty-five directors, five of whom, being stockholders, shall be annually appointed by the President of the United States, by and with the advice and consent of the Senate, not more than three of whom shall be residents of any one state; and twenty of whom shall be annually elected at the banking house in the city of Philadelphia, on the first Monday of January, in each year, by the qualified stockholders of the capital of the said bank, other than the United States, and by a plurality of votes then and there actually given, according to the scale of voting hereinafter prescribed: *Provided always*, That no person, being a director in the bank of the United

States, or any of its branches, shall be a director of any other bank; and should any such director act as a director in any other bank, it shall forthwith vacate his appointment in the direction of the bank of the United States. And the directors, so duly appointed and elected, shall be capable of serving, by virtue of such appointment and choice, from the first Monday in the month of January of each year, until the end and expiration of the first Monday in the month of January of the year next ensuing the time of each annual election to be held by the stockholders as aforesaid. And the board of directors, annually, at the first meeting after their election in each and every year, shall proceed to elect one of the directors to be president of the corporation, who shall hold the said office during the same period for which the directors are appointed and elected as aforesaid: . . . *And provided also*, That in case of the death, resignation, or removal, of the president of the said corporation, the directors shall proceed to elect another president from the directors as aforesaid: and in case of the death, resignation, or absence, from the United States, or removal of a director from office, the vacancy shall be supplied by the President of the United States, or by the stockholders, as the case may be. But the President of the United States alone shall have power to remove any of the directors appointed by him as aforesaid.

SEC. 9. *And be it further enacted*, . . . And the President of the United States is hereby authorized, during the present session of Congress, to nominate, and, by and with the advice and consent of the Senate, to appoint, five directors of the said bank, though not stockholders, any thing in the provisions of this act to the contrary notwithstanding; . . .

SEC. 11. *And be it further enacted*, That the following rules, restrictions, limitations, and provisions, shall form and be fundamental articles of the constitution of the said corporation, to wit:

* * * * * * * * * * *

Eighth. The total amount of debts which the said corporation shall at any time owe, whether by bond, bill, note, or other contract, over and above the debt or debts due for money deposited in the bank, shall not exceed the sum of thirty-five millions of dollars, unless the contracting of any greater debt shall have been previously authorized by law of the United States. . . .

* * * * * * * * * * *

Ninth. The said corporation shall not, directly or indirectly, deal or trade in any thing except bills of exchange, gold or silver bullion, or in the sale of goods really and truly pledged for money lent and not redeemed in due time, or goods which shall be the proceeds of its lands. It shall not be at liberty to purchase any public debt whatsoever, nor shall it take more than at the rate of six per centum per annum for or upon its loans or discounts.

Tenth. No loan shall be made by the said corporation, for the use or on account of the government of the United States, to an amount exceeding five hundred thousand dollars, or of any particular state, to an amount exceeding fifty thousand dollars, or of any foreign prince or state, unless previously authorized by a law of the United States.

* * * * * * * * * * *

Fourteenth. The directors of the said corporation shall establish a competent office of discount and deposit in the District of Columbia, whenever any law of the United States shall require such an establishment; also one such 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: *Provided*, the directors aforesaid shall not be bound to establish such office before the whole of the capital of the bank shall have been paid up. And it shall be lawful for the directors of the said corporation to establish offices of discount and deposit, whereso-ever they shall think fit, within the United States or the territories thereof, and to commit the management of the said offices, and the business thereof, respectively to such persons, and under such regulations as they shall deem proper, not being contrary to law or the constitution of the bank. Or instead of establishing such offices, it shall be lawful for the directors of the said corporation, from time to time, to employ any other bank or banks, to be first approved by the Secretary of the Treasury, at any place or places that they may deem safe and proper, to manage and transact the business proposed as aforesaid, other than for the purposes of discount, to be managed and transacted by such offices, under such agreements, and subject to such regulations, as they shall deem just and proper. . . .

Fifteenth. The officer at the head of the Treasury Department of the United States shall be furnished, from time to time, as often

as he may require, not exceeding once a week, with statements of the amount of the capital stock of the said corporation and of the debts due to the same; of the moneys deposited therein; of the notes in circulation, and of the specie in hand; and shall have a right to inspect such general accounts in the books of the bank as shall relate to the said statement: *Provided*, That this shall not be construed to imply a right of inspecting the account of any private individual or individuals with the bank. . . .

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.

SEC. 15. *And be it further enacted*, That during the continuance of this act, and whenever required by the Secretary of the Treasury, the said corporation shall give 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 commissions or claiming allowance on account of difference of exchange, and shall also do and perform the several and respective duties of the commissioners of loans for the several states, or of any one or more of them, whenever required by law.

SEC. 16. *And be it further enacted*, That the deposits of the money of the United States, in places in which the said bank and branches thereof may be established, shall be made in said bank or branches thereof, unless the Secretary of the Treasury shall at any time otherwise order and direct; in which case the Secretary of the Treasury shall immediately lay before Congress, if in session, and if not, immediately after the commencement of the next session, the reasons of such order or direction.

SEC. 17. *And be it further enacted*, That the said corporation shall not at any time suspend or refuse payment in gold and silver, of any of its notes, bills or obligations; nor of any moneys received upon deposit in said bank, or in any of its offices of discount and deposit. . . .

SEC. 20. *And be it further enacted*, That in consideration of the exclusive privileges and benefits conferred by this act, upon the said bank, the president, directors, and company thereof, shall pay to the United States, out of the corporate funds thereof, the sum of one million and five hundred thousand dollars, in three

equal payments; that is to say: five hundred thousand dollars at the expiration of two years; five hundred thousand dollars at the expiration of three years; and five hundred thousand dollars at the expiration of four years after the said bank shall be organized, and commence its operations in the manner herein before provided.

SEC. 21. *And be it further enacted*, 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 in 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, six millions of dollars, if they shall deem it expedient. . . .

SEC. 23. *And be it further enacted*, That it shall, at all times, be lawful, for a committee of either house of Congress, appointed for that purpose, to inspect the books, and to examine into the proceedings of the corporation hereby created, and to report whether the provisions of this charter have been, by the same, violated or not; and whenever any committee, as aforesaid, shall find and report, or the President of the United States shall have reason to believe that the charter has been violated, it may be lawful for Congress to direct, or the President to order a scire facias to be sued out of the circuit court of the district of Pennsylvania, in the name of the United States, (which shall be executed upon the president of the corporation for the time being, at least fifteen days before the commencement of the term of said court,) calling on the said corporation to show cause wherefore the charter hereby granted, shall not be declared forfeited; and it shall be lawful for the said court, upon the return of the said scire facias, to examine into the truth of the alleged violation, and if such violation be made appear, then to pronounce and adjudge that the said charter is forfeited and annulled. *Provided, however*, Every issue of fact which may be joined between the United States and the corporation aforesaid, shall be tried by jury. And it shall be lawful for the court aforesaid to require the production of such of the books of the corporation as it may deem necessary for the ascertainment of the controverted facts: and the final judgment of the court aforesaid, shall be examinable in the preme Court of the United States, by writ of error, and may re reversed or affirmed, according to the usages of law.

No. 34. Treaty with Spain for the Floridas

February 22, 1819

PARTLY because of disputes regarding claims, and partly because of the establishment by the United States of a customs district which included Mobile, the King of Spain refused to ratify the treaty of 1802. Efforts to adjust the differences between the two countries failed, and in 1808 diplomatic relations were broken off. October 27, 1810, Madison by proclamation directed Claiborne, governor of Orleans Territory, to take possession of West Florida for the United States, and secret acts of Jan. 15 and March 3, 1811, authorized the President to take temporary possession of East Florida. Diplomatic relations were resumed in 1815, and a long correspondence followed, ending in the treaty of Feb. 22, 1819. The treaty was not ratified by Spain until Oct. 24, 1820, and was again ratified by the Senate Feb. 19, 1821. An act of March 3, 1821, authorized the President to take possession of East and West Florida in accordance with the treaty.

REFERENCES. — *Text* in *Revised Statutes relating to District of Columbia*, etc. (ed. 1875), 712–717. The diplomatic correspondence is in *Amer. State Papers, Foreign Relations*, IV., V., and *Annals*, 15th Cong., 2d Sess., II., appendix. For important contemporary views, see J. Q. Adams's *Memoirs*, IV., V.; Benton's *Thirty Years' View*, I., chap. 6; II., chaps. 42, 155; Clay's speech on the treaty, in his *Life and Speeches* (ed. 1844), I., 392–404; and various letters of Gallatin, in his *Writings* (Adams's ed.), II. See also Wharton's *Intern. Law Digest* (ed. 1887), II., 277–287; Winsor's *Narrative and Critical History*, VII., 543–546; Donaldson's *Public Domain*, 108–120 (H. Misc. Doc., 47th Cong., 2d Sess., vol. 19); Lyman's *Diplomacy of the United States*, II., chap. 5.

The United States of America and His Catholic Majesty, desiring to consolidate, on a permanent basis, the friendship and good correspondence which happily prevails between the two parties, have determined to settle and terminate all their differences and pretensions, by a treaty, which shall designate, with precision, the limits of their respective bordering territories in North America.

With this intention the President of the United States has furnished with their full powers John Quincy Adams, Secretary of State of the said United States; and His Catholic Majesty has appointed the Most Excellent Lord Don Luis de Onis, Gonzales, Lopez y Vara, Lord of the town of Rayaces, Perpetual Regidor of the Corporation of the city of Salamanca, Knight Grand Cross of the Royal American Order of Isabella the Catholic, decorated with the Lys of La Vendée, Knight Pensioner of the Royal and

Distinguished Spanish Order of Charles the Third, Member of the Supreme Assembly of the said Royal Order; of the Council of His Catholic Majesty; His Secretary, with Exercise of Decrees, and His Envoy Extraordinary and Minister Plenipotentiary near the United States of America;

And the said Plenipotentiaries, after having exchanged their powers, have agreed upon and concluded the following articles:

ARTICLE I.

There shall be a firm and inviolable peace and sincere friendship between the United States and their citizens and His Catholic Majesty, his successors and subjects, without exception of persons or places.

ARTICLE II.

His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in possession of the commissaries or officers of the United States, duly authorized to receive them.

ARTICLE III.

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Nachitoches, or Red River; then following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at

Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas River shall be found to fall north or south of latitude 42, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea: All the islands in the Sabine, and the said Red and Arkansas Rivers, throughout the course thus described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions, to the territories described by the said line, that is to say: The United States hereby cede to His Catholic Majesty, and renounce forever, all their rights, claims, and pretensions, to the territories lying west and south of the above-described line; and, in like manner, His Catholic Majesty cedes to the said United States all his rights, claims, and pretensions to any territories east and north of the said line, and for himself, his heirs, and successors, renounces all claim to the said territories forever.

ARTICLE IV.

[Commissioners and surveyors to be appointed to run and mark the boundary line.]

ARTICLE V.

The inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction; and all those who may desire to remove to the Spanish dominions shall be permitted to sell or export their effects, at any time whatever, without being subject, in either case, to duties.

ARTICLE VI.

The inhabitants of the territories which His Catholic Majesty cedes to the United States, by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States.

ARTICLE VII.

[Spanish troops to be withdrawn.]

ARTICLE VIII.

[Grants of land prior to Jan. 24, 1818, to be ratified and confirmed; all subsequent grants to be null and void.]

ARTICLE IX.

The two high contracting parties, animated with the most earnest desire of conciliation, and with the object of putting an end to all the differences which have existed between them, and of confirming the good understanding which they wish to be forever maintained between them, reciprocally renounce all claims for damages or injuries which they, themselves, as well as their respective citizens and subjects, may have suffered until the time of signing this treaty.

The renunciation of the United States will extend to all the injuries mentioned in the convention of the 11th of August, 1802.

2. To all claims on account of prizes made by French privateers, and condemned by French Consuls, within the territory and jurisdiction of Spain.

3. To all claims of indemnities on account of the suspension of the right of deposit at New Orleans in 1802.

4. To all claims of citizens of the United States upon the Government of Spain, arising from the unlawful seizures at sea, and in the ports and territories of Spain, or the Spanish colonies.

5. To all claims of citizens of the United States upon the Spanish Government, statements of which, soliciting the interposition of the Government of the United States, have been presented to the Department of State, or to the Minister of the United States in Spain, since the date of the convention of 1802, and until the signature of this treaty.

The renunciation of His Catholic Majesty extends —

1. To all the injuries mentioned in the convention of the 11th of August, 1802.

2. To the sums which His Catholic Majesty advanced for the return of Captain Pike from the Provincias Internas.

3. To all injuries caused by the expedition of Miranda, that was fitted out and equipped at New York.

4. To all claims of Spanish subjects upon the Government of the United States arizing from unlawful seizures at sea, or within the ports and territorial jurisdiction of the United States.

Finally, to all the claims of subjects of His Catholic Majesty upon the Government of the United States in which the interposition of His Catholic Majesty's Government has been solicited, before the date of this treaty and since the date of the convention of 1802, or which may have been made to the department of foreign affairs of His Majesty, or to his Minister in the United States.

And the high contracting parties, respectively, renounce all claim to indemnities for any of the recent events or transactions of their respective commanders and officers in the Floridas.

The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American Army in Florida.*

ARTICLE X.

The convention entered into between the two Governments, on the 11th of August, 1802, the ratifications of which were exchanged the 21st December, 1818, is annulled.

ARTICLE XI.

The United States, exonerating Spain from all demands in future, on account of the claims of their citizens to which the renunciations herein contained extend, and considering them entirely cancelled, undertake to make satisfaction for the same, to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of those claims, a commission, to consist of three Commissioners, citizens of the United States, shall be appointed by the President, by and with the advice and consent of the Senate, which commission shall meet at the city of Washington, and, within the space of three years from the time of their first meeting, shall receive, examine, and decide upon the amount and validity of all the claims included within the descriptions above mentioned.† . . .

* The act of March 3, 1823, to carry into effect Art. IX., is in *U. S. Stat. at Large*, III., 768. — ED.

† The commission was provided for by act of March 3, 1821 (*U. S. Stat. at Large*, III., 637–639). — ED.

The payment of such claims as may be admitted and adjusted by the said Commissioners, or the major part of them, to an amount not exceeding five millions of dollars, shall be made by the United States, either immediately at their Treasury, or by the creation of stock, bearing an interest of six per cent. per annum, payable from the proceeds of sales of public lands within the territories hereby ceded to the United States, or in such other manner as the Congress of the United States may prescribe by law.*

* * * * * * * * * * *

ARTICLE XII.

The treaty of limits and navigation, of 1795, remains confirmed in all and each one of its articles excepting the 2, 3, 4, 21, and the second clause of the 22d article, which having been altered by this treaty, or having received their entire execution, are no longer valid.

With respect to the 15th article of the same treaty of friendship, limits, and navigation of 1795, in which it is stipulated that the flag shall cover the property, the two high contracting parties agree that this shall be so understood with respect to those Powers who recognize this principle; but if either of the two contracting parties shall be at war with a third party, and the other neutral, the flag of the neutral shall cover the property of enemies whose Government acknowledge this principle, and not of others.

ARTICLE XIII.

[Deserters to be arrested and delivered up at the instance of Consuls.]

ARTICLE XIV.

The United States hereby certify that they have not received any compensation from France for the injuries they suffered from her privateers, Consuls, and tribunals on the coasts and in the ports of Spain, for the satisfaction of which provision is made by this treaty; and they will present an authentic statement of the prizes made, and of their true value, that Spain may avail herself of the same in such manner as she may deem just and proper.

* A stock to provide for the payment of claims was created by act of May 24, 1824 (*U. S. Stat. at Large*, IV., 33, 34). — ED.

ARTICLE XV.

The United States, to give to His Catholic Majesty a proof of their desire to cement the relations of amity subsisting between the two nations, and to favour the commerce of the subjects of His Catholic Majesty, agree that Spanish vessels, coming laden only with productions of Spanish growth or manufactures, directly from the ports of Spain, or of her colonies, shall be admitted, for the term of twelve years, to the ports of Pensacola and St. Augustine, in the Floridas, without paying other or higher duties on their cargoes, or of tonnage, than will be paid by the vessels of the United States. During the said term no other nation shall enjoy the same privileges within the ceded territories. The twelve years shall commence three months after the exchange of the ratifications of this treaty.

ARTICLE XVI.

The present treaty shall be ratified in due form, by the contracting parties, and the ratifications shall be exchanged in six months from this time, or sooner if possible.

In witness whereof we, the underwritten Plenipotentiaries of the United States of America and of His Catholic Majesty, have signed, by virtue of our powers, the present treaty of amity, settlement, and limits, and have thereunto affixed our seals, respectively.

Done at Washington this twenty-second day of February, one thousand eight hundred and nineteen.

JOHN QUINCY ADAMS. [L.S.]
LUIS DE ONIS. [L.S.]

Missouri Compromise

1820–21

THE Territory of Missouri, originally a part of the Louisiana purchase, was organized by act of June 4, 1812. January 8, Feb. 2, and March 16, 1818, memorials were presented in the House praying for the admission of the Territory as a State. An enabling act was reported April 3, but there was no further action during the session. December 18, 1818, a memorial of the Missouri legislature, praying for admission as a State, was presented, and Feb. 13, 1819, the House took up the enabling act of the previous session. An amendment offered by Tallmadge, of New York, restricting the further extension of slavery in the new State, gave rise to much discussion, but was

finally agreed to on the 16th, by two votes of 87 to 76 and 82 to 78, and on the 17th the bill passed the House. The Senate, Feb. 27, by votes of 31 to 7 and 22 to 16, struck out the Tallmadge amendment, and on March 2 passed the bill with amendments. The House refused to concur, and the bill was lost. The issue was now joined on the status of slavery in Missouri. A number of northern legislatures passed resolutions endorsing the Tallmadge proposition, and a large number of petitions to the same effect were transmitted to Congress. In the 16th Congress, which met Dec. 6, 1819, the admission of Alabama restored the balance between free and slave States. In the meantime, the people of the District of Maine had held a convention and drafted a State constitution, and on Dec. 8 the memorial of the convention, praying admission as a State, was presented to Congress. A bill for the admission of Maine was reported in the House Dec. 21, and passed Jan. 3, 1820. A bill to the same effect had been reported in the Senate Dec. 22, but on the receipt of the House bill further consideration was postponed. In the Senate the Maine bill was referred to the Committee on the Judiciary, which reported amendments in the form of a "rider" providing for the admission of Missouri, without prohibition of slavery. The bill as amended was taken up Jan. 13, and discussed until Feb. 16, when, by a vote of 23 to 21, the report of the committee was concurred in. February 3, in the course of the discussion, Senator Thomas of Illinois submitted an amendment prohibiting slavery in the territory acquired from France north of the line of 36° 30′, except Missouri; the amendment was withdrawn on the 7th, however, and offered again on the 16th; on the 17th, by a vote of 34 to 10, it was adopted. On the 18th the Maine bill, as thus amended, passed the Senate.

In the meantime, the House also had been considering the Missouri question. December 8 the Missouri memorials presented in the previous session had been referred to a select committee, which reported an enabling act on the following day. The bill was taken up Jan. 25, and debated until Feb. 18. On the 23d, so much of the Senate amendments as comprised the Missouri enabling act was disagreed to, by a vote of 93 to 72, and the Thomas amendment was rejected by a vote of 159 to 18. On the 28th the House again insisted on its disagreement to the Senate amendments, the votes being 97 to 76 on the Missouri portions, and 160 to 14 on the Thomas clause. The consideration of the Missouri bill was meanwhile continued. On the 26th an amendment to the same effect as the Thomas amendment in the Senate was rejected, and on the 29th an amendment offered by Taylor, of New York, prohibiting slavery in Missouri, was concurred in by a vote of 94 to 86; March 1, by a vote of 91 to 82, the bill passed the House. In the Senate the clause prohibiting slavery was stricken out, and the Thomas amendment inserted. A compromise was effected by a conference committee; the Maine and Missouri bills were passed separately, and slavery was permitted in Missouri, but prohibited in the remainder of the Louisiana purchase north of 36° 30′. The act for the admission of Maine was approved March 3, and the act authorizing Missouri to form a state government was approved March 6.

The constitution under which Missouri applied for admission contained a clause forbidding free negroes to enter the State. The constitution was transmitted to Congress at the beginning of the session, November, 1820. A reso-

lution to admit Missouri as a State was reported in the Senate Nov. 20, taken up Dec. 4, and debated until the 12th, when it was passed. In the House the resolution was laid on the table until Jan. 15, 1821, when it was taken up and debated until Feb. 2, without any agreement being reached; it was then, on motion of Clay, referred to a select committee of thirteen. The report of the committee, on the 10th, recommended amendments similar to those afterwards agreed upon. On the 12th, after agreeing to the report, the third reading was refused by a vote of 80 to 83; the next day a motion to reconsider was carried, 101 to 66, but, by a vote of 82 to 88, the third reading was again refused. On the 22d Clay proposed the election of a joint committee to consider and report on the advisability of admitting Missouri; this was agreed to by a vote of 101 to 55, and on the following day the committee was chosen. The Senate, in the meantime, had rejected several propositions for admission, but agreed to the plan of a joint committee by a vote of 29 to 7. The report of the committee, in the terms of the resolution as later passed, was agreed to by the House Feb. 26, by a vote of 87 to 81; the Senate agreed to the report on the 28th, by a vote of 28 to 14; March 2 the resolution was approved. The condition imposed by the resolution was accepted by the legislature of Missouri June 26, 1821, and a proclamation of Aug. 10 announced the admission of Missouri as a State.

The extracts following relate chiefly to the question of slavery as involved in the compromises.

REFERENCES. — Accompanying each of the following extracts is an indication of the source from which it is drawn. The act for the admission of Maine is in *U. S. Stat. at Large*, III., 544; the act authorizing Missouri to form a State constitution, *ib.*, III., 545–548. The constitution of 1820 is in Poore's *Federal and State Constitutions*, II., 1104–1117, and *Niles's Register*, XIX., 50–57. The proceedings of Congress may be followed in the *House and Senate Journals*, 16th Cong., 1st and 2d Sess.; full reports of the debates are in the *Annals;* Benton's *Abridgment*, VI., VII.; *Niles's Register*, XVII., XVIII., XIX. The compromise is treated at length in all the general histories of the period, and in biographies of public men of the time: see further, Johnston, in *Lalor's Cyclopædia*, I., 549–552; J. Q. Adams's *Memoirs*, IV., V. The nature and effect of the compromise were much discussed in the debates on the compromise measures of 1850 and the Kansas-Nebraska act of 1854.

No. 35. Tallmadge's Amendment

February 13, 1819

And provided, That the further introduction of slavery or involuntary servitude be prohibited, except for the punishment of crimes, whereof the party shall have been fully [duly] convicted; and that all children born within the said State, after the admission thereof into the Union, shall be free at the age of twenty-five years. [*Annals*, 15th Cong., 2d Sess., 1170.]

No. 36. Taylor's Amendment

January 26, 1820

The reading of the bill proceeded as far as the fourth section; when

Mr. Taylor, of New York, proposed to amend the bill by incorporating in that section the following provision:

Section 4, line 25, insert the following after the word "States": "And shall ordain and establish, that there shall be neither slavery nor involuntary servitude in the said State, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided, always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any other State, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid: *And provided, also,* That the said provision shall not be construed to alter the condition or civil rights of any person now held to service or labor in the said Territory."

[*Annals,* 16th Cong., 1st Sess., 947.]

No. 37. Thomas's Amendment (final form)

February 17, 1820

And be it further enacted, That, in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, excepting only such part thereof as is included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the party shall have been duly convicted, shall be and is hereby forever prohibited: *Provided always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any State or Territory of the United States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service, as aforesaid.

[*Annals,* 16th Cong., 1st Sess., 427, 428.]

No. 38. Report of the Conference Committee

March 2, 1820

[*House of Representatives*]

Mr. Holmes, from the managers appointed on the part of this House, to attend a conference with the managers appointed on the part of the Senate, upon the subject-matter of the disagreeing votes of the two Houses on the amendments proposed by the Senate to the bill of this House, entitled "An act providing for the admission of the State of Maine into the Union," made the following report:

1. That they recommend to the Senate to recede from their amendments to the said bill.

2. That they recommend to the two Houses to agree to strike out [of] the fourth section of the bill from the House of Representatives, now pending in the Senate, entitled "An act to authorize the people of Missouri 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," the following proviso, in the following words: [here follows the Taylor amendment.]

And that the following provision be added to the bill: [here follows the Thomas amendment.]

[*Annals*, 16th Cong., 1st Sess., 1576, 1577.]

No. 39. Missouri Enabling Act

March 6, 1820

An Act to authorize the people of the Missouri territory 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 to prohibit slavery in certain territories.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the inhabitants of that portion of the Missouri territory included within the boundaries hereinafter designated, be, and they are hereby, authorized to form for themselves a constitution and state govern-

ment, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union, upon an equal footing with the original states, in all respects whatsoever.

SEC. 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along that parallel of latitude, to the St. Francois river; thence up, and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river, thence, from the point aforesaid north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line to correspond with the Indian boundary line; thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines, to the mouth of the same, where it empties into the Mississippi river; thence, due east, to the middle of the main channel of the Mississippi river; thence down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning: . . .

* * * * * * * * * * *

SEC. 8. *And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state, contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always*, That any person escaping into the same, from whom labour or service is lawfully claimed, in any state or territory of the United States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labour or service as aforesaid. [*U. S. Stat. at Large*, III., 545, 546, 548.]

No. 40. Constitution of Missouri

July 19, 1820

[ART. III.] SEC. 26. The general assembly shall not have power to pass laws —

1. For the emancipation of slaves without the consent of their owners; or without paying them, before such emancipation, a full equivalent for such slaves so emancipated; and,

2. To prevent *bona-fide* immigrants to this State, or actual settlers therein, from bringing from any of the United States, or from any of their Territories, such persons as may there be deemed to be slaves, so long as any persons of the same description are allowed to be held as slaves by the laws of this State.

They shall have power to pass laws —

1. To prohibit the introduction into this State of any slaves who may have committed any high crime in any other State or Territory;

2. To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandise;

3. To prohibit the introduction of any slave, or the offspring of any slave, who heretofore may have been, or who hereafter may be, imported from any foreign country into the United States, or any Territory thereof, in contravention of any existing statute of the United States; and,

4. To permit the owners of slaves to emancipate them, saving the right of creditors, where the person so emancipating will give security that the slave so emancipated shall not become a public charge.

It shall be their duty, as soon as may be, to pass such laws as may be necessary —

1. To prevent free negroes end [and] mulattoes from coming to and settling in this State, under any pretext whatsoever; and,

2. To oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb.

[Poore, *Federal and State Constitutions* (ed. 1877), II., 1107, 1108.]

No. 41. Resolution for the Admission of Missouri

March 2, 1821

Resolution *providing for the admission of the State of Missouri into the Union, on a certain condition.*

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That Missouri shall be admitted into this union on an equal footing with the original states, in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said state to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen, of either of the states in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the constitution of the United States: *Provided,* That the legislature of the said state, by a solemn public act, shall declare the assent of the said state to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof, the President, by proclamation, shall announce the fact; whereupon, and without any further proceeding on the part of Congress, the admission of the said state into this Union shall be considered as complete.

[*U. S. Stat. at Large,* III., 645.]

No. 42. Tenure of Office Act

May 15, 1820

DECEMBER 16, 1819, Senator Mahlon Dickerson of New Jersey submitted a resolution instructing the Committee on Finance "to inquire into the expediency of so far altering the laws for appointing collectors of the customs of the United States, district attorneys of the United States, and receivers of public moneys for lands of the United States, surveyors of the public lands, registers, and such other officers as they may think proper, as to have those officers respectively appointed for limited periods, subject to removal as heretofore." A bill in conformity with the resolution was reported April 20, and

passed the Senate May 8. The House passed the bill without amendment, and May 15 the act was approved. The bill seems to have been drafted by Crawford, the Secretary of the Treasury, and, according to J. Q. Adams, was brought forward in the interest of Crawford's presidential aspirations; it was intended also, however, to ensure greater honesty and accountability on the part of officials having charge of government funds. The act contributed much to the establishment of the principle of rotation in office.

REFERENCES. — *Text* in *U. S. Stat. at Large*, III., 582. The *House and Senate Journals*, 16th Cong., 1st Sess., show the proceedings, but there is no record of the debates. Attempts in the Senate, in 1826 and 1835, to repeal the law called out elaborate reports from Benton and Calhoun: they are printed as *Sen. Doc. 108 and 109*, 23d Cong., 2d Sess. See also J. Q. Adams's *Memoirs*, VII., 424, 425; Jefferson's *Works* (ed. 1854), VII., 190; Eaton, in *Lalor's Cyclopædia*, III., 900, 901.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passing of this act, all district attorneys, collectors of the customs, naval officers and surveyors of the customs, navy agents, receivers of public moneys for lands, registers of the land offices, paymasters in the army, the apothecary general, the assistant apothecaries general, and the commissary general of purchases, to be appointed under the laws of the United States, shall be appointed for the term of four years, but shall be removable from office at pleasure.

SEC. 2. *And be it further enacted*, That the commission of each and every of the officers named in the first section of this act, now in office, unless vacated by removal from office, or otherwise, shall cease and expire in the manner following: All such commissions, bearing date on or before the thirtieth day of September, one thousand eight hundred and fourteen, shall cease and expire on the day and month of their respective dates, which shall next issue after the thirtieth day of September next; all such commissions, bearing date after the said thirtieth day of September, in the year one thousand eight hundred and fourteen, and before the first day of October, one thousand eight hundred and sixteen, shall cease and expire on the day and month of their respective dates, which shall next ensue after the thirtieth day of September, one thousand eight hundred and twenty-one. And all other such commissions shall cease and expire at the expiration of the term of four years from their respective dates.

[The remainder of the act relates to official bonds and the recording of commissions.]

No. 43. Monroe's Message enunciating the Monroe Doctrine

December 2, 1823

THE triumph of Napoleon in Spain in 1808 was followed by a succession of revolts in the Spanish colonies in America, and by 1821 all the colonies had established revolutionary governments. In 1823 France, with the sanction of the so-called Holy Alliance, had restored Ferdinand VII. of Spain to his throne; and later in the year another meeting of the allies was suggested to consider the question of aiding Spain to reduce its colonies to submission. In the meantime, in September, 1821, a Russian ukase had asserted the claim of that country to all the Pacific coast of North America north of the 51st parallel, and forbidden foreigners to trade in the region. The claim of Russia was opposed by both Great Britain and the United States. A proposal from Great Britain, in September, 1823, "that the two countries should unite in a declaration against European intervention in the colonies," was, however, declined. In his annual message of Dec. 2, 1823, Monroe, in discussing the relations of the United States with Russia, Spain, and the Spanish-American colonies, stated the policy which afterwards came to be known as the Monroe doctrine. The portions of the message dealing with the subject are given in the extracts following.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 18th Cong., 1st Sess.; the extracts here given are from the *Senate Journal*, II, 21–23. On the origin of the statements in the message, see J. Q. Adams's *Memoirs*, VI.; Madison's *Writings* (ed. 1865), III., 339, 340; Jefferson's *Works* (ed. 1854), VII., 315–317. Correspondence relating to the Russian treaty of 1824 is in *Amer. State Papers, Foreign Relations*, V., 434–471; the correspondence with Spain, *ib.*, V., 368–428, throws light on the condition of the colonies. The policy stated by Monroe had been frequently enunciated, though less definitely, before 1823; interesting extracts, from 1787 onwards, are collected in *Amer. History Leaflets*, No. 4. The leading discussions of the Monroe doctrine are Gilman's *Monroe*, chap. 7 (with valuable bibliography, Appendix IV.); G. F. Tucker's *Monroe Doctrine;* Wharton's *Intern. Law Digest* (ed. 1887), I., 268–298; Snow's *American Diplomacy*, 237–294. See also G. Koerner, in *Lalor's Cyclopædia*, II., 898–900; Rush's *Court of London*, chap. 13.

At the proposal of the Russian imperial government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the Minister of the United States at St. Petersburgh, to arrange, by amicable negotiation, the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by his Imperial Majesty to the government of Great Britain, which has

likewise been acceded to. The government of the United States has been desirous, by this friendly proceeding, of manifesting the great value which they have invariably attached to the friendship of the Emperor, and their solicitude to cultivate the best understanding with his government. In the discussions to which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers.

* * * * * * * * * * *

It was stated at the commencement of the last session, that a great effort was then making in Spain and Portugal, to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked, that the result has been, so far, very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse, and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly, in favor of the liberty and happiness of their fellow men on that side of the Atlantic. In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded, or seriously menaced, that we resent injuries, or make preparation for our defence. With the movements in this hemisphere, we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different, in this respect, from that of America. This difference proceeds from that which exists in their respective governments. And to the defence of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted. We owe it, therefore, to candor, and to the amicable relations existing between the United States and those powers, to declare, that we should consider any attempt

on their part to extend their system to any portion of this hemisphere, as dangerous to our peace and safety. With the existing colonies or dependencies of any European power, we have not interfered, and shall not interfere. But with the governments who have declared their independence, and maintained it, and whose independence we have, on great consideration, and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling, in any other manner, their destiny, by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States. In the war between those new governments and Spain, we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, provided no change shall occur, which, in the judgment of the competent authorities of this government, shall make a corresponding change, on the part of the United States, indispensable to their security.

The late events in Spain and Portugal, shew that Europe is still unsettled. Of this important fact, no stronger proof can be adduced than that the allied powers should have thought it proper, on any principle satisfactory to themselves, to have interposed, by force, in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question, to which all independent powers, whose governments differ from theirs, are interested; even those most remote, and surely none more so than the United States. Our policy, in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy; meeting, in all instances, the just claims of every power; submitting to injuries from none. But, in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent, without endangering our peace and happiness: nor can any one believe that our Southern Brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such in-

terposition, in any form, with indifference. If we look to the comparative strength and resources of Spain and those new governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course.

No. 44. Protest of South Carolina against the Tariff of 1828

December 19, 1828

THE tariff of 1828, known as the "tariff of abominations," was especially obnoxious to the South, where sentiment in favor of protection was rapidly losing ground. In 1827 the "woollens bill" had failed only by the casting vote of Vice-President Calhoun in the Senate; and the act of 1828, with its high duties, seemed to the South to indicate the adoption of protection as a permanent national policy. In his message to the legislature, in November, 1828, Governor Taylor of South Carolina denounced the tariff act, and urged the legislature to declare it unconstitutional, and to provide for testing its validity in the courts. The committee to whom the matter was referred made an elaborate report, originally drafted by Calhoun, expounding at length the doctrine of nullification. The protest here given forms the conclusion of the report. The report is known as the "South Carolina Exposition," and was at once printed and widely circulated.

REFERENCES. — *Text* in *Senate Journal*, 20th Cong., 2d Sess., under date of Feb. 10, 1829. The "Exposition" is in Calhoun's *Works* (ed. 1855), VI., 1–59. The remarks of Senators Smith and Hayne on the presentation of the protest are in the *Cong. Debates*. The tariff act of 1828 called out many petitions *pro* and *con*, the most important of which are collected in *Amer. State Papers, Finance*, V. *Niles's Register*, XXXV., gives many documents illustrating the course of the excitement in the South during 1828. On the tariff of 1828, see Taussig's *Tariff History*, 68–108 (same article, *Pol. Sci. Quart.*, III., 17–45); on the "Exposition," see Houston's *Nullification in South Carolina*, chap. 5.

The Senate and House of Representatives of South Carolina, now met and sitting in General Assembly, through the Honorable William Smith, and the Hon. Robert Y. Hayne, their Representatives in the Senate of the United States, do, in the name and on behalf of the good people of the said Commonwealth, solemnly protest against the system of protecting duties, lately adopted by the Federal Government, for the following reasons: —

1. Because the good people of this Commonwealth believe, that the powers of Congress were delegated to it, in trust, for the accomplishment of certain specified objects, which limit and control them; and that every exercise of them, for any other purposes, is a violation of the constitution, as unwarrantable as the undisguised assumption of substantive independent powers, not granted or expressly withheld.

2. Because the power to lay duties on imports is, and in its very nature can be, only a means of effecting the objects specified by the constitution; since no free government, and least of all a government of enumerated powers, can, of right, impose any tax, (any more than a penalty,) which is not at once justified by public necessity, and clearly within the scope and purview of the social compact; and since the right of confining appropriations of the public money, to such legitimate and constitutional objects, is as essential to the liberties of the people, as their unquestionable privilege to be taxed only by their own consent.

3. Because they believe that the tariff law, passed by Congress at its last session, and all other acts of which the principal object is the protection of manufactures, or any other branch of domestic industry — if they be considered as the exercise of a supposed power in Congress, to tax the people at its own good will and pleasure, and to apply the money raised to objects not specified in the constitution — is a violation of these fundamental principles, a breach of a well defined trust, and a perversion of the high powers vested in the federal government, for federal purposes only.

4. Because such acts, considered in the light of a regulation of commerce are equally liable to objection — since, although the power to regulate commerce may, like other powers, be exercised so as to protect domestic manufactures, yet it is clearly distinguished from a power to do so, *eo nomine*, both in the nature of the thing and in the common acceptation of the terms; and because the confounding of them would lead to the most extravagant results, since the encouragement of domestic industry implies an absolute control over all the interests, resources, and pursuits of a people, and is inconsistent with the idea of any other than a simple consolidated government.

5. Because, from the contemporaneous exposition of the constitution, in the numbers of the Federalist, (which is cited only

because the Supreme Court has recognised its authority,) it is clear, that the power to regulate commerce was considered, by the convention, as only incidentally connected with the encouragement of agriculture and manufactures: and because the power of laying imposts, and duties on imports, was not understood to justify, in any case, a prohibition of foreign commodities, except as a means of extending commerce, by coercing foreign nations to a fair reciprocity in their intercourse with us, or for some other bona fide commercial purpose.

6. Because, whilst the power to protect manufactures is no where expressly granted to Congress, nor can be considered as necessary and proper to carry into effect any specified power, it seems to be expressly reserved to the States, by the tenth section of the first article of the constitution.

7. Because, even admitting Congress to have a constitutional right to protect manufactures, by the imposition of duties, or by regulations of commerce, designed principally for that purpose, yet a tariff, of which the operation is grossly unequal and oppressive, is such an abuse of power, as is incompatible with the principles of a free government, and the great ends of civil society, justice, and equality of rights and protection.

8. Finally, because South Carolina, from her climate, situation, and peculiar institutions, is, and must ever continue to be, wholly dependant upon agriculture and commerce, not only for her prosperity, but for her very existence as a State; because the abundant and valuable products of her soil — the blessings by which Divine Providence seems to have designed to compensate for the great disadvantages under which she suffers, in other respects — are among the very few that can be cultivated with any profit by slave labor; and if, by the loss of her foreign commerce, these products should be confined to an inadequate market, the fate of this fertile State would be poverty and utter desolation — her citizens, in despair, would emigrate to more fortunate regions, and the whole frame and constitution of her civil polity be impaired and deranged, if not dissolved entirely.

Deeply impressed with these considerations, the Representatives of the good people of this Commonwealth, anxiously desiring to live in peace with their fellow-citizens, and to do all that in them lies to preserve and perpetuate the union of the States, and the liberties of which it is the surest pledge: but feeling it to be their

bounden duty to expose and resist all encroachments upon the true spirit of the constitution, lest an apparent acquiescence in the system of protecting duties should be drawn into precedent, do, in the name of the Commonwealth of South Carolina, claim to enter upon the journals of the Senate, their protest against it, as unconstitutional, oppressive, and unjust.

No. 45. Protest of Georgia against the Tariff of 1828

December 20, 1828

Two protests from the legislature of Georgia were presented to Congress. One, bearing no date, was read in the Senate Jan. 12, 1829, and ordered to be printed; the other, bearing date of Dec. 10, 1828, but not approved by the governor until Dec. 20, was presented in the House Jan. 14, 1829. The latter, as a fuller statement of the position of Georgia, is here given.

REFERENCES. — *Text* in *House Journal*, 20th Cong., 2d Sess. The protest presented in the Senate is in the *Senate Journal* and the *Cong. Debates*.

The committee to whom was referred the resolutions from the States of South Carolina and Ohio have had the same under their consideration.

As the subjects referred involve questions of the deepest interest, touching the fundamental principles of the Federal Government, the sovereignty of the States, causes of complaint for infractions of the Constitution, and encroachments by the General Government upon State rights, as well as the rights of the States to redress their wrongs, your committee have devoted their serious attention and grave consideration to the subject, which the magnitude and importance of the questions involved require. And from the view which your committee have given the subject, they concur in the sentiments and resolutions of the State of South Carolina upon most of the subjects involved in the discussion.

They entertain no doubt but that the Constitution of the United States is a federal compact, formed and adopted by the States as sovereign and independent communities.

The convention which formed and adopted the Constitution was composed of members elected and delegated by, and deriving immediate power and authority from, the Legislatures of their

respective States. Its ratification depended upon the Legislatures of the States — each reserving the right of assent or dissent, without regard to population.

By the Articles of Confederation of 1778, which was a compact between the States, there was a special reservation of all rights of sovereignty and independence not thereby expressly delegated, which proves, conclusively, that, prior to entering into that compact, all the rights of sovereignty and independence belonged to the States, and were complete in them, and that they did not intend to divest themselves of any of those rights, except such as were expressly delegated.

In the Constitution of 1787, the powers delegated are clearly defined and particularly enumerated. The amendment to the Constitution is more explicit. It declares that the powers not delegated to the United States by the Constitution are reserved to the States respectively, or to the People.

The States were granting powers to the General Government; and as they enumerated the powers granted, it was useless, and would have been superfluous, to have made special reservations. The affirmative grant of powers enumerated operates an exclusion of all powers not enumerated.

The States, in forming the Constitution, treated with each other as sovereign and independent Governments, expressly acknowledging their rights of sovereignty; and inasmuch as they divested themselves of those rights only which were expressly delegated, it follows, as a legitimate consequence, that they are still sovereign and independent as to all the powers not granted.

The States respectively, therefore, have, in the opinion of your committee, the unquestionable right, in case of any infraction of the general compact, or want of good faith in the performance of its obligations, to complain, remonstrate, and even to refuse obedience to any measure of the General Government manifestly against, and in violation of, the Constitution; and, in short, to seek redress of their wrongs by all the means rightfully exercised by a sovereign and independent Government. Otherwise, the Constitution might be violated with impunity and without redress, as often as the majority might think proper to transcend their powers, and the party injured bound to yield a submissive obedience to the measure, however unconstitutional. This would tend to annihilate all the sovereignty and independence of the States,

and to consolidate *all power* in the General Government, which never was designed nor intended by the framers of the Constitution.

Your committee are also of opinion, that the acts of the General Government, in providing for the general welfare, must be general in their operation, and promotive of the general good; not the advancement of the interest of any particular section or local interest, to the injury of another.

The term general welfare implies, clearly, that the means used to obtain this end must be general in their nature and tendency. Any measures, therefore, having for their object sectional advantages or local interests, to the prejudice of another portion of the community, cannot be general, and are, therefore, contrary to the letter and spirit of the Constitution.

It is believed by your committee, therefore, that the tariff laws of the United States, so far as they have for their object the protection of a particular branch of labor, to the injury of the commercial interest of the country, and of the agricultural interest of the Southern States, are unconstitutional.

For the same reason, Congress have not the right to appropriate the moneys of the United States for the improvement or benefit of a particular section of the country, in which all the States would not have a common interest and equal benefit.

If Congress is invested with the right at all, she is invested to an unlimited and indefinite extent, and may exhaust the whole wealth and treasure of the Government in the promotion of the improvement and interest of particular sections of the country, to the injury of another. In fine, that she may make one portion of the country tributary to another; that she may tax the community to enrich or aggrandize a particular section, and make the general welfare yield to a particular interest.

But if it be true, as your committee maintain, that the Congress of the United States are restricted to the powers expressly enumerated, it is equally true that they have no power or right to pass any laws but such as may be necessary and proper to carry into effect the powers enumerated, and which promote the general welfare of the United States.

In relation to the right of Congress to interfere, either directly or indirectly, with the subject of slavery, as recognized by the laws of this State, your committee deem it improper and unnecessary to enter into a discussion.

This State never can, and never will, so far compromit her interests on a subject of such deep and vital concern to her self-preservation, as to suffer this question to be brought into discussion. Non-interference on this subject was the *sine qua non* on the part of the slave-holding States, in forming the Union and entering into the Federal Compact. As the Southern States would then, so they must now, or hereafter, consider any attempt to interfere with this delicate subject an aggression, as having a tendency to produce revolt and insurrection of the most hideous character.

These States must view with jealousy and distrust all associations having for their object the abolition of slavery. The principles propagated by the enthusiastic devotees of this project are calculated to have the most pernicious effects — exciting false hopes of liberty; producing discontent and dissatisfaction in the mind of the otherwise happy and contented slave, and a restlessness for emancipation, when the actual state of things forbids the possibility of it at present.

The Colonization Society is considered by your committee as one of a dangerous character in this respect. Its schemes of colonization are vain and visionary. Its professed objects never can be accomplished: they are wholly impracticable. This institution, therefore, should not, in the opinion of your committee, receive the support, countenance, or patronage of Congress; and not being a matter of national interest, the Government has no right to take it under its protection, or make appropriations for its support. Your committee therefore recommend the adoption of the following resolutions:

Resolved, That this Legislature concur with the Legislature of the State of South Carolina, in the resolutions adopted at their December session in 1827, in relation to the powers of the General Government and State rights.

Resolved, That his Excellency the Governor be requested to transmit copies of this preamble and resolutions to the Governors of the several States, with a request that the same be laid before the Legislatures of their respective States; and also to our Senators and Representatives in Congress, to be by them laid before Congress for consideration.

No. 46. The Bank Controversy: Jackson's First Annual Message

December 8, 1829

THE charter of the Bank of the United States did not expire until 1836, three years after the close of the term for which Jackson had been elected; it was probable, however, that the bank would make early application for a renewal of its privileges. Jackson undoubtedly sympathized with those who feared the political and economic power of a great financial monopoly; the controversy involving the branch bank at Portsmouth, N. H., however, was probably the occasion for beginning his attack on the bank, which he did in his first annual message, transmitted to Congress Dec. 8, 1829. In the House this portion of the message was referred to the Committee of Ways and Means, which made an elaborate report April 13, 1830, through McDuffie of South Carolina, sustaining the bank. May 10 resolutions offered by Potter of North Carolina, against paper money and the bank, and against the renewal of the charter, were, by a vote of 89 to 66, laid on the table. May 26 Wayne of Georgia submitted resolutions calling on the Secretary of the Treasury for a great variety of information about the conduct and business of the bank; on the 29th these were disagreed to. In the Senate the Committee on Finance, through Smith of Maryland, reported, March 29, against any change in the currency.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 21st Cong., 1st Sess.; the extract here given is from the *House Journal*, 27, 28. For the discussions, see *Cong. Debates*, VI. McDuffie's report is printed as *House Rep. 358;* it is also in *Cong. Debdtes*, VI., part II., appendix, 104–133. Smith's report is *Senate Rep. 104.* Documents connected with the Portsmouth branch controversy are collected in *Niles's Register*, XXXVII., XXXVIII.; Ingham's "Address," in his own defence, is in *ib.*, XLII., 315, 316. The bank controversy as a whole is treated at length in all larger histories of the period, and in biographies of leading statesmen of the time. *Niles's Register*, XXXVII.–XLV., gives invaluable documentary material. Benton's *Abridgment*, X.–XII., gives full reports of debates; the same author's *Thirty Years' View*, I., is also of great value. See further, on the general subject, the lives of Jackson by Parton and Sumner; J. Q. Adams's *Memoirs*, VIII., IX., *passim;* Johnston, in *Lalor's Cyclopædia*, I., 201–203; Bolles's *Financial History of the United States*, II., 317–358; Burgess's *Middle Period*, chaps. 9 and 12. Significant extracts from documents are given in *Amer. History Leaflets*, No. 24.

The charter of the Bank of the United States expires in 1836, and its stockholders will most probably apply for a renewal of their privileges. In order to avoid the evils resulting from precipitancy in a measure involving such important principles, and such deep pecuniary interests, I feel that I cannot, in justice to the parties interested, too soon present it to the deliberate consideration of

the Legislature and the People. Both the constitutionality and the expediency of the law creating this Bank are well questioned by a large portion of our fellow-citizens; and it must be admitted by all, that it has failed in the great end of establishing a uniform and sound currency.

Under these circumstances, if such an institution is deemed essential to the fiscal operations of the Government, I submit to the wisdom of the Legislature whether a national one, founded upon the credit of the Government and its revenues, might not be devised, which would avoid all constitutional difficulties; and, at the same time, secure all the advantages to the Government and country that were expected to result from the present Bank.

Debate on Foot's Resolution

1830

DECEMBER 29, 1829, Senator Foot of Connecticut submitted a resolution instructing the Committee on Public Lands "to inquire into the expediency of limiting, for a certain period, the sales of the public lands, to such lands only as have heretofore been offered for sale, and are subject to entry at the minimum price; and, also, whether the office of Surveyor General and Surveyors may not be abolished without detriment to the public interest." The motion was taken up Jan. 13, 1830, and, as amended by Foot Jan. 20, was before the Senate until May 21, when it was laid on the table. The discussion covered a wide range of topics, the resolution itself, as Webster said, being almost the only subject not considered; the chief interest of the debate, however, lay in the discussion of the nature of the Union, by Webster and Hayne. The resolution was taken as an indication of hostility on the part of the East, and particularly New England, to the development of the West; and the South, bitterly opposed to the tariff of 1828, which it regarded as a sectional measure, was ready to join with the West in resisting any supposed attempt by the East to control the national policy. Benton, in a speech Jan. 18, charged New England with "jealousy of the West and a desire to retard its growth." Hayne followed on the 19th with a speech in the same vein. On the 20th Webster replied to Hayne, defending New England against the charge of opposition to the West. On the 21st Hayne began a reply to Webster, concluded on the 25th, in the course of which he expounded with approval the doctrines of State rights and nullification. Webster's reply to Hayne, on the 26th and 27th, enforced the national view of the Constitution, and compelled Hayne to declare his position more plainly; this he did on the 27th in a speech in reply to Webster. Brief concluding remarks by Webster closed this portion of the "great debate." The extracts here given are from the speeches of Jan. 26 and 27.

REFERENCES. — *Text* in *Cong. Debates*, 21st Cong., 1st Sess., VI., Part I., 58–93, *passim*. The debate is also in *Niles's Register*, XXXVII., XXXVIII.,

and Benton's *Abridgment*, X. Webster's speech is in his *Works* (ed. 1857), III., 248–347. The political doctrines of Webster and Hayne, and the effects of the speeches, are discussed at length in general histories of the period. See also Curtis's *Life of Webster*, I., chap. 16; Benton's *Thirty Years' View*, I., chap. 44; Edward Everett, in *North Amer. Rev.*, XXXI., 462–546; Sargent's *Public Men and Events*, I., 169–175; Johnston, in *Lalor's Cyclopædia*, II., 234, 235.

No. 47. Webster's Reply to Hayne

January 26 and 27, 1830

There yet remains to be performed, [said Mr. W.] by far the most grave and important duty, which I feel to be devolved on me, by this occasion. It is to state, and to defend, what I conceive to be the true principles of the constitution under which we are here assembled. . . .

I understand the honorable gentleman from South Carolina to maintain, that it is a right of the State Legislatures to interfere, whenever, in their judgment, this Government transcends its constitutional limits, and to arrest the operation of its laws.

I understand him to maintain this right, as a right existing under the constitution; not as a right to overthrow it, on the ground of extreme necessity, such as would justify violent revolution.

I understand him to maintain an authority, on the part of the States, thus to interfere, for the purpose of correcting the exercise of power by the General Government, of checking it, and of compelling it to conform to their opinion of the extent of its powers.

I understand him to maintain that the ultimate power of judging of the constitutional extent of its own authority is not lodged exclusively in the General Government, or any branch of it; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the General Government transcends its power.

I understand him to insist that, if the exigency of the case, in the opinion of any State Government, require it, such State Government may, by its own sovereign authority, annul an act of the General Government, which it deems plainly and palpably unconstitutional.

This is the sum of what I understand from him to be the South Carolina doctrine; and the doctrine which he maintains. I propose to consider it, and compare it with the constitution. . . .

What he contends for, is, that it is constitutional to interrupt

the administration of the constitution itself, in the hands of those who are chosen and sworn to administer it, by the direct interference, in form of law, of the States, in virtue of their sovereign capacity. The inherent right in the people to reform their government, I do not deny; and they have another right, and that is, to resist unconstitutional laws, without overturning the Government. It is no doctrine of mine, that unconstitutional laws bind the people. The great question is, whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws? On that, the main debate hinges. The proposition, that, in case of a supposed violation of the constitution by Congress, the States have a constitutional right to interfere, and annul the law of Congress, is the proposition of the gentleman: I do not admit it. If the gentleman had intended no more than to assert the right of revolution, for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution, or rebellion, on the other. I say, the right of a State to annul a law of Congress, cannot be maintained but on the ground of the unalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the constitution, and in defiance of the constitution, which may be resorted to, when a revolution is to be justified. But I do not admit that, under the constitution, and in conformity with it, there is any mode in which a State Government, as a member of the Union, can interfere and stop the progress of the General Government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this Government, and the source of its power. Whose agent is it? Is it the creature of the State Legislatures, or the creature of the people? If the Government of the United States be the agent of the State Governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends leads him to the necessity of maintaining, not only that this General Government is the creature of the States, but that it is the creature of each of the States, severally; so that

each may assert the power, for itself, of determining whether it acts within the limits of its authority. It is the servant of four and twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this Government and its true character. It is, sir, the people's constitution, the people's Government; made for the people; made by the people; and answerable to the people. The people of the United States have declared that this constitution shall be the supreme law. We must either admit the proposition, or dispute their authority. The States are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the State Legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the General Government, so far the grant is unquestionably good, and the Government holds of the people, and not of the State Governments. We are all agents of the same supreme power, the people. The General Government and the State Governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The National Government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the State Governments or to the people themselves. So far as the people have restrained State sovereignty, by the expression of their will, in the constitution of the United States, so far, it must be admitted, State sovereignty is effectually controlled. I do not contend that it is, or ought to be, controlled farther. The sentiment to which I have referred, propounds that State sovereignty is only to be controlled by its own "feeling of justice;" that is to say, it is not to be controlled at all: for one who is to follow his own feelings is under no legal control. Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on State sovereignties. There are those, doubtless, who wish they had been left without restraint; but the constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty; but the constitution declares that no State shall make war. To coin money is another exercise of sovereign power; but no State is at liberty to coin money. Again, the constitution

says that no sovereign State shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise "from her own feelings of honorable justice." Such an opinion, therefore, is in defiance of the plainest provisions of the constitution. . . .

It so happens that, at the very moment when South Carolina resolves that the tariff laws are unconstitutional, Pennsylvania and Kentucky resolve exactly the reverse. They hold those laws to be both highly proper and strictly constitutional. And now, sir, how does the honorable member propose to deal with this case? How does he relieve us from this difficulty, upon any principle of his? His construction gets us into it; how does he propose to get us out?

In Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania, it is both clearly constitutional, and highly expedient; and there, the duties are to be paid. And yet we live under a Government of uniform laws, and under a constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all the States! Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? Are we not thrown back again, precisely upon the old Confederation?

It is too plain to be argued. Four-and-twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind anybody else, and this constitutional law the only bond of their union! What is such a state of things, but a mere connexion during pleasure; or, to use the phraseology of the times, during feeling? And that feeling, too, not the feeling of the people, who established the constitution, but the feeling of the State Governments. . . .

I must now beg to ask, sir, whence is this supposed right of the states derived? Where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains, is a notion founded in a total misapprehension, in my judgment, of the origin of this Government, and of the foundation on which it stands. I hold it to be a popular Government, erected by the people; those who administer it, responsible

to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the State Governments. It is created for one purpose; the State Governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a constitution emanating immediately from the people, and trusted, by them, to our administration. It is not the creature of the State Governments. It is of no moment to the argument, that certain acts of the State Legislatures are necessary to fill our seats in this body. That is not one of their original State powers — a part of the sovereignty of the State. It is a duty which the people, by the constitution itself, have imposed on the State Legislatures; and which they might have left to be performed elsewhere if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition that this whole Government — President, Senate, and House of Representatives — is a popular Government. It leaves it still all its popular character. The Governor of a State, (in some of the States) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a Governor. Is the Government of the State, on that account, not a popular Government? This Government, sir, is the independent offspring of the popular will. It is not the creature of State Legislatures. Nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties. The States cannot now make war; they cannot contract alliances; they cannot make, each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this constitution, sir, be the creature of State Legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, sir, erected this Government. They gave it a constitution; and in that constitution they have enumerated the powers which they bestow on it. They have made it a limited Government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all

others, they declare, are reserved to the States or the people. But, sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who then shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the Government? Sir, they have settled all this in the fullest manner. They have left it with the Government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole constitution was framed and adopted was, to establish a Government that should not be obliged to act through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government, under the Confederacy. Under that system, the legal action, the application of law to individuals, belonged exclusively to the States. Congress could only recommend; their acts were not of binding force, till the States had adopted and sanctioned them? Are we in that condition still? Are we yet at the mercy of State discretion, and State construction? Sir, if we are, then vain will be our attempt to maintain the constitution under which we sit. But, sir, the people have wisely provided, in the constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are, in the constitution, grants of powers to Congress, and restrictions on these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The constitution has, itself, pointed out, ordained, and established, that authority. How has it accomplished this great and essential end? By declaring, sir, that "the constitution and the laws of the United States, made in pursuance thereof, shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding."

This, sir, was the first great step. By this, the supremacy of the constitution and laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the constitution or any law of the United States passed in pursuance of it. But who shall decide this question

of interference? To whom lies the last appeal? This, sir, the constitution itself decides also, by declaring "that the judicial power shall extend to all cases arising under the constitution and laws of the United States." These two provisions, sir, cover the whole ground. They are, in truth, the key-stone of the arch. With these, it is a constitution; without them, it is a confederacy. In pursuance of these clear and express provisions, Congress established, at its very first session, in the Judicial Act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, sir, became a Government. It then had the means of self protection; and, but for this, it would, in all probability, have been now among things which are past. Having constituted the Government, and declared its powers, the people have further said, that, since somebody must decide on the extent of these powers, the Government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, sir, I repeat, how is it that a State Legislature acquires any power to interfere? Who or what gives them the right to say to the people, "we, who are your agents and servants for one purpose, will undertake to decide that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them?" The reply would be, I think, not impertinent: "Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of State Legislatures altogether. It cannot stand the test of examination. Gentlemen may say that, in an extreme case, a State Government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the State Governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A nullifying act of a State Legislature cannot alter the case, nor make resistance any more lawful. . . .

To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the Government by forced or unfair construction. I admit, that it is a Government of strictly limited powers, of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some

cases, admit of doubt; and the General Government would be good for nothing, it would be incapable of long existing, if some mode had not been provided, in which those doubts, as they should arise, might be peaceably, but authoritatively, solved. . . .

Direct collision, therefore, between force and force, is the unavoidable result of that remedy for the revision of unconstitutional laws which the gentleman contends for. It must happen in the very first case to which it is applied. Is not this the plain result? To resist, by force, the execution of a law, generally, is treason. Can the courts of the United States take notice of the indulgence of a State to commit treason? The common saying that a State cannot commit treason herself, is nothing to the purpose. Can she authorize others to do it? If John Fries had produced an act of Pennsylvania, annulling the law of Congress, would it have helped his case? Talk about it as we will, these doctrines go the length of revolution. They are incompatible with any peaceable administration of the Government. They lead directly to disunion and civil commotion; and therefore it is, that, at their commencement, when they are first found to be maintained by respectable men, and in a tangible form, I enter my public protest against them all. . . .

But, sir, what is this danger, and what the grounds of it? Let it be remembered that the constitution of the United States is not unalterable. It is to continue in its present form no longer than the people, who established it, shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power, between the State Governments and the General Government, they can alter that distribution at will.

If any thing be found in the national constitution, either by original provision, or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction be established, unacceptable to them, so as to become, practically, a part of the constitution, they will amend it at their own sovereign pleasure. But while the people choose to maintain it as it is; while they are satisfied with it, and refuse to change it, who has given, or who can give, to the State Legislatures, a right to alter it, either by interference, construction, or otherwise? Gentlemen do not seem to recollect that the people have any power to do anything for themselves; they imagine there is no

safety for them any longer than they are under the close guardianship of the State Legislatures. Sir, the people have not trusted their safety, in regard to the general constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the Government itself, in doubtful cases, should put on its own powers, under their oaths of office, and subject to their responsibility to them: just as the people of a State trust their own State Governments with a similar power. Secondly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents, whenever they see cause. Thirdly, they have reposed trust in the Judicial power, which, in order that it might be trust-worthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power to alter or amend the constitution, peaceably and quietly, whenever experience shall point out defects or imperfections. And, finally, the people of the United States have, at no time, in no way, directly or indirectly, authorized any State Legislature to construe or interpret their high instrument of Government; much less to interfere, by their own power, to arrest its course and operation. . . .

I have thus stated the reasons of my dissent to the doctrines which have been advanced and maintained. I am conscious, sir, of having detained you and the Senate much too long. I was drawn into the debate with no previous deliberation, such as is suited to the discussion of so grave and important a subject. But it is a subject of which my heart is full, and I have not been willing to suppress the utterance of its spontaneous sentiments. I cannot, even now, persuade myself to relinquish it, without expressing, once more, my deep conviction, that, since it respects nothing less than the union of the States, it is of most vital and essential importance to the public happiness. I profess, sir, in my career, hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country. That Union we reached only by the discipline of

our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and, although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness. I have not allowed myself, sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty, when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor, in the affairs of this Government, whose thoughts should be mainly bent on considering, not how the Union should be best preserved, but how tolerable might be the condition of the people when it shall be broken up and destroyed. While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that, I seek not to penetrate the veil. God grant that, in my day, at least, that curtain may not rise. God grant that, on my vision, never may be opened what lies behind. When my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance, rather, behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto no such miserable interrogatory as, What is all this worth? Nor those other words of delusion and folly, Liberty first, and Union afterwards: but every where, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart — Liberty *and* Union, now and forever, one and inseparable!

No. 48. Hayne's Reply to Webster

January 27, 1830

. . . It cannot be doubted, and is not denied, that, before the formation of the constitution, each State was an independent sovereignty, possessing all the rights and powers appertaining to independent nations; nor can it be denied that, after the constitution was formed, they remained equally sovereign and independent, as to all powers not expressly delegated to the Federal Government. This would have been the case, even if no positive provision to that effect had been inserted in that instrument. But to remove all doubt, it is expressly declared, by the tenth article of the amendments of the constitution, that "the powers not delegated to the United States by the constitution, nor prohibited by it to the States, or [are] reserved to the States, respectively, or to the people." The true nature of the Federal constitution, therefore, is, (in the language of Mr. Madison) "a compact to which the states are parties" — a compact by which each State, acting in its sovereign capacity, has entered into an agreement with the other States, by which they have consented that certain designated powers shall be exercised by the United States, in the manner prescribed in the instrument. Nothing can be clearer, than that, under such a system, the Federal Government, exercising strictly delegated powers, can have no right to act beyond the pale of its authority, and that all such acts are void. A State, on the contrary, retaining all powers not expressly given away, may lawfully act in all cases where she has not voluntarily imposed restrictions on herself. Here, then, is a case of a compact between sovereigns; and the question arises, What is the remedy for a clear violation of its express terms by one of the parties? And here the plain obvious dictate of common sense is in strict conformity with the understanding of mankind, and the practice of nations in all analogous cases; "that, where resort can be had to no common superior, the parties to the compact must, themselves, be the rightful judges whether the bargain has been pursued or violated." (Madison's Report, p. 20.) When it is insisted by the gentleman that one of the parties (the Federal Government) "has the power of deciding ultimately and conclusively upon the extent of its own authority," I ask for the grant of such a power. I call upon the gentleman to show it to

me in the constitution. It is not to be found there. If it is to be inferred from the nature of the compact, I aver that not a single argument can be urged in support of such an inference, in favor of the Federal Government, which would not apply, with at least equal force, in favor of a State. All sovereigns are of necessity equal; and any one State, however small in population or territory, has the same rights as the rest, just as the most insignificant nation in Europe is as much sovereign as France, or Russia, or England. . . .

I have already shown that all sovereigns must, as such, be equal. It only remains therefore to inquire whether the States have surrendered their sovereignty, and consented to reduce themselves to mere corporations. The whole form and structure of the Federal Government, the opinions of the framers of the constitution, and the organization of the State Governments, demonstrate that, though the States have surrendered certain specific powers, they have not surrendered their sovereignty. They have each an independent Legislature, Executive, and Judiciary, and exercise jurisdiction over the lives and property of their citizens. They have, it is true, voluntarily restrained themselves from doing certain acts, but, in all other respects, they are as omnipotent as any independent nation whatever. Here, however, we are met by the argument, that the constitution was not formed by the States in their sovereign capacity, but by the people; and it is therefore inferred that, the Federal Government being created by all the people, must be supreme; and though it is not contended that the constitution may be rightfully violated, yet it is insisted that from the decision of the Federal Government there can be no appeal. It is obvious that this argument rests on the idea of State inferiority. Considering the Federal Government as one whole, and the States merely as component parts, it follows, of course, that the former is as much superior to the latter as the whole is to the parts of which it is composed. Instead of deriving power by delegation from the States to the Union, this scheme seems to imply that the individual States derive their power from the United States, just as petty corporations may exercise so much power, and no more, as their superior may permit them to enjoy. This notion is entirely at variance with all our conceptions of State rights, as those rights were understood by Mr. Madison and others, at the time the constitution was framed. I deny that the constitution was framed by the people

in the sense in which that word is used on the other side, and insist that it was framed by the States acting in their sovereign capacity. When, in the preamble of the constitution, we find the words "we the people of the United States," it is clear they can only relate to the people as citizens of the several states, because the Federal Government was not then in existence.

We accordingly find, in every part of that instrument, that the people are always spoken of in that sense. Thus, in the second section of the first article it is declared, that "the House of Representatives shall be composed of members chosen every second year, by the people of the several States." To show that, in entering into this compact, the States acted in their sovereign capacity, and not merely as parts of one great community, what can be more conclusive than the historical fact that, when every State had consented to it except one, she was not held to be bound? . . .

But, the gentleman insists that the tribunal provided by the constitution for the decision of controversies between the States and the Federal Government, is the Supreme Court. And here again I call for the authority on which the gentleman rests the assertion, that the Supreme Court has any jurisdiction whatever over questions of sovereignty between the States and the United States. When we look into the constitution we do not find it there. I put entirely out of view any act of Congress on the subject. We are not looking into laws, but the constitution.

It is clear that questions of sovereignty are not the proper subjects of judicial investigation. They are much too large, and of too delicate a nature, to be brought within the jurisdiction of a court of justice. . . . When it is declared that the constitution, and laws of the United States made in pursuance thereof, shall be the supreme law of the land, it is manifest that no indication is given either as to the power of the Supreme Court to bind the States by its decisions, nor as to the course to be pursued in the event of laws being passed not in pursuance of the constitution. . . .

. . . If the Supreme Court of the United States can take cognizance of such a question, so can the Supreme Courts of the States. But, sir, can it be supposed for a moment, that, when the States proceeded to enter into the compact, called the constitution of the United States, they could have designed, nay, that they could, under any circumstances, have consented to leave to a

court to be created by the Federal Government, the power to decide, finally, on the extent of the powers of the latter, and the limitations on the powers of the former? If it had been designed to do so, it would have been so declared, and assuredly some provision would have been made to secure, as umpires, a tribunal somewhat differently constituted from that whose appropriate duties is the ordinary administration of justice. But to prove, as I think conclusively, that the Judiciary were not designated to act as umpires, it is only necessary to observe that, in a great majority of cases, that court could manifestly not take jurisdiction of the matters in dispute. . . .

No doubt can exist, that, before the States entered into the compact, they possessed the right, to the fullest extent, of determining the limits of their own powers — it is incident to all sovereignty. Now, have they given away that right, or agreed to limit or restrict it in any respect? Assuredly not. They have agreed that certain specific powers shall be exercised by the Federal Government; but the moment that government steps beyond the limits of its charter, the right of the States "to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties, appertaining to them," is as full and complete as it was before the constitution was formed. It was plenary then, and never having been surrendered, must be plenary now. But what then, asks the gentleman? A State is brought into collision with the United States, in relation to the exercise of unconstitutional powers: who is to decide between them? Sir, it is the common case of difference of opinion between sovereigns as to the true construction of a compact. Does such a difference of opinion necessarily produce war? No. And if not, among rival nations, why should it do so among friendly States? In all such cases, some mode must be devised by mutual agreement, for settling the difficulty; and most happily for us, that mode is clearly indicated in the constitution itself, and results, indeed, from the very form and structure of the Government. The creating power is three-fourths of the States. By their decision, the parties to the compact have agreed to be bound, even to the extent of changing the entire form of the Government itself; and it follows, of necessity, that, in case of a deliberate and settled difference of opinion between the parties to the compact, as to the extent of the powers of either, resort must be had to their common

superior — (that power which may give any character to the constitution they may think proper) viz: three-fourths of the States. . . .

But it has been asked, why not compel a State, objecting to the constitutionality of a law, to appeal to her sister States, by a proposition to amend the constitution? I answer, because such a course would, in the first instance, admit the exercise of an unconstitutional authority, which the States are not bound to submit to, even for a day, and because it would be absurd to suppose that any redress could ever be obtained by such an appeal, even if a State were at liberty to make it. . . .

The gentleman has called upon us to carry out our scheme practically. Now, sir, if I am correct in my view of this matter, then it follows, of course, that the right of a State being established, the Federal Government is bound to acquiesce in a solemn decision of a State, acting in its sovereign capacity, at least so far as to make an appeal to the people for an amendment to the constitution. This solemn decision of a State (made either through its Legislature, or a convention, as may be supposed to be the proper organ of its sovereign will — a point I do not propose now to discuss) binds the Federal Government, under the highest constitutional obligation, not to resort to any means of coercion against the citizens of the dissenting State. How, then, can any collision ensue between the Federal and State Governments, unless, indeed, the former should determine to enforce the law by unconstitutional means? What could the Federal Government do, in such a case? Resort, says the gentleman, to the courts of justice. Now, can any man believe that, in the face of a solemn decision of a State, that an act of Congress is "a gross, palpable, and deliberate violation of the constitution," and the interposition of its sovereign authority to protect its citizens from the usurpation, that juries could be found ready merely to register the decrees of the Congress, wholly regardless of the unconstitutional character of their acts? Will the gentleman contend that juries are to be coerced to find verdicts at the point of the bayonet? . . .

Sir, if Congress should ever attempt to enforce any such laws, they would put themselves so clearly in the wrong, that no one could doubt the right of the State to exert its protecting power. . . .

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No. 49. Webster's Concluding Remarks

January 27, 1830

A few words, Mr. President, on this constitutional argument, which the honorable gentleman has labored to reconstruct.

His argument consists of two propositions, and an inference. His propositions are —

1. That the Constitution is a compact between the States.

2. That a compact between two, with authority reserved to one to interpret its terms, would be a surrender to that one, of all power whatever.

3. Therefore, (such is his inference) the General Government does not possess the authority to construe its own powers.

Now, sir, who does not see, without the aid of exposition or detection, the utter confusion of ideas, involved in this, so elaborate and systematic argument?

The constitution, it is said, is a compact between States; the States, then, and the States only, are parties to the compact. How comes the General Government itself a party? Upon the honorable gentleman's hypothesis, the General Government is the result of the compact, the creature of the compact, not one of the parties to it. Yet the argument, as the gentleman has now stated it, makes the Government itself one of its own creators. It makes it a party to that compact to which it owes its own existence.

For the purpose of erecting the constitution on the basis of a compact, the gentleman considers the States as parties to that compact; but as soon as his compact is made, then he chooses to consider the General Government, which is the offspring of that compact, not its offspring, but one of its parties; and so, being a party, has not the power of judging on the terms of compact. Pray, sir, in what school is such reasoning as this taught?

If the whole of the gentleman's main proposition were conceded to him, that is to say — if I admit for the sake of the argument, that the constitution is a compact between States, the inferences which he draws from that proposition are warranted by no just reason. Because, if the constitution be a compact between States, still, that constitution, or that compact, has established a Government, with certain powers; and whether it be one of those powers, that it shall construe and interpret for itself the terms of

the compact, in doubtful cases, is a question which can only be decided by looking to the compact, and inquiring what provisions it contains on this point. Without any inconsistency with natural reason, the Government, even thus created, might be trusted with this power of construction. The extent of its powers, therefore, must still be sought for in the instrument itself.

If the old confederation had contained a clause, declaring that resolutions of the Congress should be the supreme law of the land, any State law or constitution to the contrary notwithstanding, and that a committee of Congress, or any other body created by it, should possess judicial powers, extending to all cases arising under resolutions of Congress, then the power of ultimate decision would have been vested in Congress, under the confederation, although that confederation was a compact between states; and for this plain reason, that it would have been competent to the States, who alone were parties to the compact, to agree who should decide in cases of dispute arising on the construction of the compact.

For the same reason, sir, if I were now to concede to the gentleman his principal propositions, viz. that the constitution is a compact between States, the question would still be, what provision is made, in this compact, to settle points of disputed construction, or contested power, that shall come into controversy? And this question would still be answered, and conclusively answered, by the constitution itself. While the gentleman is contending against construction, he himself is setting up the most loose and dangerous construction. The constitution declares that the laws of Congress shall be the supreme law of the land.* No construction is necessary here. It declares, also, with equal plainness and precision, that the judicial power of the United States shall extend to every case arising under the laws of Congress. This needs no construction. Here is a law, then, which is declared to be supreme; and here is a power established, which is to interpret that law. Now, sir, how has the gentleman met this? Suppose the constitution to be a compact, yet here are its terms, and how does the gentleman get rid of them? He cannot argue the seal off the bond, nor the words out of the instrument. Here they are — what answer does he give to them? None in the world, sir, except that the effect of this would be to place the

* In Webster's *Works* (ed. 1857) this passage reads, "the laws of Congress passed in pursuance of the constitution," etc. — ED.

States in a condition of inferiority; and because it results, from the very nature of things, there being no superior, that the parties must be their own judges! Thus closely and cogently does the honorable gentleman reason on the words of the constitution. The gentleman says, if there be such a power of final decision in the General Government, he asks for the grant of that power. Well, sir, I show him the grant — I turn him to the very words — I show him that the laws of Congress are made supreme; and that the judicial power extends, by express words, to the interpretation of these laws. Instead of answering this, he retreats into the general reflection, that it must result, from the nature of things, that the States, being parties, must judge for themselves.

I have admitted, that, if the constitution were to be considered as the creature of the State Governments, it might be modified, interpreted, or construed, according to their pleasure. But, even in that case, it would be necessary that they should agree. One, alone, could not interpret it conclusively; one, alone, could not construe it; one, alone, could not modify it. Yet the gentleman's doctrine is, that Carolina, alone, may construe and interpret that compact which equally binds all, and gives equal rights to all.

So then, sir, even supposing the constitution to be a compact between the States, the gentleman's doctrine, nevertheless, is not maintainable; because, first, the General Government is not a party to that compact, but a Government established by it, and vested by it with the powers of trying and deciding doubtful questions; and, secondly, because, if the constitution be regarded as a compact, not one State only, but all the States, are parties to that compact, and one can have no right to fix upon it her own peculiar construction.

So much, sir, for the argument, even if the premises of the gentleman were granted, or could be proved. But, sir, the gentleman has failed to maintain his leading proposition. He has not shown, it cannot be shown, that the constitution is a compact between State Governments. The constitution itself, in its very front, refutes that proposition: it declares that it is ordained and established by the people of the United States. So far from saying that it is established by the Governments of the several States, it does not even say that it is established by the people of the several States; but it pronounces that it is established by the people of the United States in the aggregate. The gentleman

says, it must mean no more than that the people of the several States, taken collectively, constitute the people of the United States; be it so, but it is in this, their collective capacity; it is as all the people of the United States that they establish the constitution.* So they declare; and words cannot be plainer than the words used.

When the gentleman says the constitution is a compact between the States, he uses language exactly applicable to the old confederation. He speaks as if he were in Congress before 1789. He describes fully that old state of things then existing. The confederation was, in strictness, a compact; the States, as States, were parties to it. We had no other General Government. But that was found insufficient, and inadequate to the public exigencies. The people were not satisfied with it, and undertook to establish a better. They undertook to form a General Government, which should stand on a new basis — not a confederacy, not a league, not a compact between States, but a constitution; a popular Government, founded in popular election, directly responsible to the people themselves, and divided into branches, with prescribed limits of power, and prescribed duties. They ordained such a Government; they gave it the name of a constitution, and therein they established a distribution of powers between this, their General Government, and their several State Governments. When they shall become dissatisfied with this distribution, they can alter it. Their own power over their own instrument remains. But, until they shall alter it, it must stand as their will, and is equally binding on the General Government and on the States.

The gentleman, sir, finds analogy, where I see none. He likens it to the case of a treaty, in which, there being no common superior, each party must interpret for itself, under its own obligation of good faith. But this is not a treaty, but a constitution of Government, with powers to execute itself, and fulfil its duties.

I admit, sir, that this Government is a Government of checks and balances; that is, the House of Representatives is a check on the Senate, and the Senate is a check on the House, and the President a check on both. But I cannot comprehend him, or, if I do, I totally differ from him, when he applies the notion of

* In Webster's Works (ed. 1857) this passage reads: "The gentleman says, it must mean no more than the people of the several States. Doubtless, the people of the several States, taken collectively, constitute the people of the United States; but it is in this, their collective capacity, it is as all the people of the United States, that they establish the constitution." — ED.

checks and balances to the interference of different Governments. He argues, that if we transgress, each State, as a State, has a right to check us. Does he admit the converse of the proposition, that we have a right to check the States? The gentleman's doctrines would give us a strange jumble of authorities and powers, instead of Governments of separate and defined powers. It is the part of wisdom, I think, to avoid this; and to keep the General Government and the State Governments, each in its proper sphere, avoiding, as carefully as possible, every kind of interference.

Finally, sir, the honorable gentleman says, that the States will only interfere, by their power, to preserve the constitution. They will not destroy it, they will not impair it — they will only save, they will only preserve, they will only strengthen it! Ah, sir, this is but the old story. All regulated Governments, all free Governments, have been broken up by similar disinterested and well disposed interference! It is the common pretence. But I take leave of the subject.

No. 50. The Bank Controversy: Jackson's Second Annual Message

December 7, 1830

LITTLE attention was paid by Congress to so much of Jackson's second annual message as related to the Bank of the United States. December 9, in the House, an attempt by Wayne of Georgia to have that portion of the message referred to a select committee, instead of to the Committee of Ways and Means, was unsuccessful, the vote being 67 to 108. February 2, 1831, the Senate, by a vote of 20 to 23, rejected Benton's motion for leave to bring in a joint resolution declaring that the charter ought not to be renewed. The result in each of these cases was a victory for the bank.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 21st Cong., 2d Sess.; the extract here given is from the *Senate Journal*, 30, 31. For the discussions, see *Cong. Debates*, or Benton's *Abridgment*, XI. See also Benton's *Thirty Years' View*, I., chap. 56.

The importance of the principles involved in the inquiry, whether it will be proper to recharter the Bank of the United States, requires that I should again call the attention of Congress to the subject. Nothing has occurred to lessen, in any degree, the dangers which many of our citizens apprehend from that institution, as at present organized. In the spirit of improvement and compromise which distinguishes our country and its institu-

tions, it becomes us to inquire, whether it be not possible to secure the advantages afforded by the present bank, through the agency of a Bank of the United States, so modified in its principles and structure as to obviate constitutional and other objections.

It is thought practicable to organize such a bank, with the necessary officers, as a branch of the Treasury Department, based on the public and individual deposites, without power to make loans or purchase property, which shall remit the funds of the Government, and the expense of which may be paid, if thought advisable, by allowing its officers to sell bills of exchange to private individuals at a moderate premium. Not being a corporate body, having no stockholders, debtors, or property, and but few officers, it would not be obnoxious to the constitutional objections which are urged against the present bank; and having no means to operate on the hopes, fears, or interests, of large masses of the community, it would be shorn of the influence which makes that bank formidable. The States would be strengthened by having in their hands the means of furnishing the local paper currency through their own banks; while the Bank of the United States, though issuing no paper, would check the issues of the State banks by taking their notes in deposite, and for exchange, only so long as they continue to be redeemed with specie. In times of public emergency, the capacities of such an institution might be enlarged by legislative provisions.

These suggestions are made, not so much as a recommendation, as with a view of calling the attention of Congress to the possible modifications of a system which can not continue to exist in its present form without occasional collisions with the local authorities, and perpetual apprehensions and discontent on the part of the States and the people.

No. 51. The Bank Controversy: Jackson's Third Annual Message

December 6, 1831

THE apparent disposition of Jackson, as indicated by his third annual message, to drop the subject of the bank was further emphasized by the annual report of the Secretary of the Treasury, submitted Dec. 7, in which the cause of the bank was advocated at length.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 22d

Cong., 1st Sess.; the extract here given is from the *Senate Journal*, 17. For McLane's report, see *House Exec. Doc. 3*.

Entertaining the opinions heretofore expressed in relation to the Bank of the United States as at present organized, I felt it my duty, in my former messages frankly to disclose them, in order that the attention of the legislature and the people should be seasonably directed to that important subject, and that it might be considered and finally disposed of in a manner best calculated to promote the ends of the Constitution and subserve the public interests. Having thus conscientiously discharged a constitutional duty, I deem it proper, on this occasion, without a more particular reference to the views of the subject there expressed, to leave it for the present to the investigation of an enlightened people and their representatives.

No. 52. Jackson's Bank Veto

July 10, 1832

THE application of the Bank of the United States for a renewal of its charter was presented to Congress Jan. 9, 1832. In the Senate the memorial was referred to a select committee. March 13 Dallas of Pennsylvania, for the committee, reported a bill for a recharter of the bank; the bill was read a second time May 22, and debated until June 11, when it passed by a vote of 28 to 20. In the House the petition for a recharter had been referred to the Committee of Ways and Means, which reported Feb. 10, by McDuffie of South Carolina, a bill to renew and modify the charter. On the 23d Clayton of Georgia moved the appointment of a select committee to examine the affairs of the bank. The motion was debated until March 14, when, with an amendment offered by J. Q. Adams, it was agreed to. A majority report, to the effect "that the bank ought not to be rechartered until the debt was all paid and the revenue readjusted," was made by Clayton April 30; minority reports, defending the bank, were presented by McDuffie and Adams May 11 and 14. The Senate bill was not taken up for discussion in the House until June 30; July 3 it was passed with amendments, under suspension of the rules, by a vote of 107 to 85. The Senate concurred in the House amendments, and the bill went to the President, who returned it July 10 without his approval. In the Senate, July 13, the vote on the repassage of the bill stood 22 to 19, less than the required two-thirds; so the bill failed. Only the most important portions of the veto message are here given.

REFERENCES. — *Text* in *Senate Journal*, 22d Cong., 1st Sess., 433–446; the message is also printed as *Senate Doc. 180*, and *House Exec. Doc. 300*. Full reports of the discussions are in the *Cong. Debates*, and Benton's *Abridgment*, XI. The text of the bank bill is in the *Senate Journal*, 451–453. For Clayton's report, see *House Rep. 460*; the document includes the minority reports, evidence,

and papers relating to the Portsmouth controversy. Webster's speeches of May 25 and 26, on the bill, are in his *Works* (ed. 1857), III., 391–415; speech of July 11, on the veto, *ib.*, III., 416–447. Clay's speech of July 12, on the veto, is in his *Life and Speeches* (ed. 1844), II., 94–105. Numerous reports and memorials relating to the bank will be found in the House and Senate documents of this session. See further, Benton's *Thirty Years' View*, I., chaps. 63–68, 72; Curtis's *Webster*, I., chap. 18; Sumner's *Jackson*, chap. 12.

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. . . .

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 fifty per cent., and command in market at least forty-two millions of dollars, subject to the payment of the present bonus. The present value of the monopoly, therefore, is seventeen millions of dollars, and this the act proposes to sell for three millions, payable in fifteen annual instalments of $200,000 each.

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 twenty-eight millions of stock, incorporating the purchasers with all the powers and privileges secured in this act, and putting the premium upon the sales into the Treasury? . . .

It has been urged as an argument in favor of rechartering the present bank, that the 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. . . .

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 concentred, 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 stockholder, 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 independance, 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*. . . .

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 prohibited, 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 neces-

sity," 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. . . .

. . . That a Bank of the United States, competent to all the 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 a 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 any abuses and legalize any encroachments.

Suspicions are entertained, and charges are made, of gross abuse and 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 make 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. . . .

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.

No. 53. South Carolina Ordinance of Nullification

November 24, 1832

THE opposition of the South, and particularly of South Carolina, to protection has already been noted (No. 44). The tariff act of July 14, 1832, while doing away with some of the most objectionable features of the act of 1828, showed no signs of an abandonment of the protective policy. The State election of 1832, accordingly, turned on the question of calling a convention to nullify the tariff laws. The legislature met in extra session Oct. 22; on the 26th, in accordance with the suggestion of Governor Hamilton in his message, a bill for calling a convention was passed. The convention met Nov. 19. Of the 162 delegates present, 136 favored nullification. November 24, by a vote of 136 to 26, the Ordinance of Nullification was adopted. Addresses to the people of the United States and of South Carolina were also issued. The legislature met in regular session Nov. 27, and promptly passed a series of laws to give effect to the ordinance.

REFERENCES. — *Text* in *Senate Doc. 30*, 22d Cong., 2d Sess., pp. 36–39; the document contains also the report of the committee of 21 to the convention, addresses to the people of South Carolina and of the United States, message of Governor Hamilton to the legislature, inaugural address of Governor Hayne, and the three acts. The proceedings of the convention are in *State Papers on Nullification* (Mass. Gen. Court, Misc. Doc., 1834). Numerous documents are collected in *Niles's Register*, XLIII. Houston's *Critical Study of Nullification in South Carolina* is of prime importance; see especially, on the ordinance, pp. 106–115. See also Burgess's *Middle Period*, chap. 10; Parton's *Jackson*, III., chaps. 32, 33; Benton's *Thirty Years' View*, I., chaps. 78, 87–89; Stephens's *War between the States*, I., coll. 10–12; Johnston, in *Lalor's Cyclopædia*, II., 1050–1055; *Memoir and Writings of Hugh S. Legaré*, I., 270–279.

An Ordinance to Nullify certain acts of the Congress of the United States, purporting to be laws laying duties and imposts on the importation of foreign commodities.

Whereas the Congress of the United States, by various acts, purporting to be acts laying duties and imposts on foreign imports, but in reality intended for the protection of domestic manufactures, and the giving of bounties to classes and individuals engaged in particular employments, at the expense and to the injury

and oppression of other classes and individuals, and by wholly exempting from taxation certain foreign commodities, such as are not produced or manufactured in the United States, to afford a pretext for imposing higher and excessive duties on articles similar to those intended to be protected, hath exceeded its just powers under the Constitution, which confers on it no authority to afford such protection, and hath violated the true meaning and intent of the Constitution, which provides for equality in imposing the burthens of taxation upon the several States and portions of the confederacy: And whereas the said Congress, exceeding its just power to impose taxes and collect revenue for the purpose of effecting and accomplishing the specific objects and purposes which the Constitution of the United States authorizes it to effect and accomplish, hath raised and collected unnecessary revenue for objects unauthorized by the Constitution:

We, therefore, the people of the State of South Carolina in Convention assembled, to declare and ordain, and it is hereby declared and ordained, that the several acts and parts of acts of the Congress of the United States, purporting to be laws for the imposing of duties and imposts on the importation of foreign commodities, and now having actual operation and effect within the United States, and, more especially, an act entited "An act in alteration of the several acts imposing duties on imports," approved on the nineteenth day of May, one thousand eight hundred and twenty-eight, and also an act entitled "An act to alter and amend the several acts imposing duties on imports," approved on the fourteenth day of July, one thousand eight hundred and thirty-two, are unauthorized by the Constitution of the United States, and violate the true meaning and intent thereof, and are null, void, and no law, nor binding upon this State, its officers or citizens; and all promises, contracts, and obligations, made or entered into, or to be made or entered into, with purpose to secure the duties imposed by the said acts, and all judicial proceedings which shall be hereafter had in affirmance thereof, are and shall be held utterly null and void.

And it is further ordained, that it shall not be lawful for any of the constituted authorities, whether of this State or of the United States, to enforce the payment of duties imposed by the said acts within the limits of this State; but it shall be the duty of the Legislature to adopt such measures and pass such acts as may be necessary to give full effect to this ordinance, and to prevent the

enforcement and arrest the operation of the said acts and parts of acts of the Congress of the United States within the limits of this State, from and after the 1st day of February next, and the duty of all other constituted authorities, and of all persons residing or being within the limits of this State, and they are hereby required and enjoined, to obey and give effect to this ordinance, and such acts and measures of the Legislature as may be passed or adopted in obedience thereto.

And it is further ordained, that in no case of law or equity, decided in the courts of this State, wherein shall be drawn in question the authority of this ordinance, or the validity of such act or acts of the Legislature as may be passed for the purpose of giving effect thereto, or the validity of the aforesaid acts of Congress, imposing duties, shall any appeal be taken or allowed to the Supreme Court of the United States, nor shall any copy of the record be permitted or allowed for that purpose; and if any such appeal shall be attempted to be taken, the courts of this State shall proceed to execute and enforce their judgments, according to the laws and usages of the State, without reference to such attempted appeal, and the person or persons attempting to take such appeal may be dealt with as for a contempt of the court.

And it is further ordained, that all persons bow [now] holding any office of honor, profit, or trust, civil or military, under this State, (members of the Legislature excepted,) shall, within such time, and in such manner as the Legislature shall prescribe, take an oath well and truly to obey, execute, and enforce, this ordinance, and such act or acts of the Legislature as may be passed in pursuance thereof, according to the true intent and meaning of the same; and on the neglect or omission of any such person or persons so to do, his or their office or offices shall be forthwith vacated, and shall be filled up as if such person or persons were dead or had resigned; and no person hereafter elected to any office of honor, profit, or trust, civil or military, (members of the Legislature excepted,) shall, until the Legislature shall otherwise provide and direct, enter on the execution of his office, or be in any respect competent to discharge the duties thereof, until he shall, in like manner, have taken a similar oath; and no juror shall be empannelled in any of the courts of this State, in any cause in which shall be in question this ordinance, or any act of the Legislature passed in pursuance thereof, unless he shall first,

in addition to the usual oath, have taken an oath that he will well and truly obey, execute, and enforce this ordinance, and such act or acts of the Legislature as may be passed to carry the same into operation and effect, according to the true intent and meaning thereof.

And we, the people of South Carolina, to the end that it may be fully understood by the Government of the United States, and the people of the co-States, that we are determined to maintain this, our ordinance and declaration, at every hazard, do further declare that we will not submit to the application of force, on the part of the Federal Government, to reduce this State to obedience; but that we will consider the passage, by Congress, of any act authorizing the employment of a military or naval force against the State of South Carolina, her constituted authorities or citizens; or any act abolishing or closing the ports of this State, or any of them, or otherwise obstructing the free ingress and egress of vessels to and from the said ports, or any other act on the part of the Federal Government, to coerce the State, shut up her ports, destroy or harrass her commerce, or to enforce the acts hereby declared to be null and void, otherwise than through the civil tribunals of the country, as inconsistent with the longer continuance of South Carolina in the Union: and that the people of this State will thenceforth hold themselves absolved from all further obligation to maintain or preserve their political connexion with the people of the other States, and will forthwith proceed to organize a separate Government, and do all other acts and things which sovereign and independent States may of right to do.

Done in Convention at Columbia, the twenty-fourth day of November, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-seventh year of the declaration of the independence of the United States of America.*

No. 54. The Bank Controversy: Jackson's Fourth Annual Message

December 4, 1832

"In July [1832] General Cadwallader was sent to Europe to try to negotiate with the holders of the three per cents for an extension of the loan for a

* The names of the signers are omitted. — ED.

year beyond October, the bank becoming the debtor, and paying, if necessary, four per cent on the extension. . . . August 22d General Cadwallader made an arrangement with the Barings, by which they were to pay off all the holders of the stocks who were not willing to extend them and take the bank as debtor" (Sumner). In his annual message of Dec. 4 Jackson called the attention of Congress to this transaction, although the contract had been repudiated by the bank Oct. 15. February 13, 1833, Polk of Tennessee, from the Committee of Ways and Means, reported in the House a bill authorizing the sale of the bank stock held by the United States; by a vote of 102 to 91 the bill was rejected. March 1 the Committee of Ways and Means, through Verplanck of New York, submitted a report, together with a resolution "that the Government deposites may, in the opinion of this House, be safely continued in the Bank of the United States." An elaborate minority report was submitted by Polk. March 2 the House adopted the resolution by a vote of 109 to 46. The bank controversy had now become a party question, and the merits of the case were no longer the chief consideration.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 22d Cong., 2d Sess.; the extract here given is in the *House Journal*, 15, 16. The discussions are in the *Cong. Debates*, and Benton's *Abridgment*, XI. For the correspondence relative to the three per cent stock, see *House Exec. Doc. 9;* for the report of Toland, the agent of the Treasury to inspect the accounts of the bank, see *House Exec. Doc. 8.* Verplanck's report is *House Rep. 121.*

In conformity with principles heretofore explained, and with the hope of reducing the General Government to that simple machine which the constitution created, and of withdrawing from the States all other influence than that of its universal beneficence in preserving peace, affording an uniform currency, maintaining the inviolability of contracts, diffusing intelligence, and discharging, unfelt, its other superintending functions, I recommend that provision be made to dispose of all stocks now held by it in corporations, whether created by the General or State Governments, and placing the proceeds in the Treasury. As a source of profit, these stocks are of little or no value; as a means of influence among the States, they are adverse to the purity of our institutions. The whole principle on which they are based, is deemed by many unconstitutional, and, to persist in the policy which they indicate, is considered wholly inexpedient.

It is my duty to acquaint you with an arrangement made by the Bank of the United States with a portion of the holders of the three per cent. stock, by which the Government will be deprived of the use of the public funds longer than was anticipated. By this arrangement, which will be particularly explained by the Secretary of the Treasury, a surrender of the certificates of this stock

may be postponed until October, 1833; and thus the liability of the Government, after its ability to discharge the debt, may be continued by the failure of the bank to perform its duties.

Such measures as are within the reach of the Secretary of the Treasury have been taken to enable him to judge whether the public deposites in that institution may be regarded as entirely safe; but, as his limited power may prove inadequate to this object, I recommend the subject to the attention of Congress, under the firm belief that it is worthy of their serious investigation. An inquiry into the transactions of the institution, embracing the branches as well as the principal bank, seems called for by the credit which is given throughout the country to many serious charges impeaching its character, and which, if true, may justly excite the apprehension that it is no longer a safe depository of the money of the people.

No. 55. Jackson's Proclamation to the People of South Carolina

December 10, 1832

IN anticipation of the action of the South Carolina convention, Jackson issued additional instructions to the collector at Charleston, and made preparations for using the military and naval forces of the United States if necessary. The authorities of South Carolina made similar preparations. Hayne had left the Senate to become governor of the State, his place being taken by Calhoun, who resigned the Vice-Presidency. In his annual message of Dec. 4, 1832, Jackson referred briefly to the state of affairs in South Carolina, and expressed the hope that existing laws would prove sufficient for any exigency. On the 10th he issued the proclamation to the people of South Carolina, extracts from which follow. December 20 Governor Hayne, at the request of the legislature, issued a counter proclamation, in which, among other matters, the interference of the President was resented, and the right of secession affirmed. On the same day general orders, over the signature of the adjutant general of the State, invited the services of volunteers.

REFERENCES. — *Text* in *Senate Doc. 30*, 22d Cong., 2d Sess., pp. 78–92; the same document contains also the instructions to the collector of customs and the United States district attorney, and the proclamation of Governor Hayne. The resolution of the legislature of South Carolina, in response to the proclamation, is in *Niles's Register*, XLIII., 300. See also Parton's *Jackson*, III., chap. 34; Benton's *Thirty Years' View*, I., chap. 79.

[After reciting the circumstances under which the Ordinance of Nullification was issued, and the substance of its assertions, the proclamation continues:]

And whereas, the said ordinance prescribes to the people of South Carolina a course of conduct in direct violation of their duty as citizens of the United States, contrary to the laws of their country, subversive of its Constitution, and having for its object the destruction of the Union — that Union, which, coeval with our political existence, led our fathers, without any other ties to unite them than those of patriotism and a common cause, through a sanguinary struggle to a glorious independence — that sacred Union, hitherto inviolate, which, perfected by our happy Constitution, has brought us, by the favor of Heaven, to a state of prosperity at home, and high consideration abroad, rarely, if ever, equalled in the history of nations. To preserve this bond of our political existence from destruction, to maintain inviolate this state of national honor and prosperity, and to justify the confidence my fellow citizens have reposed in me, I, ANDREW JACKSON, *President of the United States*, have thought proper to issue this my PROCLAMATION, stating my views of the Constitution and laws applicable to the measures adopted by the Convention of South Carolina, and to the reasons they have put forth to sustain them, declaring the course which duty will require me to pursue, and, appealing to the understanding and patriotism of the people, warn them of the consequences that must inevitably result from an observance of the dictates of the Convention.

Strict duty would require of me nothing more than the exercise of those powers with which I am now, or may hereafter be invested, for preserving the peace of the Union, and for the execution of the laws. But the imposing aspect which opposition has assumed in this case, by clothing itself with State authority, and the deep interest which the people of the United States must all feel in preventing a resort to stronger measures, while there is a hope that any thing will be yielded to reasoning and remonstrance, perhaps demand, and will certainly justify, a full exposition to South Carolina and the nation of the views I entertain of this important question, as well as a distinct enunciation of the course which my sense of duty will require me to pursue.

The ordinance is founded, not on the indefeasible right of resisting acts which are plainly unconstitutional, and too oppres-

sive to be endured; but on the strange position that any one State may not only declare an act of Congress void, but prohibit its execution — that they may do this consistently with the Constitution — that the true construction of that instrument permits a State to retain its place in the Union, and yet be bound by no other of its laws than those it may choose to consider as constitutional. It is true, they add, that to justify this abrogation of a law, it must be palpably contrary to the Constitution; but it is evident, that, to give the right of resisting laws of that description, coupled with the uncontrolled right to decide what laws deserve that character, is to give the power of resisting all laws. For, as by the theory, there is no appeal, the reasons alleged by the State, good or bad, must prevail. If it should be said that public opinion is a sufficient check against the abuse of this power, it may be asked why it is not deemed a sufficient guard against the passage of an unconstitutional act by Congress? There is, however, a restraint in this last case, which makes the assumed power of a State more indefensible, and which does not exist in the other. There are two appeals from an unconstitutional act passed by Congress — one to the Judiciary, the other to the people and the States. There is no appeal from the State decision in theory, and the practical illustration shows that the courts are closed against an application to review it, both judges and jurors being sworn to decide in its favor. But reasoning on this subject is superfluous, when our social compact, in express terms, declares that the laws of the United States, its Constitution, and treaties made under it, are the supreme law of the land; and, for greater caution, adds "that the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." And it may be asserted without fear of refutation, that no Federative Government could exist without a similar provision. Look for a moment to the consequence. If South Carolina considers the revenue laws unconstitutional, and has a right to prevent their execution in the port of Charleston, there would be a clear constitutional objection to their collection in every other port, and no revenue could be collected any where; for all imposts must be equal. It is no answer to repeat, that an unconstitutional law is no law, so long as the question of its legality is to be decided by the State itself; for every law operating injuriously upon any local interest will be perhaps thought, and certainly represented,

as unconstitutional, and, as has been shown, there is no appeal. . . .

If the doctrine of a State veto upon the laws of the Union carries with it internal evidence of its impracticable absurdity, our constitutional history will also afford abundant proof that it would have been repudiated with indignation had it been proposed to form a feature in our Government. . . .

I consider, then, the power to annul a law of the United States, assumed by one State, INCOMPATIBLE WITH THE EXISTENCE OF THE UNION, CONTRADICTED EXPRESSLY BY THE LETTER OF THE CONSTITUTION, UNAUTHORIZED BY ITS SPIRIT, INCONSISTENT WITH EVERY PRINCIPLE ON WHICH IT WAS FOUNDED, AND DESTRUCTIVE OF THE GREAT OBJECT FOR WHICH IT WAS FORMED.

After this general view of the leading principle, we must examine the particular application of it which is made in the ordinance.

The preamble rests its justification on these grounds: It assumes, as a fact, that the obnoxious laws, although they purport to be laws for raising revenue, were in reality intended for the protection of manufactures, which purpose it asserts to be unconstitutional; that the operation of these laws is unequal; that the amount raised by them is greater than is required by the wants of the Government; and, finally, that the proceeds are to be applied to objects unauthorized by the Constitution. These are the only causes alleged to justify an open opposition to the laws of the country, and a threat of seceding from the Union, if any attempt should be made to enforce them. The first virtually acknowledges that the law in question was passed under a power expressly given by the Constitution to lay and collect imposts; but its constitutionality is drawn in question from the *motives* of those who passed it. However apparent this purpose may be in the present case, nothing can be more dangerous than to admit the position that an unconstitutional purpose, entertained by the members who assent to a law enacted under a constitutional power, shall make that law void: for how is that purpose to be ascertained? Who is to make the scrutiny? How often may bad purposes be falsely imputed — in how many cases are they concealed by false professions — in how many is no declaration of motive made? Admit this doctrine, and you give to the States an uncontrolled right to decide, and every law may be annulled under this pretext. If, therefore, the absurd and dangerous doctrine should be admitted,

that a State may annul an unconstitutional law, or one that it deems such, it will not apply to the present case.

The next objection is, that the laws in question operate unequally. This objection may be made with truth, to every law that has been or can be passed. The wisdom of man never yet contrived a system of taxation that would operate with perfect equality. If the unequal operation of a law makes it unconstitutional, and if all laws of that description may be abrogated by any State for that cause, then indeed is the Federal Constitution unworthy of the slightest effort for its preservation. . . .

The two remaining objections made by the ordinance to these laws, are that the sums intended to be raised by them are greater than are required, and that the proceeds will be unconstitutionally employed.

The Constitution has given, expressly, to Congress the right of raising revenue, and of determining the sum the public exigencies will require. The States have no control over the exercise of this right other than that which results from the power of changing the representatives who abuse it, and thus procure redress. Congress may, undoubtedly, abuse this discretionary power, but the same may be said of others with which they are vested. Yet the discretion must exist somewhere. The Constitution has given it to the representatives of all the people, checked by the representatives of the States, and by the Executive Power. The South Carolina construction gives it to the Legislature or the Convention of a single State, where neither the people of the different States, nor the States in their separate capacity, nor the Chief Magistrate elected by the people, have any representation. Which is the most discreet disposition of the power? I do not ask you, fellow citizens, which is the constitutional disposition — that instrument speaks a language not to be misunderstood. But if you were assembled in general Convention, which would you think the safest depository of this discretionary power in the last resort? Would you add a clause giving it to each of the States, or would you sanction the wise provisions already made by your Constitution? . . .

The ordinance, with the same knowledge of the future that characterizes a former objection, tells you that the proceeds of the tax will be unconstitutionally applied. If this could be ascertained with certainty, the objection would, with more propriety,

be reserved for the law so applying the proceeds, but surely can not be urged against the laws levying the duty. . . .

On such expositions and reasonings, the ordinance grounds not only an assertion of the right to annul the laws of which it complains, but to enforce it by a threat of seceding from the Union if any attempt is made to execute them.

This right to secede is deduced from the nature of the Constitution, which, they say, is a compact between sovereign States, who have preserved their whole sovereignty, and, therefore, are subject to no superior; that, because they made the compact, they can break it when, in their opinion, it has been departed from by the other States. Fallacious as this course of reasoning is, it enlists State pride, and finds advocates in the honest prejudices of those who have not studied the nature of our Government sufficiently to see the radical error on which it rests.

The people of the United States formed the Constitution, acting through the State Legislatures in making the compact, to meet and discuss its provisions, and acting in separate Conventions when they ratified those provisions: but the terms used in its construction, show it to be a government in which the people of all the States collectively are represented. . . .

The Constitution of the United States then forms a *government*, not a league; and whether it be formed by compact between the States, or in any other manner, its character is the same. It is a government in which all the people are represented, which operates directly on the people individually, not upon the States — they retained all the power they did not grant. But each State having expressly parted with so many powers as to constitute, jointly with the other States, a single nation, cannot, from that period, possess any right to secede, because such secession does not break a league, but destroys the unity of a nation; and any injury to that unity is not only a breach which would result from the contravention of a compact, but it is an offence against the whole Union. To say that any State may at pleasure secede from the Union, is to say that the United States are not a nation, because it would be a solecism to contend that any part of a nation might dissolve its connexion with the other parts, to their injury or ruin, without committing any offence. Secession, like any other revolutionary act, may be morally justified by the extremity of oppression; but to call it a constitutional right, is confounding the

meaning of terms; and can only be done through gross error, or to deceive those who are willing to assert a right, but would pause before they made a revolution, or incur the penalties consequent on a failure.

Because the Union was formed by compact, it is said the parties to that compact may, when they feel themselves aggrieved, depart from it: but it is precisely because it is a compact that they cannot. A compact is an agreement or binding obligation. It may by its terms have a sanction or penalty for its breach or it may not. If it contains no sanction, it may be broken with no other consequence than moral guilt: if it have a sanction, then the breach insures the designated or implied penalty. A league between independent nations, generally, has no sanction other than a moral one; or if it should contain a penalty, as there is no common superior, it cannot be enforced. A government, on the contrary, always has a sanction, express or implied; and, in our case, it is both necessarily implied and expressly given. An attempt, by force of arms, to destroy a government, is an offence by whatever means the constitutional compact may have been formed, and such government has the right, by the law of self-defence, to pass acts for punishing the offender, unless that right is modified, restrained, or resumed by the constitutional act. In our system, although it is modified in the case of treason, yet authority is expressly given to pass all laws necessary to carry its powers into effect, and, under this grant, provision has been made for punishing acts which obstruct the due administration of the laws.

It would seem superfluous to add anything to show the nature of that union which connects us; but, as erroneous opinions on this subject are the foundation of doctrines the most destructive to our peace, I must give some further development to my views on this subject. No one, fellow citizens, has a higher reverence for the reserved rights of the States than the magistrate who now addresses you. No one would make greater personal sacrifices, or official exertions, to defend them from violation; but equal care must be taken to prevent, on their part, an improper interference with, or resumption of, the rights they have vested in the nation. The line has not been so distinctly drawn as to avoid doubts in some cases of the exercise of power. Men of the best intentions and soundest views may differ in their construction of some parts

of the Constitution; but there are others on which dispassionate reflection can leave no doubt. Of this nature appears to be the assumed right of secession. It treats [*rests*], as we have seen, on the alleged undivided sovereignty of the States, and of their having formed, in this sovereign capacity, a compact which is called the Constitution, from which, because they made it, they have the right to secede. Both of these positions are erroneous, and some of the arguments to prove them so have been anticipated.

The States severally have not retained their entire sovereignty. It has been shown that, in becoming parts of a nation, not members of a league, they surrendered many of their essential parts of sovereignty. The right to make treaties — declare war — levy taxes — exercise exclusive judicial and legislative powers — were all of them functions of sovereign power. The States, then, for all these purposes, were no longer sovereign. The allegiance of their citizens was transferred, in the first instance, to the Government of the United States: they became American citizens, and owed obedience to the Constitution of the United States, and to laws made in conformity with the powers it vested in Congress. This last position has not been, and cannot be denied. How, then, can that State be said to be sovereign and independent whose citizens owe obedience to laws not made by it, and whose magistrates are sworn to disregard those laws when they come in conflict with those passed by another? What shows conclusively that the States cannot be said to have reserved an undivided sovereignty, is, that they expressly ceded the right to punish treason, not treason against their separate power, but treason against the United States. Treason is an offence against *sovereignty*, and sovereignty must reside with the power to punish it. But the reserved rights of the States are not less sacred because they have, for their common interest, made the General Government a depository of these powers.

The unity of our political character (as has been shown for another purpose) commenced with its very existence. Under the royal government we had no separate character: our opposition to its oppressions began as UNITED COLONIES. We were the UNITED STATES under the confederation, and the name was perpetuated, and the Union rendered more perfect, by the Federal Constitution. In none of these stages did we consider ourselves in any other light than as forming one nation. Treaties and alliances were

made in the name of all. Troops were raised for the joint defence. How, then, with all these proofs, that under all changes of our position we had, for designated purposes and defined powers, created national governments — how is it, that the most perfect of those several modes of union should now be considered as a mere league that may be dissolved at pleasure? It is from an abuse of terms. Compact is used as synonymous with league, although the true term is not employed, because it would at once show the fallacy of the reasoning. It would not do to say that our Constitution was only a league, but it is labored to prove it a compact, (which in one sense it is,) and then to argue that as a league is a compact, every compact between nations must of course be a league, and that from such an engagement every sovereign power has the right to recede. But it has been shown that, in this sense, the States are not sovereign, and that even if they were, and the national Constitution had been formed by compact, there would be no right in any one State to exonerate itself from its obligations.

So obvious are the reasons which forbid this secession, that it is necessary only to allude to them. The Union was formed for the benefit of all. It was produced by mutual sacrifices of interests and opinions. Can those sacrifices be recalled? Can the States, who magnanimously surrendered their title to the territories of the west, recal the grant? Will the inhabitants of the inland States agree to pay the duties that may be imposed without their assent by those on the Atlantic or the Gulf, for their own benefit? Shall there be a free port in one State, and onerous duties in another? No one believes that any right exists in a single State to involve all the others in these and countless other evils contrary to the engagements solemnly made. Every one must see that the other States, in self defence, must oppose it at all hazards.

These are the alternatives that are presented by the Convention: a repeal of all the acts for raising revenue, leaving the Government without the means of support, or an acquiescence in the dissolution of our Union by the secession of one of its members. When the first was proposed, it was known that it could not be listened to for a moment. It was known, if force was applied to oppose the execution of the laws that it must be repelled by force; that Congress could not, without involving itself in disgrace and the country in ruin, accede to the proposition: and yet if this is not

done in a given day, or if any attempt is made to execute the laws, the State is, by the ordinance, declared to be out of the Union. The majority of a Convention assembled for the purpose, have dictated these terms, or rather this rejection of all terms, in the name of the people of South Carolina. It is true that the Governor of the State speaks of the submission of their grievances to a Convention of all the States, which, he says, they "sincerely and anxiously seek and desire." Yet this obvious and constitutional mode of obtaining the sense of the other States on the construction of the federal compact, and amending it, if necessary, has never been attempted by those who have urged the State on to this destructive measure. The State might have proposed the call for a General Convention to the other States; and Congress, if a sufficient number of them concurred, must have called it. But the first magistrate of South Carolina, when he expressed a hope that, "on a review by Congress and the functionaries of the General Government, of the merits of the controversy," such a Convention will be accorded to them, must have known that neither Congress, nor any functionary of the General Government, has authority to call such a Convention, unless it be demanded by two-thirds of the States. This suggestion, then, is another instance of the reckless inattention to the provisions of the Constitution with which this crisis has been madly hurried on; or of the attempt to persuade the people that a constitutional remedy had been sought and refused. If the Legislature of South Carolina "anxiously desire" a General Convention to consider their complaints, why have they not made application for it in the way the Constitution points out? The assertion that they "earnestly seek it" is completely negatived by the omission.

This, then, is the position in which we stand. A small majority of the citizens of one State in the Union have elected delegates to a State Convention; that Convention has ordained that all the revenue laws of the United States must be repealed, or that they are no longer a member of the Union. The Governor of that State has recommended to the Legislature the raising of an army to carry the secession into effect, and that he may be empowered to give clearances to vessels in the name of the State. No act of violent opposition to the laws has yet been committed, but such a state of things is hourly apprehended; and it is the intent of this instrument to proclaim, not only that the duty imposed on

me by the Constitution "to take care that the laws be faithfully executed," shall be performed to the extent of the powers already vested in me by law, or of such others as the wisdom of Congress shall devise and entrust to me for that purpose, but to warn the citizens of South Carolina who have been deluded into an opposition to the laws, of the danger they will incur by obedience to the illegal and disorganizing ordinance of the Convention; to exhort those who have refused to support it to persevere in their determination to uphold the Constitution and laws of their country; and to point out to all the perilous situation into which the good people of that State have been led, and that the course they are urged to pursue is one of ruin and disgrace to the very State whose rights they affect to support. . . .

Fellow citizens of the United States! The threat of unhallowed disunion — the names of those once respected, by whom it was uttered — the array of military force to support it — denote the approach of a crisis in our affairs, on which the continuance of our unexampled prosperity, our political existence, and perhaps that of all free governments, may depend. The conjuncture demanded a free, a full, and explicit enunciation, not only of my intentions, but of my principles of action; and, as the claim was asserted of a right by a State to annul the laws of the Union, and even to secede from it at pleasure, a frank exposition of my opinions in relation to the origin and form of our Government, and the construction I give to the instrument by which it was created, seemed to be proper. Having the fullest confidence in the justness of the legal and constitutional opinion of my duties, which has been expressed, I rely, with equal confidence, on your undivided support in my determination to execute the laws — to preserve the Union by all constitutional means — to arrest, if possible, by moderate but firm measures, the necessity of a recourse to force; and, if it be the will of Heaven, that the recurrence of its primeval curse on man for the shedding of a brother's blood should fall upon our land, that it be not called down by any offensive act on the part of the United States. . . .

No. 56. Act for Enforcing the Tariff

March 2, 1833

IN his annual message of Dec. 4, 1832, Jackson suggested that "the policy of protection must be ultimately limited to those articles of domestic manufacture which are indispensable to our safety in time of war"; and the annual report of the Secretary of the Treasury recommended a reduction of duties to a revenue basis. December 27 Verplanck of New York reported from the House Committee of Ways and Means a bill to reduce the tariff. January 16, 1833, Jackson sent to Congress his message on nullification, reviewing the progress of events in South Carolina, and asking for additional legislation to enforce the revenue laws. On the 21st a bill to enforce the collection of the revenue was reported in the Senate by Wilkins of Pennsylvania, from the Committee on the Judiciary. The tariff bill, sharply antagonized by protectionist members, was meantime making its way through the House. February 12 Clay introduced in the Senate a compromise tariff bill. On the 20th the Senate passed the "force bill" by a vote of 32 to 1, and on the following day took up Clay's bill. On the 25th the House recommitted its tariff bill, by a vote of 95 to 54, with instructions to report the compromise tariff in its place; on the 26th the latter passed the House, the vote being 119 to 85. The same day the Senate laid Clay's bill on the table, and March 1 passed the House bill, by a vote of 29 to 16. The "force bill" passed the House March 1, by a vote of 149 to 47. In the meantime, many State legislatures had passed resolutions against nullification. The South Carolina ordinance was to go into effect Feb. 1, but action was deferred pending Congressional settlement of the tariff. The passage of the compromise tariff was regarded as a signal victory by the nullifiers. The convention was summoned to meet March 11; on the 18th it dissolved, after repealing the ordinance of nullification and adopting an ordinance nullifying the "force bill."

REFERENCES. — *Text* in *U. S. Stat. at Large*, IV., 632–635. For the proceedings, see the *House and Senate Journals*, 22d Cong., 2d Sess.; for the discussions, see the *Cong. Debates*, or Benton's *Abridgment*, XII. *Niles's Register*, XLIII., contains abstracts of debates and numerous documents. The message of Jan. 16 is in the *Journals*. The speeches of Webster and Calhoun on the "force bill" are in the *Cong. Debates*, and also Calhoun's *Works* (ed. 1853), II., 197–309, and Webster's *Works* (ed. 1857), III., 448–505. The events are discussed at length in Benton's *Thirty Years' View*, I., chaps. 80–86; see also Houston, *op. cit.*; Curtis's *Webster*, I., chap. 19; Tyler's *Letters and Times of the Tylers*, I., chap. 14.

An Act further to provide for the collection of duties on imports.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, it shall become impracticable, in the judgment of the

President, to execute the revenue laws, and collect the duties on imports in the ordinary way, in any collection district, it shall and may be lawful for the President to direct that the custom-house for such district be established and kept in any secure place within some port or harbour of such district, either upon land or on board any vessel; and, in that case, it shall be the duty of the collector to reside at such place, and there to detain all vessels and cargoes arriving within the said district until the duties imposed on said cargoes, by law, be paid in cash, deducting interest according to existing laws; and in such cases it shall be unlawful to take the vessel or cargo from the custody of the proper officer of the customs, unless by process from some Court of the United States; and in case of any attempt otherwise to take such vessel or cargo by any force, or combination, or assemblage of persons too great to be overcome by the officers of the customs, it shall and may be lawful for the President of the United States, or such person or persons as he shall have empowered for that purpose, to employ such part of the land or naval forces, or militia of the United States, as may be deemed necessary for the purpose of preventing the removal of such vessel or cargo, and protecting the officers of the customs in retaining the custody thereof.

SEC. 2. *And be it further enacted*, That the jurisdiction of the circuit courts of the United States shall extend to all cases, in law or equity, arising under the revenue laws of the United States, for which other provisions are not already made by law; and if any person shall receive any injury to his person or property for or on account of any act by him done, under any law of the United States, for the protection of the revenue or the collection of duties on imports, he shall be entitled to maintain suit for damage therefor in the circuit court of the United States in the district wherein the party doing the injury may reside, or shall be found. And all property taken or detained by any officer or other person under authority of any revenue law of the United States, shall be irrepleviable, and shall be deemed to be in the custody of the law, and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof. And if any person shall dispossess or rescue, or attempt to dispossess or rescue, any property so taken or detained as aforesaid, or shall aid or assist therein, such person shall be deemed guilty of a misdemeanour, and shall be liable to such punishment as is provided

by the twenty-second section of the act for the punishment of certain crimes against the United States, approved the thirtieth day of April, Anno Domini one thousand seven hundred and ninety,* for the wilful obstruction or resistance of officers in the service of process.

SEC. 3. *And be it further enacted*, That in any case where suit or prosecution shall be commenced in a court of any state, against any officer of the United States, or other person, for or on account of any act done under the revenue laws of the United States, or under colour thereof, or for or on account of any right, authority, or title, set up or claimed by such officer, or other person under any such law of the United States, it shall be lawful for the defendant in such suit or prosecution, at any time before trial, upon a petition to the circuit court of the United States, in and for the district in which the defendant shall have been served with process, setting forth the nature of said suit or prosecution, and verifying the said petition by affidavit, together with a certificate signed by an attorney or counsellor at law of some court of record of the state in which such suit shall have been commenced, or of the United States, setting forth that, as counsel for the petitioner, he has examined the proceedings against him, and has carefully inquired into all the matters set forth in the petition, and that he believes the same to be true; which petition, affidavit and certificate, shall be presented to the said circuit court, if in session, and if not, to the clerk thereof, at his office, and shall be filed in said office, and the cause shall thereupon be entered on the docket of said court, and shall be thereafter proceeded in as a cause originally commenced in that court; and it shall be the duty of the clerk of said court, if the suit were commenced in the court below by summons, to issue a writ of certiorari to the state court, requiring said court to send to the said circuit court the record and proceedings in said cause; or if it were commenced by capias, he shall issue a writ of habeas corpus cum causa, a duplicate of which said writ shall be delivered to the clerk of the state court, or left at his office by the marshal of the district, or his deputy, or some person duly authorized thereto; and, thereupon it shall be the duty of the said state court to stay all further proceedings in such cause, and the said suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be

* *U. S. Stat. at Large*, I., 112, 117. — ED.

deemed and taken to be moved to the said circuit court, and any further proceedings, trial or judgment therein in the state court shall be wholly null and void. And if the defendant in any such suit be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the said cause according to the rules of law and the order of the circuit court, or of any judge thereof, in vacation. And all attachments made and all bail and other security given upon such suit, or prosecution, shall be and continue in like force and effect, as if the same suit or prosecution had proceeded to final judgment and execution in the state court. And if, upon the removal of any such suit, or prosecution, it shall be made to appear to the said circuit court that no copy of the record and proceedings therein, in the state court, can be obtained, it shall be lawful for said circuit court to allow and require the plaintiff to proceed *de novo*, and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said circuit court; and on failure of so proceeding, judgment of *non pros.* may be rendered against the plaintiff with costs for the defendant.

SEC. 4. *And be it further enacted*, That in any case in which any party is, or may be by law, entitled to copies of the record and proceedings in any suit or prosecution in any state court, to be used in any court of the United States, if the clerk of said state court shall, upon demand, and the payment or tender of the legal fees, refuse or neglect to deliver to such party certified copies of such record and proceedings, the court of the United States in which such record and proceedings may be needed, on proof, by affidavit, that the clerk of such state court has refused or neglected to deliver copies thereof, on demand as aforesaid, may direct and allow such record to be supplied by affidavit, or otherwise, as the circumstances of the case may require and allow; and, thereupon, such proceeding, trial, and judgment, may be had in the said court of the United States, and all such processes awarded, as if certified copies of such records and proceedings had been regularly before the said court.

SEC. 5. *And be it further enacted*, That whenever the President of the United States shall be officially informed, by the authorities of any state, or by a judge of any circuit or district

court of the United States, in the state, that, within the limits of such state, any law or laws of the United States, or the execution thereof, or of any process from the courts of the United States, is obstructed by the employment of military force, or by any other unlawful means, too great to be overcome by the ordinary course of judicial proceeding, or by the powers vested in the marshal by existing laws, it shall be lawful for him, the President of the United States, forthwith to issue his proclamation, declaring such fact or information, and requiring all such military and other force forthwith to disperse; and if at any time after issuing such proclamation, any such opposition or obstruction shall be made, in the manner or by the means aforesaid, the President shall be, and hereby is, authorized, promptly to employ such means to suppress the same, and to cause the said laws or process to be duly executed, as are authorized and provided in the cases therein mentioned by the act of the twenty-eighth of February, one thousand seven hundred and ninety-five, entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, repel invasions, and to repeal the act now in force for that purpose;" * and also, by the act of the third of March, one thousand eight hundred and seven, entitled "An act authorizing the employment of the land and naval forces of the United States in cases of insurrection." †

SEC. 6. *And be it further enacted*, That in any state where the jails are not allowed to be used for the imprisonment of persons arrested or committed under the laws of the United States, or where houses are not allowed to be so used, it shall and may be lawful for any marshal, under the direction of the judge of the United States for the proper district, to use other convenient places, within the limits of said state, and to make such other provision as he may deem expedient and necessary for that purpose.

SEC. 7. *And be it further enacted*, That either of the justices of the Supreme Court, or a judge of any district court of the United States, in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases of a prisoner or prisoners, in jail or confinement, where he or they shall be committed or confined on, or by any authority or

* *U. S. Stat. at Large*, I., 424, 425. — ED.
† *U. S. Stat. at Large*, II., 443. — ED.

law, for any act done, or omitted to be done, in pursuance of a law of the United States, or any order, process, or decree, of any judge or court thereof, any thing in any act of Congress to the contrary notwithstanding. And if any person or persons to whom such writ of habeas corpus may be directed, shall refuse to obey the same, or shall neglect or refuse to make return, or shall make a false return thereto, in addition to the remedies already given by law, he or they shall be deemed and taken to be guilty of a misdemeanor, and shall, on conviction before any court of competent jurisdiction, be punished by fine, not exceeding one thousand dollars, and by imprisonment, not exceeding six months, or by either, according to the nature and aggravation of the case.

SEC. 8. *And be it further enacted*, That the several provisions contained in the first and fifth sections of this act, shall be in force until the end of the next session of Congress, and no longer.

Removal of the Deposits

September, 1833

IN spite of evidence to the contrary, the conduct of the bank in the matter of the three per cent. stock had convinced Jackson that the institution was, by this time, thoroughly unsound. By the bank charter act the immediate control of the public deposits was vested in the Secretary of the Treasury, with the further provision that, in case of their removal from the bank, the reasons therefor should be laid before Congress. The removal of the deposits seems to have been discussed in administration circles soon after Jackson's second election; reports, however, did not become current until July, 1833. In May the Secretary of the Treasury, McLane, having declined to order the removal, was transferred to the Department of State, and Duane appointed in his place. September 18 Jackson read to the Cabinet an elaborate paper, drafted by Taney, the Attorney-General, setting forth at length his reasons for deciding upon the removal of the deposits after Oct. 1. Although Duane was opposed to the bank, he "refused to give the order and refused to resign"; Sept. 23 he was dismissed, and Taney became Secretary of the Treasury. In the meantime, Amos Kendall, a member of the "Kitchen Cabinet," had been sent to visit a number of Eastern cities and arrange with State banks to receive the public deposits. The first orders for removal were issued by Taney Sept. 26, and designated the Girard Bank of Philadelphia as a place of deposit. In October the Maine Bank of Portland and the Franklin Bank of Cincinnati were similarly designated.

REFERENCES. — *Text* of the paper read to the Cabinet in *Niles's Register*, XLV., 73-77; it is also in the *Cong. Globe*, 1833-35, I., pp. 59-62; of the

correspondence relative to the removal of the deposits, in *Senate Doc. 2*, 23d Cong., 1st Sess., pp. 32–36. The removal of the deposits was the principal subject of debate in the session of Congress which met Dec. 2, 1833; for references to documents, see later, under Nos. 62 and 64. See also Parton's *Jackson*, III., chaps. 36, 37; Sumner's *Jackson*, 291–304; Tyler's *Taney*, chap. 3; White's *Money and Banking*, 298–310; Benton's *Thirty Years' View*, I., chaps. 92–102. Numerous documents are collected in *Niles's Register*, XLV., XLVI.

No. 57. Jackson's Paper read to the Cabinet

September 18, 1833

Having carefully and anxiously considered all the facts and arguments, which have been submitted to him, relative to a removal of the public deposites from the bank of the United States, the president deems it his duty, to communicate in this manner to his cabinet the final conclusions of his own mind, and the reasons on which they are founded, in order to put them in durable form, and to prevent misconceptions.

[The paper then reviews the controversy with the bank, and particularly the efforts to obtain a renewal of the charter, and continues:]

The power of the secretary of the treasury over the deposites is *unqualified*. The provision that he shall report his reasons to congress, is no limitation. Had it not been inserted, he would have been responsible to congress, had he made a removal for any other than good reasons, and his responsibility now ceases, upon the rendition of sufficient ones to congress. The only object of the provision, is to make his reasons accessible to congress, and enable that body the more readily to judge of their soundness and purity, and thereupon to make such further provision by law as the legislative power may think proper in relation to the deposite of the public money. Those reasons may be very diversified. It was asserted by the secretary of the treasury without contradiction, as early as 1817, that he had power "to control the proceedings" of the bank of the United States at any moment, "by changing the deposites to the state banks," should it pursue an illiberal course towards those institutions; that "the secretary of the treasury will always be disposed to support the credit of the state banks, and will invariably direct transfers from the deposites of the public

money in aid of their legitimate exertions to maintain their credit," and he asserted a right to employ the state banks when the bank of the United States should refuse to receive on deposite the notes of such state banks as the public interest required should be received in payment of the public dues. In several instances he did transfer the public deposites to state banks, in the immediate vicinity of branches, for reasons connected only with the safety of those banks, the public convenience and the interests of the treasury.

If it was lawful for Mr. Crawford, the secretary of the treasury at that time, to act on these principles, it will be difficult to discover any sound reason against the application of similar principles in still stronger cases. And it is a matter of surprise that a power which, in the infancy of the bank, was freely asserted as one of the ordinary and familiar duties of the secretary of the treasury, should now be gravely questioned, and attempts made to excite and alarm the public mind as if some new and unheard of power was about to be usurped by the executive branch of the government.

It is but a little more than two and a half years to the termination of the charter of the present bank. It is considered as the decision of the country that it shall then cease to exist, and no man, the president believes, has reasonable ground for expectation that any other bank of the United States will be created by Congress. . . . It is obvious that any new system which may be substituted in the place of the bank of the United States, could not be suddenly carried into effect on the termination of its existence without serious inconvenience to the government and the people. Its vast amount of notes are then to be redeemed and withdrawn from circulation, and its immense debt collected. These operations must be gradual, otherwise much suffering and distress will be brought upon the community. It ought to be not a work of months only, but of years, and the president thinks it cannot, with due attention to the interests of the people, be longer postponed. It is safer to begin it too soon than to delay it too long.

It is for the wisdom of Congress to decide upon the best substitute to be adopted in the place of the bank of the United States; and the president would have felt himself relieved from a heavy and painful responsibility if in the charter of the bank, congress had received to itself the power of directing at its pleasure, the public money to be elsewhere deposited, and had not devolved that

power exclusively on one of the executive departments. . . . But as the president presumes that the charter to the bank is to be considered as a contract on the part of the government, it is not now in the power of congress to disregard its stipulations; and by the terms of that contract the public money is to be deposited in the bank, during the continuance of its charter, unless the secretary of the treasury shall otherwise direct. Unless, therefore, the secretary of the treasury first acts, congress have no power over the subject, for they cannot add a new clause to the charter or strike one out of it without the consent of the bank; and consequently the public money must remain in that institution to the last hour of its existence, unless the secretary of the treasury shall remove it at an earlier day.

The responsibility is thus thrown upon the executive branch of the government, of deciding how long before the expiration of the charter, the public interests will require the deposites to be placed elsewhere. . . . and it being the duty of one of the executive departments to decide in the first instance, subject to the future action of the legislative power, whether the public deposites shall remain in the bank of the United States until the end of its existence, or be withdrawn some time before, the president has felt himself bound to examine the question carefully and deliberately in order to make up his judgment on the subject: and in his opinion the near approach of the termination of the charter, and the public considerations heretofore mentioned, are of themselves amply sufficient to justify the removal of the deposites without reference to the conduct of the bank, or their safety in its keeping.

But in the conduct of the bank may be found other reasons very imperative in their character, and which require prompt action. Developments have been made from time to time of its faithlessness as a public agent, its misapplication of public funds, its interference in elections, its efforts, by the machinery of committees, to deprive the government directors of a full knowledge of its concerns, and above all, its flagrant misconduct as recently and unexpectedly disclosed in placing all the funds of the bank, including the money of the government, at the disposition of the president of the bank, as means of operating upon public opinion, and procuring a new charter, without requiring him to render a voucher for their disbursement. A brief recapitulation of facts which justify these charges and which have come to the knowledge of the public and the presi-

dent, will, he thinks, remove every reasonable doubt as to the course which it is now the duty of the president to pursue.

[An extended examination of these various charges here follows.]

It has been alleged by some as an objection to the removal of the deposites, that the bank has the power, and in that event will have the disposition, to destroy the state banks employed by the government, and bring distress upon the country. It has been the fortune of the president to encounter dangers which were represented as equally alarming, and he has seen them vanish before resolution and energy. . . . The president verily believes the bank has not the power to produce the calamities its friends threaten. The funds of the government will not be annihilated by being transferred. They will immediately be issued for the benefit of trade, and if the bank of the United States curtails its loans, the state banks, strengthened by the public deposites, will extend theirs. What comes in through one bank, will go out through others, and the equilibrium will be preserved. Should the bank, for the mere purpose of producing distress, press its debtors more heavily than some of them can bear, the consequences will recoil upon itself, and in the attempts to embarrass the country, it will only bring loss and ruin upon the holders of its own stock. But if the president believed the bank possessed all the power which has been attributed to it, his determination would only be rendered the more inflexible. If, indeed, this corporation now holds in its hands the happiness and prosperity of the American people, it is high time to take the alarm. If the despotism be already upon us, and our only safety is in the mercy of the despot, recent developments in relation to his designs and the means he employs, show how necessary it is to shake it off. The struggle can never come with less distress to the people, or under more favorable auspices than at the present moment.

All doubts as to the willingness of state banks to undertake the service of the government, to the same extent, and on the same terms, as it is now performed by the banks [bank] of the United States, is put to rest by the report of the agent recently employed to collect information; and from that willingness, their own safety in the operation may be confidently inferred. Knowing their own resources better than they can be known by others, it is not to be supposed that they would be willing to place themselves in a situation which they cannot occupy without danger of annihilation

or embarrassment. The only consideration applies to the safety of the public funds, if deposited in those institutions. And when it is seen that the directors of many of them are not only willing to pledge the character and capital of the corporations in giving success to this measure, but also their own property and reputation, we cannot doubt that they, at least, believe the public deposites would be safe in their management. The president thinks that these facts and circumstances afford as strong a guarantee as can be had in human affairs, for the safety of the public funds, and the practicability of a new system of collection and disbursement through the agency of the state banks.

From all these considerations the president thinks that the state banks ought immediately to be employed in the collection and disbursement of the public revenue, and the funds now in the bank of the United States drawn out with all convenient despatch. . . .

* * * * * * * * * * *

In conclusion the president must be permitted to remark that he looks upon the pending question as of higher consideration than the mere transfer of a sum of money from one bank to another. Its decision may affect the character of our government for ages to come. Should the bank be suffered longer to use the public moneys, in the accomplishment of its purposes, with the proofs of its faithlessness and corruption before our eyes, the patriotic among our citizens will despair of success in struggling against its power; and we shall be responsible for entailing it upon our country forever. Viewing it as a question of transcendant importance, both in the principles and consequences it involves, the president could not, in justice to the responsibility which he owes to the country, refrain from pressing upon the secretary of the treasury, his view of the considerations which impel to immediate action. Upon him has been devolved by the constitution and the suffrages of the American people, the duty of superintending the operation of the executive departments of the government, and seeing that the laws are faithfully executed. In the performance of this high trust, it is his undoubted right to express to those whom the laws and his own choice have made his associates in the administration of the government, his opinion of their duties under circumstances as they arise. It is this right which he now exercises. Far be it from him to expect or require, that any member of the cabinet

should, at his request, order or dictation, do any act which he believes unlawful, or in his conscience condemns. From them and from his fellow citizens in general, he desires only that aid and support, which their reason approves and their conscience sanctions.

In the remarks he has made on this all important question, he trusts the secretary of the treasury will see only the frank and respectful declarations of the opinions which the president has formed on a measure of great national interest, deeply affecting the character and usefulness of his administration; and not a spirit of dictation, which the president would be as careful to avoid, as ready to resist. Happy will he be, if the facts now disclosed produce uniformity of opinion and unity of action among the members of the administration.

The president again repeats that he begs his cabinet to consider the proposed measure as his own, in the support of which he shall require no one of them to make a sacrifice of opinion or principle. Its responsibility has been assumed, after the most mature deliberation and reflection, as necessary to preserve the morals of the people, the freedom of the press and the purity of the elective franchise, without which all will unite in saying that the blood and treasure expended by our forefathers in the establishment of our happy system of government will have been vain and fruitless. Under these convictions, he feels that a measure so important to the American people cannot be commenced too soon; and he therefore names the first day of October next, as a period proper for the change of the deposites, or sooner, provided the necessary arrangements with the state banks can be made.

ANDREW JACKSON.

No. 58. Taney's Instructions to the Collector at Philadelphia

September 26, 1833

TREASURY DEPARTMENT,
September 26, 1833.

SIR: Believing that the public interest requires that the Bank of the United States should cease to be the depository of the

money of the United States, I have determined to use the State banks as places of deposites; and have selected for that purpose, in the city of Philadelphia, the Girard Bank.

You will, therefore, present the enclosed draft of a contract to that bank; and, upon the execution of the contract, you will forward it to this department. You will ask the aid of the District Attorney of the United States, who will see that the contract is executed in due form under the corporate seal. The contract being executed, you will then deposite all of the public money which may come to your hands after the thirtieth day of this present month of September, in the bank above mentioned, until the further order of this department. You will also deposite in the said bank, for collection, all the bonds which may hereafter be taken for the payment of duties.

You will also call on the Bank of the United States at Philadelphia, and receive from it all bonds hereafter given to the United States, which are payable on or after the first day of October next, and deposite them for collection in the aforesaid State bank. I send you, herewith, an order on the Bank of the United States for that purpose.

When the contract shall have been executed by the State bank, you will forward the enclosed letters to the collectors, at Bridgetown, Burlington, Great Egg harbor, and Little Egg harbor, who have heretofore deposited the money received by them in the Bank of the United States.

You will continue to deposite as usual, in the Bank of the United States, until the thirtieth of this present month of September, inclusive.

You will keep a copy of the contract executed by the bank, and, from time to time, advise this department of any thing you may deem material to the public interest, connected with the change of the deposites.

Your obedient servant,

R. B. TANEY,
Secretary of the Treasury.

To JAMES N. BARKER, ESQ.,
Collector, Philadelphia.

No. 59. Taney to the Girard Bank

September 26, 1833

TREASURY DEPARTMENT,
September 26, 1833.

SIR: The Girard Bank has been selected by this department as the depository of the public money collected in Philadelphia and its vicinity; and the collector at Philadelphia will hand you the form of a contract proposed to be executed, with a copy of his instructions from this department.

In selecting your institution as one of the fiscal agents of the Government, I not only rely on its solidity and established character, as affording a sufficient guaranty for the safety of the public money intrusted to its keeping; but I confide also in its disposition to adopt the most liberal course, which circumstances will admit, towards other moneyed institutions generally, and particularly to those in the city of Philadelphia.

The deposites of public money will enable you to afford increased facilities to commerce, and to extend your accommodation to individuals; and as the duties which are payable to the Government arise from the business and enterprise of the merchants engaged in foreign trade, it is but reasonable that they should be preferred in the additional accommodation which the public deposites will enable your institution to give, whenever it can be done without injustice to the claims of other classes of the community.

I am, very respectfully,

Your obedient servant,

R. B. TANEY,
Secretary of Treasury.

To the PRESIDENT OF THE GIRARD BANK,
Philadelphia.

No. 60. Taney to the Bank of the United States

September 26, 1833

TREASURY DEPARTMENT,
September 26, 1833.

SIR: You will deliver to the collector at Philadelphia all bonds to the United States, payable on or after the first of October next, which may be in your possession on the receipt of this order.

I am, very respectfully,

Your obedient servant,

R. B. TANEY,
Secretary of the Treasury.

NICHOLAS BIDDLE, ESQ.,
President of the Bank of the United States, Philadelphia.

No. 61. Contract between the Girard Bank and the United States

September 28, 1833

1st. The said bank agrees to receive, and enter to the credit of the Treasurer of the United States, all sums of money offered to be deposited on account of the United States, whether offered in gold or silver coin, in notes of the Bank of the United States or branches, in notes of any bank which are convertible into coin in its immediate vicinity, or in notes of any bank which it is, for the time being, in the habit of receiving.

2. If the deposite in said bank shall exceed one-half of its capital stock actually paid in, it is agreed that collateral security, satisfactory to the Secretary of the Treasury, shall be given for its safe keeping and faithful disbursement: Provided, that, if the said Secretary shall at any time deem it necessary, the bank agrees to give collateral security when the deposite shall not equal one-half the capital.

3. The said bank agrees to make weekly returns of its entire condition to the Secretary of the Treasury, and to the Treasurer of the United States of the state of his account, and to submit its books and transactions to a critical examination by the Secretary, or any agent duly authorized by him, whenever he shall require it.

This examination may extend to all the books and accounts, to the cash on hand, and to all the acts and concerns of the bank, except the current accounts of individuals; or as far as is admissible without a violation of the bank charter.

4. The said bank agrees to pay, out of the deposite on hand, all warrants or drafts which may be drawn upon it by the Treasurer of the United States, and to transfer any portion of that deposite to any other bank or banks employed by the Government within the United States, whenever the Secretary of the Treasury may require it, without charge to the Government for transportation or difference of exchange, commission, or any thing else whatever; but the Secretary of the Treasury shall give a reasonable notice of the time when such transfer will be required.

5. The said bank agrees to render to the Government, whenever required by the proper authority, all or any portion of the services now performed by the Bank of the United States, or which might be lawfully required of it in the vicinity of said contracting bank.

6. If the Secretary of the Treasury shall think proper to employ an agent or agents to examine and report upon the accounts and condition of the banks in the service of the Government, or any of them, the said bank agrees to pay an equitable proportion of his or their expenses and compensation, according to such apportionment as may be made by the said Secretary.

7. Whenever required by the Secretary of the Treasury, the said bank agrees to furnish, with all convenient despatch, bills of exchange on London, payable at such sight as may be required, at the usual market price for the time being, without commission or advance for the profit of said bank, or any charge whatsoever beyond the actual cost; the payment of said bills to be guaranteed by said bank.

8. It is agreed that the Secretary of the Treasury may discharge the said bank from the service of the Government whenever, in his opinion, the public interest may require it. In witness whereof, the said The Girard Bank in the city of Philadelphia, has caused to be

affixed its corporate seal, attested by the signatures of its president and cashier, on the day and year first above written.

[L.S.] JAS. SCHOTT, *President.*
WM. D. LEWIS, *Cashier.*

No. 62. The Bank Controversy: Jackson's Fifth Annual Message

December 3, 1833

THE affairs of the bank furnished the chief subject for discussion in the first session of the twenty-third Congress. There was a strong majority in favor of the Administration in the House, while in the Senate the majority was in favor of the bank. The annual message of Dec. 3, 1833, gave Jackson's version of the reasons for removing the deposits. Taney made an elaborate statement of reasons in a special communication of Dec. 4. A report submitted March 4, by Polk of Tennessee, from the House Committee of Ways and Means, against the recharter of the bank and the restoration of the deposits, and in favor of the use of State banks as places of deposit, was debated until April 4, when the resolutions accompanying the report were agreed to. A select committee to investigate the affairs of the bank reported May 22: the minority report sustained the bank, while the majority report "complained that the powers of the committee had been so restricted by the bank that a full investigation had been impossible." Thirty thousand extra copies of the report were ordered printed. A bill regulating the United States deposits in local banks, reported by Polk April 22, passed the House June 24, by a vote of 112 to 90, but was laid on the table in the Senate. The proceedings of the Senate in this session are noticed later [No. 64], in connection with Jackson's protest against the resolution of censure.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 23d Cong., 1st Sess.; the extract here given is from the *Senate Journal*, 15–17. For the proceedings of the House, see the *Journal;* for the debates, see *Cong. Debates*, or *Cong. Globe*, or Benton's *Abridgment*, XII. Taney's report of Dec. 4, with accompanying documents, is *Senate Doc. 2*, also *House Exec. Doc. 2*. The House and Senate documents contain a great number of memorials for and against the removal of the deposits. For Polk's report of March 4, see *House Rep. 312;* for Binney's minority report, see *House Rep. 313*. Polk's report of April 22, on the mode of selecting the deposit banks, is *House Rep. 422:* Taney's views are included. Thomas's report of May 22, from the select committee to investigate the affairs of the bank, is *House Rep. 481*.

Since the last adjournment of Congress, the Secretary of the Treasury has directed the money of the United States to be

deposited in certain State banks designated by him, and he will immediately lay before you his reasons for this direction. I concur with him entirely in the view he has taken of the subject; and, some months before the removal, I urged upon the department the propriety of taking that step. The near approach of the day on which the charter will expire, as well as the conduct of the bank, appeared to me to call for this measure upon the high considerations of public interest and public duty. The extent of its misconduct, however, although known to be great, was not at that time fully developed by proof. It was not until late in the month of August, that I received from the Government directors an official report, establishing beyond question that this great and powerful institution had been actively engaged in attempting to influence the elections of the public officers by means of its money; and that, in violation of the express provisions of its charter, it had, by a formal resolution, placed its funds at the disposition of its President, to be employed in sustaining the political power of the bank. A copy of this resolution is contained in the report of the Government directors, before referred to; and however the object may be disguised by cautious language, no one can doubt that this money was in truth intended for electioneering purposes, and the particular uses to which it was proved to have been applied, abundantly show that it was so understood. Not only was the evidence complete as to the past application of the money and power of the bank to electioneering purposes, but that the resolution of the Board of Directors authorized the same course to be pursued in future.

It being thus established, by unquestionable proof, that the Bank of the United States was converted into a permanent electioneering engine, it appeared to me that the path of duty which the Executive department of the Government ought to pursue, was not doubtful. As by the terms of the bank charter, no officer but the Secretary of the Treasury could remove the deposites, it seemed to me that this authority ought to be at once exerted to deprive that great corporation of the support and countenance of the Government in such an use of its funds, and such an exertion of its power. In this point of the case, the question is distinctly presented, whether the people of the United States are to govern through representatives chosen by their unbiassed suffrages, or whether the money and power of a great corporation are to be

secretly exerted to influence their judgment, and control their decisions. It must now be determined whether the bank is to have its candidates for all offices in the country from the highest to the lowest, or whether candidates on both sides of political questions shall be brought forward as heretofore, and supported by the usual means.

At this time, the efforts of the bank to control public opinion, through the distresses of some and the fears of others, are equally apparent, and, if possible, more objectionable. By a curtailment of its accommodations, more rapid than any emergency requires, and even while it retains specie to an almost unprecedented amount in its vaults, it is attempting to produce great embarrassment in one portion of the community, while, through presses known to have been sustained by its money, it attempts, by unfounded alarms, to create a panic in all.

These are the means by which it seems to expect that it can force a restoration of the deposites, and, as a necessary consequence, extort from Congress a renewal of its charter. I am happy to know that, through the good sense of our people, the effort to get up a panic has hitherto failed, and that, through the increased accommodations which the State banks have been enabled to afford, no public distress has followed the exertions of the bank; and it cannot be doubted that the exercise of its power, and the expenditure of its money, as well as its efforts to spread groundless alarm, will be met, and rebuked as they deserve. In my own sphere of duty, I should feel myself called on by the facts disclosed, to order a *scire facias* against the bank, with a view to put an end to the chartered rights it has so palpably violated, were it not that the charter itself will expire as soon as a decision would probably be obtained from the court of last resort.

I called the attention of Congress to this subject in my last annual message, and informed them that such measures as were within the reach of the Secretary of the Treasury, had been taken to enable him to judge whether the public deposites in the Bank of the United States were entirely safe; but that as his single powers might be inadequate to the object, I recommended the subject to Congress as worthy of their serious investigation; declaring it, as my opinion, that an inquiry into the transactions of that institution, embracing the branches as well as the principal bank, was called for by the credit which was given throughout the

country to many serious charges impeaching their character, and which, if true, might justly excite the apprehension that they were no longer a safe depository for the public money. The extent to which the examination, thus recommended, was gone into, is spread upon your journals, and is too well known to require to be stated. Such as was made, resulted in a report from a majority of the Committee of Ways and Means touching certain specified points only, concluding with a resolution that the Government deposites might safely be continued in the Bank of the United States. This resolution was adopted at the close of the session by the vote of a majority of the House of Representatives.

Although I may not always be able to concur in the views of the public interest, or the duties of its agents, which may be taken by the other departments of the Government, or either of its branches, I am, notwithstanding, wholly incapable of receiving, otherwise than with the most sincere respect, all opinions or suggestions proceeding from such a source; and in respect to none am I more inclined to do so than to the House of Representatives. But it will be seen from the brief views at this time taken of the subject by myself, as well as the more ample ones presented by the Secretary of the Treasury, that the change in the deposites which has been ordered, has been deemed to be called for by considerations which are not affected by the proceedings referred to, and which, if correctly viewed by that department, rendered its act a matter of imperious duty.

Coming, as you do for the most part, immediately from the people and the States, by election, and possessing the fullest opportunity to know their sentiments, the present Congress will be sincerely solicitous to carry into full and fair effect the will of their constituents in regard to this institution. It will be for those in whose behalf we all act, to decide whether the Executive Department of the Government, in the steps which it has taken on this subject, has been found in the line of its duty.

No. 63. Constitution of the American Anti-Slavery Society

December 4, 1833

A CALL for a convention, to meet Dec. 4, 1833, at Philadelphia, to form an American Anti-Slavery Society, was issued Oct. 29, over the signatures of Arthur Tappan, Joshua Leavitt, and Elizur Wright, Jr., officers of the New York City Anti-Slavery Society. About sixty delegates assembled at the appointed time, and adopted a constitution, together with a "Declaration of Sentiments," the original draft of the latter being drawn by William Lloyd Garrison.

REFERENCES.— *Text* in a pamphlet entitled *Platform of the American Anti-Slavery Society and its Auxiliaries* (New York, 1855), pp. 3, 4. The fullest account of the convention is in *William Lloyd Garrison: Story of his Life told by his Children*, I., 392–415, where is also a copy of the Declaration. The Declaration is also in the pamphlet above cited. For Whittier's account, see *Atlantic Monthly*, XXXIII., 166–172 (February, 1874).

Whereas the Most High God "hath made of one blood all nations of men to dwell on all the face of the earth," and hath commanded them to love their neighbors as themselves; and whereas, our National Existence is based upon this principle, as recognized in the Declaration of Independence, "that all mankind are created equal, and that they are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness"; and whereas, after the lapse of nearly sixty years, since the faith and honor of the American people were pledged to this avowal, before Almighty God and the World, nearly one-sixth part of the nation are held in bondage by their fellow-citizens; and whereas, Slavery is contrary to the principles of natural justice, of our republican form of government, and of the Christian religion, and is destructive of the prosperity of the country, while it is endangering the peace, union, and liberties of the States; and whereas, we believe it the duty and interest of the masters immediately to emancipate their slaves, and that no scheme of expatriation, either voluntary or by compulsion, can remove this great and increasing evil; and whereas, we believe that it is practicable, by appeals to the consciences, hearts, and interests of the people, to awaken a public sentiment throughout the nation that will be opposed to the continuance of Slavery in any part of the Republic, and by effecting the speedy abolition of Slavery, prevent

a general convulsion; and whereas, we believe we owe it to the oppressed, to our fellow-citizens who hold slaves, to our whole country, to posterity, and to God, to do all that is lawfully in our power to bring about the extinction of Slavery, we do hereby agree, with a prayerful reliance on the Divine aid, to form ourselves into a society, to be governed by the following Constitution: —

ARTICLE I. — This Society shall be called the AMERICAN ANTI-SLAVERY SOCIETY.

ARTICLE II. — The objects of this Society are the entire abolition of Slavery in the United States. While it admits that each State, in which Slavery exists, has, by the Constitution of the United States, the exclusive right to *legislate* in regard to its abolition in said State, it shall aim to convince all our fellow-citizens, by arguments addressed to their understandings and consciences, that Slaveholding is a heinous crime in the sight of God, and that the duty, safety, and best interests of all concerned, require its *immediate abandonment*, without expatriation. The Society will also endeavor, in a constitutional way, to influence Congress to put an end to the domestic Slave trade, and to abolish Slavery in all those portions of our common country which come under its control, especially in the District of Columbia, — and likewise to prevent the extension of it to any State that may be hereafter admitted to the Union.

ARTICLE III. — This Society shall aim to elevate the character and condition of the people of color, by encouraging their intellectual, moral, and religious improvement, and by removing public prejudice, that thus they may, according to their intellectual and moral worth, share an equality with the whites, of civil and religious privileges; but this Society will never, in any way, countenance the oppressed in vindicating their rights by resorting to physical force.

ARTICLE IV. — Any person who consents to the principles of this Constitution, who contributes to the funds of this Society, and is not a Slaveholder, may be a member of this Society, and shall be entitled to vote at the meetings.

[The remaining six articles are purely formal.]

No. 64. Jackson's Protest against the Senate Resolution of Censure

April 15, 1834

TANEY'S message of Dec. 4, 1833, was taken up in the Senate Dec. 11, and, by a vote of 23 to 18, a copy of the paper read to the Cabinet was called for. Although the paper had been published, the request of the Senate was refused. On the 26th the consideration of Taney's message was resumed, and Clay offered two resolutions, the first disapproving the conduct of the President in the removal of Duane, and the second declaring Taney's statement of reasons for removing the deposits insufficient. The resolutions formed the chief subject of debate in the Senate for the next three months. December 27 Jackson's nominations of directors of the bank were rejected, by a vote of 20 to 25. A motion by Benton, Jan. 8, to summon Biddle before the Senate for examination, was voted down, 12 to 34. A report from the Committee on Finance, on the removal of the deposits, and recommending the adoption of Clay's second resolution, was submitted by Webster Feb. 5. March 18 Webster moved for leave to bring in a bill to extend for six years the charter of the bank. The motion was debated until the 25th, and then, by a vote of 24 to 15, rejected. March 28 Clay's first resolution, and the resolution reported by the Committee on Finance, were agreed to, in the following form: 1. "*Resolved*, That the reasons assigned by the Secretary of the Treasury for the removal of the money of the United States deposited in the Bank of the United States and its branches, communicated to Congress on the 4th day of December, 1833, are unsatisfactory and insufficient;" agreed to, 28 to 18. 2. "*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;" agreed to, 26 to 20.

April 15, in the message from which extracts are given below, Jackson protested against the action of the Senate. The message reached the Senate on the 17th. Poindexter at once moved that it be not received. Debate on this motion was prolonged until May 7, when the following resolutions were agreed to: 1. "*Resolved*, That the protest communicated to the Senate on the 17th ultimo, 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;" agreed to, 27 to 16. 2. "*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 public 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;" agreed to, 27 to 16. 3. "*Resolved*, That the aforesaid protest is a breach of the privileges of the Senate, and that it be not entered on the Journals;" agreed to, 27 to 16.

4. "*Resolved*, That the President of the United States has no right to send a protest to the Senate against any of its proceedings;" agreed to, 27 to 16. June 13 the House of Representatives, by a vote of 114 to 101, laid the resolutions on the table. The nominations of directors of the bank had been renewed March 11; May 1 a report submitted by Tyler, from the Committee on Finance, recommending their rejection, was accepted by the Senate, the vote being 11 to 30. June 24 the nomination of Taney to be Secretary of the Treasury was also rejected, 18 to 28.

REFERENCES. — *Text* in *Niles's Register*, XLVI., 138–144. The proceedings of the Senate are in the *Journal*, 23d Cong., 1st Sess.; for the discussions, see the *Cong. Debates*, or *Cong. Globe*, or Benton's *Abridgment*, XII. Calhoun's speech of May 6 is in his *Works* (ed. 1853), II., 405–425; Webster's speech of May 7 is in his *Works*, IV., 103–151. The state of public feeling may be gathered from *Niles's Register*. See also Benton's *Thirty Years' View*, I., chap. 103. Webster's report, Feb. 5, on the removal of the deposits, is in his *Works* (ed. 1857), IV., 50–81; remarks on various occasions on the same subject, *ib.*, III., 506–551; IV., 3–49; speech of March 18, on extension of the bank charter, *ib.*, IV., 82–102. Calhoun's speech of Jan. 13, on the removal of the deposits, is in his *Works* (ed. 1853), II., 309–343; speech on Webster's proposition to recharter, *ib.*, II., 344–376. For Clay's speeches on the removal of the deposits, see his *Life and Speeches* (ed. 1844), II., 145–207.

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 govern-

ment, 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 the purpose of 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 unauthorised 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 afore-

said 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 U. 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 coequal 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. . . .

Tested by these principles, the resolution of the senate is wholly unauthorised 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 responsi-

bility; 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 authorised and necessarily required to consider and decide upon the conduct of the president, or any other public officer. Indirectly however, as has already been 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 indispensible 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 authorise 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. . . .

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 offence. 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 offence 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 authorise a judgment of guilty on an impeachment, were numerous enough to carry that resolution.

That the resolution does not expressly alledge 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 terpitude of the act. In the absence of any such excuse, or palliation, there is room only 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 offence: but in no part of this proceeding have the directions of the constitution been observed.

[The provisions of the Constitution regarding impeachment are then considered at length.]

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 offence — "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 defence 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 believe 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. . . .

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. . . .

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.

[An elaborate survey and defence of the conduct of the President in the matter of the removal of the deposits here follows.]

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 coequal 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 of 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 can not close this substitute for that defence 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 defence 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 their 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 an 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 proceedings denounced in that resolution, 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.

No. 65. The Bank Controversy: Jackson's Sixth Annual Message

December 2, 1834

THE second session of the twenty-third Congress was not fruitful in legislation of any sort. December 18 Tyler, from the Senate Committee on Finance, made a report on the affairs and conduct of the bank, as provided for at the previous session. A motion by Benton, Jan. 19, 1835, to recommit the report, with instructions "to renew and complete the inquiries," was laid on the table; on March 3 the committee was discharged from further consideration of the subject. A bill to regulate the deposits was reported by Calhoun Feb. 9, and passed the Senate Feb. 27, by a vote of 28 to 12; a report was made on it in the House March 2, but no further action was taken. A bill for the same purpose was reported in the House Dec. 16, and discussed at length from Feb. 10 to 19, but failed to pass. A bill authorizing the sale of the United States bank stock was also introduced.

REFERENCES. — *Text* of the message in *House and Senate Journals*, 23d Cong., 2d Sess.; the extract here given is from the *Senate Journal*, 15–18. The discussions may be followed in the *Cong. Debates*, or *Cong. Globe*, or Benton's *Abridgment*, XII. For the report of the Secretary of the Treasury, Dec. 12, on the system of keeping and disbursing the public money, see *Senate Doc. 13*. Tyler's report, Dec. 18, is *Senate Doc. 17*. Webster's speech of Feb. 26, on the regulation of the deposits, is in his *Works* (ed. 1857), IV., 200–204. Calhoun's report on executive patronage, Feb. 9, is *Senate Doc. 108;* it is also in his *Works* (ed. 1857), V., 148–190.

Circumstances make it my duty to call the attention of Congress to the Bank of the United States. Created for the conven-

ience of the Government, that institution has become the scourge of the people. Its interference to postpone the payment of a portion of the national debt, that it might retain the public money appropriated for that purpose, to strengthen it in a political contest — the extraordinary extension and contraction of its accommodations to the community — its corrupt and partisan loans — its exclusion of the public directors from a knowledge of its most important proceedings — the unlimited authority conferred on the president to expend its funds in hiring writers, and procuring the execution of printing, and the use made of that authority — the retention of the pension money and books after the selection of new agents — the groundless claim to heavy damages in consequence of the protest of the bill drawn on the French Government — have, through various channels, been laid before Congress. Immediately after the close of the last session, the bank, through its president, announced its ability and readiness to abandon the system of unparalleled curtailment, and the interruption of domestic exchanges, which it had practised upon from the 1st of August, 1833, to the 30th of June, 1834, and to extend its accommodations to the community. The grounds assumed in this annunciation amounted to an acknowledgment that the curtailment, in the extent to which it had been carried, was not necessary to the safety of the bank, and had been persisted in merely to induce Congress to grant the prayer of the bank in its memorial relative to the removal of the deposites, and to give it a new charter. They were substantially a confession that all the real distresses which individuals and the country had endured for the preceding six or eight months, had been needlessly produced by it, with the view of affecting, through the sufferings of the people, the legislative action of Congress. It is a subject of congratulation that Congress and the country had the virtue and firmness to bear the infliction; that the energies of our people soon found relief from this wanton tyranny, in vast importations of the precious metals from almost every part of the world; and that, at the close of this tremendous effort to control our Government, the bank found itself powerless, and no longer able to loan out its surplus means. The community had learned to manage its affairs without its assistance, and trade had already found new auxiliaries; so that, on the first of October last, the extraordinary spectacle was presented of a national bank, more than one half of whose

capital was either lying unproductive in its vaults, or in the hands of foreign bankers.

To the needless distresses brought on the country during the last session of Congress, has since been added the open seizure of the dividends on the public stock, to the amount of one hundred and seventy thousand and forty-one dollars, under pretence of paying damages, cost, and interest, upon the protested French bill.* This sum constituted a portion of the estimated revenues for the year 1834, upon which the appropriations made by Congress were based. It would as soon have been expected that our collectors would seize on the customs, or the receivers of our land offices on the moneys arising from the sale of public lands, under pretences of claims against the United States, as that the bank would have retained the dividends. Indeed, if the principle be established that any one who chooses to set up a claim against the United States, may, without authority of law, seize on the public property or money wherever he can find it, to pay such claim, there will remain no assurance that our revenue will reach the Treasury, or that it will be applied after the appropriation to the purposes designated in the law. The paymasters of our army, and the pursers of our navy, may, under like pretences, apply to their own use moneys appropriated to set in motion the public force, and in time of war leave the country without defence. This measure resorted to by the bank is disorganizing and revolutionary, and, if generally resorted to by private citizens in like cases, would fill the land with anarchy and violence.

It is a constitutional provision, "that no money shall be drawn from the Treasury but in consequence of appropriations made by law." The palpable object of this provision is, to prevent the expenditure of the public money for any purpose whatsoever which shall not have been first approved by the Representatives of the people and the States in Congress assembled. It vests the power of declaring for what purposes the public money shall be expended in the Legislative Department of the Government, to the exclusion of the Executive and Judicial; and it is not within the constitutional authority of either of those departments to pay it away without law, or to sanction its payment. According to this plain constitutional provision, the claim of the bank can never be paid without an appropriation by act of Congress. But the

* For a concise account of this transaction, see Sumner's Jackson, 295, 296. —ED.

bank has never asked for an appropriation. It attempts to defeat the provision of the constitution, and obtain payment without an act of Congress. Instead of awaiting an appropriation passed by both Houses, and approved by the President, it makes an appropriation for itself, and invites an appeal to the judiciary to sanction it. That the money had not technically been paid into the Treasury, does not affect the principle intended to be established by the Constitution. The Executive and the Judiciary have as little right to appropriate and expend the public money without authority of law, before it is placed to the credit of the Treasury, as to take it from the Treasury. In the annual report of the Secretary of the Treasury, and in his correspondence with the President of the bank, and the opinions of the Attorney General accompanying it, you will find a further examination of the claims of the bank, and the course it has pursued.

It seems due to the safety of the public funds remaining in that bank, and to the honor of the American people, that measures be taken to separate the Government entirely from an institution so mischievous to the public prosperity, and so regardless of the Constitution and laws. By transferring the public deposites, by appointing other pension agents, as far as it had the power, by ordering the discontinuance of the receipt of bank checks in the payment of the public dues, after the first day of January, the Executive has exerted all its lawful authority to sever the connexion between the Government and this faithless corporation.

The high-handed career of this institution imposes upon the constitutional functionaries of this Government duties of the gravest and most imperative character — duties which they can not avoid, and from which, I trust, there will be no inclination on the part of any of them to shrink. My own sense of them is most clear, as is also my readiness to discharge those which may rightfully fall on me. To continue any business relations with the Bank of the United States that may be avoided, without a violation of the national faith, after that institution has set at open defiance the conceded right of the Government to examine its affairs; after it has done all in its power to deride the public authority in other respects, and to bring it into disrepute at home and abroad; after it has attempted to defeat the clearly expressed will of the people, by turning against them the immense power

intrusted to its hands, and by involving a country, otherwise peaceful, flourishing, and happy, in dissension, embarrassment, and distress — would make the nation itself a party to the degradation so sedulously prepared for its public agents, and do much to destroy the confidence of mankind in popular governments, and to bring into contempt their authority and efficiency. In guarding against an evil of such magnitude, considerations of temporary convenience should be thrown out of the question, and we should be influenced by such motives only as look to the honor and preservation of the republican system. Deeply and solemnly impressed with the justice of these views, I feel it to be my duty to recommend to you, that a law be passed authorizing the sale of the public stock; that the provision of the charter, requiring the receipt of notes of the bank in payment of public dues, shall, in accordance with the power reserved to Congress, in the 14th section of the charter, be suspended until the bank pays to the Treasury the dividends withheld; and that all laws connecting the Government or its officers with the Bank, directly or indirectly, be repealed; and that the institution be left hereafter to its own resources and means.

Events have satisfied my mind, and I think the minds of the American people, that the mischiefs and dangers which flow from a national bank far overbalance all its advantages. The bold effort the present bank has made to control the Government, the distresses it has wantonly produced, the violence of which it has been the occasion in one of our cities, famed for its observance of law and order, are but premonitions of the fate which awaits the American people should they be deluded into a perpetuation of this institution, or the establishment of another like it. It is fervently hoped, that, thus admonished, those, who have heretofore favored the establishment of a substitute for the present bank, will be induced to abandon it, as it is evidently better to incur any inconvenience that may be reasonably expected, than to concentrate the whole moneyed power of the Republic in any form whatsoever, or under any restrictions.

Happily it is already illustrated that the agency of such an institution is not necessary to the fiscal operations of the Government. The State banks are found fully adequate to the performance of all services which were required of the Bank of the United States, quite as promptly, and with the same cheapness. They have

maintained themselves, and discharged all these duties, while the Bank of the United States was still powerful, and in the field as an open enemy; and it is not possible to conceive that they will find greater difficulties in their operations when that enemy shall cease to exist.

The attention of Congress is earnestly invited to the regulation of the deposites in the State banks, by law. Although the power now exercised by the Executive Department in this behalf, is only such as was uniformly exerted through every Administration from the origin of the Government up to the establishment of the present bank, yet, it is one which is susceptible of regulation by law, and, therefore ought so to be regulated. The power of Congress to direct in what places the Treasurer shall keep the moneys in the Treasury, and to impose restrictions upon the Executive authority, in relation to their custody and removal, is unlimited, and its exercise will rather be courted than discouraged by those public officers and agents on whom rests the responsibility for their safety. It is desirable that as little power as possible should be left to the President or the Secretary of the Treasury over those institutions — which, being thus freed from Executive influence, and without a common head to direct their operations, would have neither the temptation nor the ability to interfere in the political conflicts of the country. Not deriving their charters from the national authorities, they would never have those inducements to meddle in general elections, which have led the Bank of the United States to agitate and convulse the country for upwards of two years.

The progress of our gold coinage is creditable to the officers of the mint, and promises in a short period to furnish the country with a sound and portable currency, which will much diminish the inconvenience to travellers of the want of a general paper currency, should the State banks be incapable of furnishing it. Those institutions have already shown themselves competent to purchase and furnish domestic exchange for the convenience of trade, at reasonable rates; and not a doubt is entertained that, in a short period, all the wants of the country, in bank accommodations and exchange, will be supplied as promptly and as cheaply as they have heretofore been by the Bank of the United States. If the several States shall be induced gradually to reform their banking systems, and prohibit the issue of all small notes, we shall, in a

few years, have a currency as sound, and as little liable to fluctuations, as any other commercial country.

No. 66. Act to Regulate the Deposits

June 23, 1836

IN his annual message of Dec. 7, 1835, Jackson announced the extinguishment of the national debt, and renewed the recommendation contained in his annual message of Dec. 2, 1834, that suitable regulation of the public deposits be made. In the Senate, Dec. 29, Calhoun brought in a bill for that purpose, together with a joint resolution "proposing an amendment to the Constitution, providing for a distribution of the surplus revenues among the several States and Territories, until the year 1843." The joint resolution was laid on the table March 4. The bill to regulate the deposits was taken up April 21, and debated at intervals until June 17, when, with an amendment providing for the distribution of the surplus revenue among the States, it passed by a vote of 39 to 6. The House passed the bill on the 21st, by a vote of 155 to 38, with an amendment making the distributed revenue a loan to the States, instead of a gift. In each House attempts to divide the measure were unsuccessful. The Senate concurred in the House amendment, and June 23 the act was approved. A bill for regulating the deposits had been introduced in the House March 21, but repeated efforts to secure its consideration failed. A supplementary act of July 4 authorized the Secretary of the Treasury to make transfers of the public money from the banks of one State to those of another, whenever necessary "to prevent large and inconvenient accumulations in particular places, or in order to produce a due equality and just proportion." Quarterly payments under the act were made in January, April, and July, 1837, to the amount of $28,000,000; after that there was no longer a surplus, and the distribution ceased. The money thus loaned to the States was never recalled.

REFERENCES. — *Text* in *U. S. Stat. at Large*, V., 52–56. For the proceedings, see the *House and Senate Journals*, 24th Cong., 1st Sess.; for the discussions, see *Cong. Debates*, or *Cong. Globe*, or Benton's *Abridgment*, XII. Webster's speech of March 17, on the deposit banks, is in his *Works* (ed. 1857), IV., 235–237; speech of May 31, on the surplus revenue, *ib.*, IV., 252–264. For Calhoun's speech of May 28, on the regulation of the deposits, see his *Works* (ed. 1857), II., 534–569. The treatment of the surplus and public deposits was discussed in the annual report of the Secretary of the Treasury, Dec. 6, 1836. Jackson, in his annual message of Dec. 5, criticised the deposit act at length. See further, Benton's *Thirty Years' View*, I., chap. 128; Bourne's *History of the Surplus Revenue of* 1837; Knox's *United States Notes*, chap. 12.

An Act to regulate the deposites of the public money.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the Secretary of the Treasury to select as soon as may be practicable and employ as the depositories of the money of the United States, such of the banks incorporated by the several States, by Congress for the District of Columbia, or by the Legislative Councils of the respective Territories for those Territories, as may be located at, adjacent or convenient to the points or places at which the revenues may be collected, or disbursed, and in those States, Territories or Districts in which there are no banks, and within which the public collections or disbursements require a depository, the said Secretary may make arrangements with a bank or banks, in some other State, Territory or District, to establish an agency, or agencies, in the States, Territories or Districts so destitute of banks, as banks of deposite; and to receive through such agencies such deposites of the public money, as may be directed to be made at the points designated, and to make such disbursements as the public service may require at those points; the duties and liabilities of every bank thus establishing any such agency to be the same in respect to its agency, as are the duties and liabilities of deposit banks generally under the provisions of this act: *Provided*, That at least one such bank shall be selected in each State and Territory, if any can be found in each State and Territory willing to be employed as depositories of the public money, upon the terms and conditions hereinafter prescribed, and continue to conform thereto; and that the Secretary of the Treasury shall not suffer to remain in any deposite bank, an amount of the public moneys more than equal to three-fourths of the amount of its capital stock actually paid in, for a longer time than may be necessary to enable him to make the transfers required by the twelfth section of this act; and that the banks so selected, shall be, in his opinion, safe depositories of the public money, and shall be willing to undertake to do and perform the several duties and services, and to conform to the several conditions prescribed by this act.

SEC. 2. [In the absence of a bank satisfactory to the Secretary of the Treasury, or in case of refusal, the public moneys may be deposited at some other convenient point, subject to withdrawal at any time by direction of Congress.]

SEC. 3. [Certain statements and documents to be furnished by deposit banks.]

SEC. 4. *And be it further enacted*, That the said banks, before they shall be employed as the depositories of the public money, shall agree to receive the same, upon the following terms and conditions, to wit:

First. Each bank shall furnish to the Secretary of the Treasury, from time to time, as often as he may require, not exceeding once a week, statements setting forth its condition and business, as prescribed in the foregoing section of this act, except that such statements need not, unless requested by said Secretary, contain a list of the directors, or a copy of the charter. And the said banks shall furnish to the Secretary of the Treasury, and to the Treasurer of the United States, a weekly statement of the condition of his account upon their books. And the Secretary of the Treasury shall have the right, by himself, or an agent appointed for that purpose, to inspect such general accounts in the books of the bank, as shall relate to the said statements: *Provided*, That this shall not be construed to imply a right of inspecting the account of any private individual or individuals with the bank.

Secondly. To credit as specie, all sums deposited therein to the credit of the Treasurer of the United States, and to pay all checks, warrants, or drafts, drawn on such deposites, in specie if required by the holder thereof.

Thirdly. To give, whenever required by the Secretary of the Treasury, the necessary facilities for transferring the public funds from place to place, within the United States, and the Territories thereof, and for distributing the same in payment of the public creditors, without charging commissions or claiming allowance on account of difference of exchange.

Fourthly. To render to the Government of the United States all the duties and services heretofore required by law to be performed by the late Bank of the United States and its several branches or offices.

SEC. 5. *And be it further enacted*, That no bank shall be selected or continued as a place of deposite of the public money which shall not redeem its notes and bills on demand in specie. . . .

[Sections 6 to 10, inclusive, prescribe various administrative regulations.]

SEC. 11. *And be it further enacted*, That whenever the amount of public deposites to the credit of the Treasurer of the United States, in any bank shall, for a whole quarter of a year, exceed the one-fourth part of the amount of the capital stock of such bank actually paid in, the banks shall allow and pay to the United States, for the use of the excess of the deposites over the one-fourth part of its capital, an interest at the rate of two per centum per annum, to be calculated for each quarter, upon the average excesses of the quarter. . . .

SEC. 12. [Transfers of public money between banks, in certain cases, are declared illegal.]

SEC. 13. *And be it further enacted*, That the money which shall be in the Treasury of the United States, on the first day of January, eighteen hundred and thirty-seven, reserving the sum of five millions of dollars, shall be deposited with such of the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States, as shall, by law, authorize their Treasurers, or other competent authorities to receive the same on the terms hereinafter specified; and the Secretary of the Treasury shall deliver the same to such Treasurers, or other competent authorities, in such form as may be prescribed by the Secretary aforesaid; which certificates shall express the usual and legal obligations, and pledge the faith of the State, for the safe keeping and repayment thereof, and shall pledge the faith of the States receiving the same, to pay the said moneys, and every part thereof, from time to time, whenever the same shall be required, by the Secretary of the Treasury, for the purpose of defraying any wants of the public treasury, beyond the amount of the five millions aforesaid: *Provided*, That if any State declines to receive its proportion of the surplus aforesaid, on the terms before named, the same shall be deposited with the other States, agreeing to accept the same on deposite in the proportion aforesaid: *And provided further*, That when said money, or any part thereof, shall be wanted by the said Secretary, to meet appropriations by law, the same shall be called for, in rateable proportions, within one year, as nearly as conveniently may be, from the different States, with which the same is deposited, and shall not be called for, in sums exceeding ten thousand dollars, from any one State, in any one month, without previous notice of thirty days, for every additional sum of twenty thousand dollars, which may at any time be required.

SEC. 14. *And be it further enacted*, That the said deposites shall be made with the said States in the following proportions, and at the following times, to wit: one quarter part on the first day of January, eighteen hundred and thirty seven, or as soon thereafter as may be; one quarter part on the first day of April, one quarter part on the first day of July, and one quarter part on the first day of October, all in the same year.

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(96)

No. 67. Specie Circular

July 11, 1836

ONE effect of the speculative fever which began early in 1835 was an enormous increase in the sales of the public lands. By law, payments for lands could be made only in gold and silver, or in notes of specie paying banks; but a large part of the payments was in fact made in State bank notes, which in the West had largely driven specie out of circulation. The United States thus found that the public domain was being disposed of for a currency of doubtful or more than doubtful value. The subject of the coinage had been before Congress since 1834, and Jackson had declared himself in favor of gold and silver as the "true constitutional currency." April 23, 1836, Benton moved that thereafter "nothing but gold and silver coin ought to be received in payment for public lands." The motion was tabled, and the session ended without action. July 11, by direction of the President, the so-called specie circular was issued. An inquiry into the effect of the circular was moved by Benton Jan. 12, 1837, and a bill "designating and limiting the funds receivable for the revenues of the United States" passed the Senate Feb. 10, by a vote of 41 to 5, and the House March 1, without a division, but was vetoed by the President. By a joint resolution approved May 21, 1838, it was declared unlawful for the Secretary of the Treasury "to make or to continue in force, any general order, which shall create any difference between the different branches of revenue, as to the money or medium of payment, in which debts or dues, accruing to the United States, may be paid."

REFERENCES. — *Text* in *Senate Doc. 2*, 24th Cong., 2d Sess., p. 96. The reasons for the circular were discussed by Jackson in his annual message of Dec. 5, 1836. Wright's report of May 16, 1838, is *Senate Doc. 445*, 25th Cong., 2d Sess. Webster's speech of April 23, 1836, on Benton's motion, is in his *Works* (ed. 1857), IV., 238–246; for his speech of Dec. 21, on the circular, *ib.*, IV., 265–291. See also Benton's *Thirty Years' View*, I., chaps. 146, 156. On a similar Treasury order of August, 1827, see J. Q. Adams's *Memoirs*, VII., 427. Jackson's statement of reasons for not signing the bill

of 1837, with an accompanying opinion of the Attorney-General, is in *Niles's Register*, LII., 26, 27.

Circular to Receivers of Public Money, and to the Deposite Banks

TREASURY DEPARTMENT, *July* 11, 1836.

IN consequence of complaints which have been made of frauds, speculations, and monopolies, in the purchase of the public lands, and the aid which is said to be given to effect these objects by excessive bank credits, and dangerous if not partial facilities through bank drafts and bank deposites, and the general evil influence likely to result to the public interests, and especially the safety of the great amount of money in the Treasury, and the sound condition of the currency of the country, from the further exchange of the national domain in this manner, the President of the United States has given directions, and you are hereby instructed, after the 15th day of August next, to receive in payment of the public lands nothing except what is directed by the existing laws, viz: gold and silver, and in the proper cases, Virginia land scrip; provided that till the 15th of December next, the same indulgences heretofore extended as to the kind of money received, may be continued for any quantity of land not exceeding 320 acres to each purchaser who is an actual settler or bona fide resident in the State where the sales are made.

In order to ensure the faithful execution of these instructions, all receivers are strictly prohibited from accepting for land sold, any draft, certificate, or other evidence of money, or deposite, though for specie, unless signed by the Treasurer of the United States, in conformity to the act of April 24, 1820. And each of those officers is required to annex to his monthly returns to this Department, the amount of gold, and of silver, respectively, as well as the bills received under the foregoing exception; and each deposite bank is required to annex to every certificate given upon a deposite of money, the proportions of it actually paid in gold, in silver, and in bank notes. All former instructions on these subjects, except as now modified, will be considered as remaining in full force.

The principal objects of the President in adopting this measure being to repress alleged frauds, and to withhold any countenance or facilities in the power of the Government from the monopoly of the public lands in the hands of speculators and capitalists, to

the injury of the actual settlers in the new States, and of emigrants in search of new homes, as well as to discourage the ruinous extension of bank issues, and bank credits, by which those results are generally supposed to be promoted, your utmost vigilance is required, and relied on, to carry this order into complete execution.

LEVI WOODBURY,
Secretary of the Treasury.

No. 68. Benton's Expunging Resolution

January 16, 1837

IN the course of the debate on the reception of Jackson's protest against the Senate resolution of censure, Benton announced his purpose to introduce, at each succeeding session, a motion to expunge the resolution of censure from the journal until the desired action was taken or his own public career ended. A motion to this effect, introduced Feb. 27, 1835, was laid on the table. Resolutions introduced March 18, 1836, were discussed at intervals until April 5, when they were ordered to be printed; May 27 they were tabled. A resolution, substantially as passed later, was again presented Jan. 3, 1837, taken up on the 12th, and on the 16th agreed to, by a vote of 24 to 19. While the secretary of the Senate was performing the duty devolved upon him by the resolution, many members withdrew. A motion to rescind the expunging resolution was offered by Bayard of Delaware, Dec. 14, 1837, but no action was taken.

REFERENCES. — The *text* as here given is from the *Senate Journal*, 24th Cong., 2d Sess., pp. 81–83, with the amendments adopted Jan. 13 and 16 incorporated. The discussions may be followed in the *Cong. Debates*, or *Cong. Globe*, or Benton's *Abridgment*, XII., XIII. Clay's speech of Jan. 16 is in his *Life and Speeches* (ed. 1844), II., 264–278; Benton's account is in his *Thirty Years' View*, I., chaps. 122–124, 141, 159–161. See also *Niles's Register*, L., 25–32, 168–184.

WHEREAS, on the 26th day of December, in the year 1833, the following resolve was moved in the Senate:

"*Resolved*, That, by dismissing the late Secretary of the Treasury, because he would not, contrary to his own sense of duty, remove the money of the United States in deposite with the Bank of the United States and its branches, in conformity with the President's opinion, and, by appointing his successor to effect such removal, which has been done, the President has assumed

the exercise of a power over the Treasury of the United States, not granted him by the constitution and laws, and dangerous to the liberties of the people." —

Which proposed resolve was altered and changed by the mover thereof, on the 28th day of March, in the year 1834, so as to read as follows:

"*Resolved*, That, in taking upon himself the responsibility of removing the deposite of the public money from the Bank of the United States, the President of the United States has assumed the exercise of a power over the Treasury of the United States not granted to him by the constitution and laws, and dangerous to the liberties of the people."—

Which resolve, so changed and modified by the mover thereof, on the same day and year last mentioned was further altered so as to read in these words:

"*Resolved*, That the President, in the late executive proceedings in relation to the revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both." —

In which last-mentioned form the said resolve, on the same day and year last mentioned, was adopted by the Senate, and became the act and judgment of that body, and, as such, now remains upon the Journal thereof:

And whereas the said resolve was not warranted by the constitution, and was irregularly and illegally adopted by the Senate, in violation of the rights of defence which belong to every citizen, and in subversion of the fundamental principles of law and justice: *because* President Jackson was thereby adjudged and pronounced to be guilty of an impeachable offence, and a stigma placed upon him as a violator of his oath of office, and of the laws and constitution, which he was sworn to preserve, protect, and defend, *without* going through the forms of an impeachment, and without allowing to him the benefits of a trial, or the means of defence:

And whereas the said resolve, in all its various shapes and forms, was unfounded and erroneous in point of fact, and therefore unjust and unrighteous, as well as irregular and unauthorized by the constitution: *because* the said President Jackson, neither in the act of dismissing Mr. Duane, nor in the appointment of Mr. Taney, as specified in the first form of the resolve; nor in

taking upon himself the responsibility of removing the deposites, as specified in the second form of the same resolve; nor in any act which was then, or can now, be specified under the vague and ambiguous terms of the general denunciation contained in the third and last form of the resolve; did do or commit any act in violation or in derogation of the laws and constitution, or dangerous to the liberties of the people:

And whereas the said resolve, as adopted, was uncertain and ambiguous, containing nothing but a loose and floating charge for derogating from the laws and constitution, and assuming ungranted power and authority in the late executive proceedings in relation to the public revenue; *without* specifying what part of the executive proceedings, or what part of the public revenue was intended to be referred to; or what parts of the laws and constitution were supposed to have been infringed; or in what part of the Union, or at what period of his administration, these late proceedings were supposed to have taken place; *thereby* putting each Senator at liberty to vote in favor of the resolve upon a separate and secret reason of his own, and leaving the ground of the Senate's judgment to be guessed at by the public, and to be differently and diversely interpreted by individual Senators, according to the private and particular understanding of each: *contrary* to all the ends of justice, and to all the forms of legal or judicial proceeding; to the great prejudice of the accused, who could not know against what to defend himself; and to the loss of senatorial responsibility, by shielding Senators from public accountability for making up a judgment upon grounds which the public cannot know, and which, if known, might prove to be insufficient in law, or unfounded in fact:

And whereas the specification contained in the first and second forms of the resolve having been objected to in debate and shown to be insufficient to sustain the charges they were adduced to support, and it being well believed that no majority could be obtained to vote for the said specifications, and the same having been actually withdrawn by the mover in the face of the whole Senate in consequence of such objection and belief, and before any vote taken thereupon; the said specifications could not afterwards be admitted by any rule of parliamentary practice, or by any principle of legal implication, secret intendment, or mental reservation, to remain and continue a part of the written and public

resolve from which they were thus withdrawn; and, if they could be so admitted, they would not be sufficient to sustain the charg therein contained:

And whereas the Senate being the constitutional tribunal for the trial of the President, when charged by the House of Representatives with offences against the laws and the constitution, the adoption of the said resolve, before any impeachment preferred by the House, was a breach of the privileges of the House; not warranted by the constitution; a subversion of justice; a prejudication of a question which might legally come before the Senate; and a disqualification of that body to perform its constitutional duty with fairness and impartiality, if the President should thereafter be regularly impeached by the House of Representatives for the same offence:

And whereas the temperate, respectful, and argumentative defence and protest of the President against the aforesaid proceeding of the Senate was rejected and repulsed by that body, and was voted to be a breach of its privileges, and was not permitted to be entered on its Journal or printed among its documents; while all memorials, petitions, resolves, and remonstrances against the President, however violent or unfounded, and calculated to inflame the people against him, were duly and honorably received, encomiastically commented upon in speeches, read at the table, ordered to be printed with the long list of names attached, referred to the Finance Committee for consideration, filed away among the public archives, and now constitute a part of the public documents of the Senate, to be handed down to the latest posterity:

And whereas the said resolve was introduced, debated, and adopted, at a time and under circumstances which had the effect of co-operating with the Bank of the United States in the parricidal attempt which that institution was then making to produce a panic and pressure in the country; to destroy the confidence of the people in President Jackson; to paralyze his administration; to govern the elections; to bankrupt the State banks; ruin their currency; fill the whole Union with terror and distress; and thereby to extort from the sufferings and the alarms of the people, the restoration of the deposites and the renewal of its charter:

And whereas the said resolve is of evil example and dangerous precedent, and should never have been received, debated, or

opted by the Senate, or admitted to entry upon its Journal: herefore,

Resolved, That the said resolve be expunged from the Journal; and, for that purpose, that the Secretary of the Senate, at such time as the Senate may appoint, shall bring the manuscript Journal of the session 1833–34 into the Senate, and, in the presence of the Senate, draw black lines round the said resolve, and write across the face thereof, in strong letters, the following words: "EXPUNGED BY ORDER OF THE SENATE, THIS SIXTEENTH DAY OF JANUARY, IN THE YEAR OF OUR LORD 1837."

No. 69. Giddings's Resolutions on Slavery

March 21, 1842

IN November, 1841, a number of slaves on board the brig "Creole," bound from Hampton, Va., to New Orleans, revolted, took possession of the vessel, and went to Nassau. There they were imprisoned by the English authorities, who refused to surrender them to the American consul without an order from the home government. Webster, in a dispatch to the United States minister at London, claimed that slaves, being property under the Constitution, continued to be such even on the high seas, and should be given up by Great Britain under the law of nations. It was to combat this view that Giddings of Ohio offered in the House, March 21, 1842, the resolutions which follow, and which embodied "the basis for the subsequent resistance to the extension of slavery to the Territories." The resolutions brought on a violent debate, ending in the adoption the following day, by votes of 119 to 66 and 125 to 64, of a long preamble and resolution, censuring Giddings for his action. On the same day Giddings resigned his seat, was re-elected April 26 by an increased majority, and again took his seat May 5.

REFERENCES. — *Text* of the resolutions in *House Journal*, 27th Cong., 2d Sess.; for the resolution of censure, *ib.*, 580. For the discussions see the *Cong. Globe*, or Benton's *Abridgment*, XIV. The diplomatic correspondence regarding the "Creole" is in *House Exec. Doc. 2*, 27th Cong., 3d Sess., pp. 114–123, and *Senate Doc. 1*, pp. 116–125. See also Von Holst's *United States*, II., 479–486; J. Q. Adams's *Memoirs*, XI., 113–115; Wilson's *Rise and Fall of the Slave Power*, I., chap. 31; Benton's *Thirty Years' View*, II., chap. 98.

1. *Resolved*, That, prior to the adoption of our Federal Constitution, each of the several States composing this Union exercised full and exclusive jurisdiction over the subject of slavery within its own territory, and possessed full power to continue or abolish it at pleasure.

2. *Resolved*, That, by adopting the Constitution, no part of the aforesaid powers were delegated to the Federal Government, but were reserved by and still pertain to each of the several States.

3. *Resolved*, That, by the 8th section of the 1st article of the Constitution, each of the several States surrendered to the Federal Government all jurisdiction over the subjects of commerce and navigation upon the high seas.

4. *Resolved*, That slavery, being an abridgment of the natural rights of man, can exist only by force of positive ***municipal law***, and is necessarily confined to the territorial jurisdiction of the power creating it.

5. *Resolved*, That when a ship belonging to the citizens of any State of this Union leaves the waters and territory of such State, and enters upon the high seas, the persons on board cease to be subject to the slave laws of such State, and therefore are governed in their relations to each other by, and are amenable to, the laws of the United States.

6. *Resolved*, That when the brig Creole, on her late passage for New Orleans, left the territorial jurisdiction of Virginia, the slave laws of that State ceased to have jurisdiction over the persons on board said brig, and such persons became amenable only to the laws of the United States.

7. *Resolved*, That the persons on board the said ship, in resuming their natural rights of personal liberty, violated no law of the United States, incurred no legal responsibility, and are justly liable to no punishment.

8. *Resolved*, That all attempts to regain possession of or to re-enslave said persons are unauthorized by the Constitution or laws of the United States, and are incompatible with our national honor.

9. *Resolved*, That all attempts to exert our national influence in favor of the coastwise slave trade, or to place this nation in the attitude of maintaining a "commerce in human beings," are subversive of the rights and injurious to the feelings of the free States are unauthorized by the Constitution, and prejudicial to our national character.

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No. 70. Treaty with Great Britain

August 9, 1842

THE determination of the northeastern boundary of the United States, first defined by the treaty of 1783, had been the subject of frequent diplomatic correspondence and international agreements. So much of the boundary as had to do with the St. Croix River and its source had been fixed by commissioners under the treaty of 1794, but the claims to the "highlands" were still unsettled. In 1831 the award of the king of the Netherlands, under the convention of 1827, had been rejected by both Great Britain and the United States. "In 1838–9 the territory between New Brunswick and Maine, claimed by both parties, became the scene of a small border war. Maine raised an armed posse, erected forts along the line which she claimed as the true one, and the legislature placed $800,000 at the governor's disposal for the defence of the State; an act of Congress, March 3, 1839, authorized the President to resist any attempt of Great Britain to enforce exclusive jurisdiction over the disputed territory, and armed conflict was only averted by the mediation of Gen. Scott, who arranged a truce and a joint occupation by both parties" (Johnston). In addition to the question of boundary, differences had also arisen between the two countries over the attempted participation of Americans in the Canadian rebellion of 1837, and in regard to the suppression of the slave trade. Early in 1842 Lord Ashburton was sent to the United States as special envoy, and Aug. 9 the treaty usually known by his name was concluded. October 13 ratifications were exchanged at London, and Nov. 10 the treaty was proclaimed. By act of March 3, 1843, provision was made for carrying the treaty into effect.

REFERENCES. — *Text* in *Revised Statutes relating to the District of Columbia*, etc. (ed. 1875), 315–320. The diplomatic correspondence, including that with Maine and New Hampshire, is in *House Exec. Doc. 2*, 27th Cong., 3d Sess.; also *Cong. Globe*, 4–21. The treaty was adversely criticised in Congress in 1846, in the discussions over the treaty of Washington; Webster's speech of April 6 and 7 gives a full account of the negotiations. The speech is in the *Cong. Globe*, 29th Cong., 1st Sess., and also Webster's *Works* (ed. 1857), V., 78–147. Calhoun's speech on the treaty is in his *Works* (ed. 1854), IV., 212–237. Contrasted English views may be seen in the *Quarterly Rev.*, LXXI., 560–595, and *Westm. Rev.*, XXXIX., 83–107. See also Wharton's *Intern. Law Digest* (ed. 1887), II., 175–183; Curtis's *Webster*, II., chap. 28; Tyler's *Letters and Times of the Tylers*, II., chaps. 7, 8; Benton's *Thirty Years' View*, II., chaps. 101–106; Sparks, in *North Amer. Rev.*, LVI., 452–496; *Senate Doc. 502*, 25th Cong., 2d Sess. The act of March 3, 1843, to carry the treaty into effect, is in *U. S. Stat. at Large*, V., 623.

Whereas certain portions of the line of boundary between the United States of America and the British dominions in North America, described in the second article of the treaty of peace of 1783, have not yet been ascertained and determined, notwith-

standing the repeated attempts which have been heretofore made for that purpose; and whereas it is now thought to be for the interest of both parties, that, avoiding further discussion of their respective rights, arising in this respect under the said treaty, they should agree on a conventional line in said portions of the said boundary, such as may be convenient to both parties, with such equivalents and compensations as are deemed just and reasonable; and whereas, by the treaty concluded at Ghent on the 24th day of December, 1814, between the United States and His Britannic Majesty, an article was agreed to and inserted of the following tenor, vizt: "Art. 10. Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice; and whereas both His Majesty and the United States are desirous of continuing their efforts to promote its entire abolition, it is hereby agreed that both the contracting parties shall use their best endeavors to accomplish so desirable an object;" and whereas, notwithstanding the laws which have at various times been passed by the two Governments, and the efforts made to suppress it, that criminal traffic is still prosecuted and carried on; and whereas the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland are determined that, so far as may be in their power, it shall be effectually abolished; and whereas it is found expedient, for the better administration of justice and the prevention of crime within the territories and jurisdiction of the two parties respectively, that persons committing the crimes hereinafter enumerated, and being fugitives from justice, should, under certain circumstances, be reciprocally delivered up: The United States of America and Her Britannic Majesty, having resolved to treat on these several subjects, have for that purpose appointed their respective Plenipotentiaries to negotiate and conclude a treaty, that is to say:

The President of the United States has, on his part, furnished with full powers Daniel Webster, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland has, on her part, appointed the Right Honorable Alexander Lord Ashburton, a peer of the said United Kingdom, a member of Her Majesty's Most Honorable Privy Council, and Her Majesty's Minister Plenipotentiary on a special mission to the United States;

Who, after a reciprocal communication of their respective full powers, have agreed to and signed the following articles:

ARTICLE I.

It is hereby agreed and declared that the line of boundary shall be as follows: Beginning at the monument at the source of the river St. Croix as designated and agreed to by the Commissioners under the fifth article of the treaty of 1794, between the Governments of the United States and Great Britain; thence, north, following the exploring line run and marked by the surveyors of the two Governments in the years 1817 and 1818, under the fifth article of the treaty of Ghent, to its intersection with the river St. John, and to the middle of the channel thereof; thence, up the middle of the main channel of the said river St. John, to the mouth of the river St. Francis; thence, up the middle of the channel of the said river St. Francis, and of the lakes through which it flows, to the outlet of the Lake Pohenagamook; thence, southwesterly, in a straight line, to a point on the northwest branch of the river St. John, which point shall be ten miles distant from the main branch of the St. John, in a straight line, and in the nearest direction; but if the said point shall be found to be less than seven miles from the nearest point of the summit or crest of the highlands that divide those rivers which empty themselves into the river Saint Lawrence from those which fall into the river Saint John, then the said point shall be made to recede down the said northwest branch of the river St. John, to a point seven miles in a straight line from the said summit or crest; thence, in a straight line, in a course about south, eight degrees west, to the point where the parallel of latitude of 46° 25′ north intersects the southwest branch of the St. John's; thence, southerly, by the said branch, to the source thereof in the highlands at the Metjarmette portage; thence, down along the said highlands which divide the waters which empty themselves into the river Saint Lawrence from those which fall into the Atlantic Ocean, to the head of Hall's Stream; thence, down the middle of said stream, till the line thus run intersects the old line of boundary surveyed and marked by Valentine and Collins, previously to the year 1774, as the 45th degree of north latitude, and which has been known and understood to be the line of actual division between the States of New York and Vermont on one side, and

the British province of Canada on the other; and from sai point of intersection, west, along the said dividing line, as here tofore known and understood, to the Iroquois or St. Lawrenc River.

ARTICLE II.

It is moreover agreed, that from the place where the join Commissioners terminated their labors under the sixth article o the treaty of Ghent, to wit, at a point in the Neebish Channel near Muddy Lake, the line shall run into and along the ship channel between Saint Joseph and St. Tammany Islands, to the division of the channel at or near the head of St. Joseph's Island thence, turning eastwardly and northwardly around the lower end of St. George's or Sugar Island, and following the middle of the channel which divides St. George's from St. Joseph's Island thence up the east Neebish Channel, nearest to St. George's Island, through the middle of Lake George; thence, west of Jonas' Island, into St. Mary's River, to a point in the middle of that river, about one mile above St. George's or Sugar Island, so as to appropriate and assign the said island to the United States; thence, adopting the line traced on the maps by the Commissioners, thro' the river St. Mary and Lake Superior, to a point north of Ile Royale, in said lake, one hundred yards to the north and east of Ile Chapeau, which last-mentioned island lies near the northeastern point of Ile Royale, where the line marked by the Commissioners terminates; and from the last-mentioned point, southwesterly, through the middle of the sound between Ile Royale and the northwestern main land, to the mouth of Pigeon River, and up the said river, to and through the north and south Fowl Lakes, to the lakes of the height of land between Lake Superior and the Lake of the Woods; thence, along the water communication to Lake Saisaginaga, and through that lake; thence to and through Cypress Lake, Lac du Bois Blanc, Lac la Croix Little Vermilion Lake, and Lake Namecan and through the several smaller lakes, straits, or streams, connecting the lakes here mentioned, to that point in Lac la Pluie, or Rainy Lake, at the Chaudière Falls, from which the Commissioners traced the line to the most northwestern point of the Lake of the Woods; thence along the said line, to the said most northwestern point, being in latitude 49° 23′ 55″ north, and in longitude 95° 14′ 38″ wes

from the observatory at Greenwich; thence, according to existing treaties, due south to its intersection with the 49th parallel of north latitude, and along that parallel to the Rocky Mountains. It being understood that all the water communications and all the usual portages along the line from Lake Superior to the Lake of the Woods, and also Grand Portage, from the shore of Lake Superior to the Pigeon River, as now actually used, shall be free and open to the use of the citizens and subjects of both countries.

ARTICLE III.

In order to promote the interests and encourage the industry of all the inhabitants of the countries watered by the river St. John and its tributaries, whether living within the State of Maine or the province of New Brunswick, it is agreed that, where, by the provisions of the present treaty, the river St. John is declared to be the line of boundary, the navigation of the said river shall be free and open to both parties, and shall in no way be obstructed by either; that all the produce of the forest, in logs, lumber, timber, boards, staves, or shingles, or of agriculture, not being manufactured, grown on any of those parts of the State of Maine watered by the river St. John, or by its tributaries, of which fact reasonable evidence shall, if required, be produced, shall have free access into and through the said river and its said tributaries, having their source within the State of Maine, to and from the sea-port at the mouth of the said river St. John's, and to and round the falls of the said river, either by boats, rafts, or other conveyance; that when within the province of New Brunswick, the said produce shall be dealt with as if it were the produce of the said province; that, in like manner, the inhabitants of the territory of the upper St. John, determined by this treaty to belong to Her Britannic Majesty, shall have free access to and through the river, for their produce, in those parts where the said river runs wholly through the State of Maine: Provided, always, that this agreement shall give no right to either party to interfere with any regulations not inconsistent with the terms of this treaty which the governments, respectively, of Maine or of New Brunswick may make respecting the navigation of the said river, where both banks thereof shall belong to the same party.

ARTICLE IV.

All grants of land heretofore made by either party, within th limits of the territory which by this treaty falls within the domin ions of the other party, shall be held valid, ratified, and confirme to the persons in possession under such grants, to the same exten as if such territory had by this treaty fallen within the dominion of the party by whom such grants were made; and all equitabl possessory claims, arising from a possession and improvement o any lot or parcel of land by the person actually in possession, o by those under whom such person claims, for more than six year before the date of this treaty, shall, in like manner, be deeme valid, and be confirmed and quieted by a release to the perso entitled thereto, of the title to such lot or parcel of land, s described as best to include the improvements made thereon and in all other respects the two contracting parties agree to dea upon the most liberal principles of equity with the settlers actuall dwelling upon the territory falling to them, respectively, which ha heretofore been in dispute between them.

ARTICLE V.

Whereas in the course of the controversy respecting the disputed territory on the northeastern boundary, some moneys have beer received by the authorities of Her Britannic Majesty's provinc of New Brunswick, with the intention of preventing depredation on the forests of the said territory, which moneys were to b carried to a fund called the "disputed territory fund," the proceed whereof it was agreed should be hereafter paid over to the partie interested, in the proportions to be determined by a final settle ment of boundaries, it is hereby agreed that a correct account o all receipts and payments on the said fund shall be delivered t the Government of the United States within six months after th ratification of this treaty; and the proportion of the amount due thereon to the States of Maine and Massachusetts, and any bond or securities appertaining thereto shall be paid and delivered ove to the Government of the United States; and the Government o the United States agrees to receive for the use of, and pay ove to, the States of Maine and Massachusetts, their respective por tions of said fund, and further, to pay and satisfy said States

respectively, for all claims for expenses incurred by them in protecting the said heretofore disputed territory and making a survey thereof in 1838; the Government of the United States agreeing with the States of Maine and Massachusetts to pay them the further sum of three hundred thousand dollars, in equal moieties, on account of their assent to the line of boundary described in this treaty, and in consideration of the conditions and equivalents received therefor from the Government of Her Britannic Majesty.

[Art. VI. provides for the appointment of two commissioners to mark the boundary between the St. Croix and the St. Lawrence.]

ARTICLE VII.

It is further agreed that the channels in the river St. Lawrence on both sides of the Long Sault Islands and of Barnhart Island, the channels in the river Detroit on both sides of the island Bois Blanc, and between that island and both the American and Canadian shores, and all the several channels and passages between the various islands lying near the junction of the river St. Clair with the lake of that name, shall be equally free and open to the ships, vessels, and boats of both parties.

ARTICLE VIII.

The parties mutually stipulate that each shall prepare, equip, and maintain in service on the coast of Africa a sufficient and adequate squadron or naval force of vessels of suitable numbers and descriptions, to carry in all not less than eighty guns, to enforce, separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the slave-trade, the said squadrons to be independent of each other, but the two Governments stipulating, nevertheless, to give such orders to the officers commanding their respective forces as shall enable them most effectually to act in concert and co-operation, upon mutual consultation, as exigencies may arise, for the attainment of the true object of this article, copies of all such orders to be communicated by each Government to the other, respectively.

ARTICLE IX.

Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the slave-trade, the facilities for

carrying on that traffic and avoiding the vigilance of cruisers, by the fraudulent use of flags and other means, are so great, and the temptations for pursuing it, while a market can be found for slaves so strong, as that the desired result may be long delayed unless all markets be shut against the purchase of African negroes, the parties to this treaty agree that they will unite in all becoming representations and remonstrances with any and all Powers within whose dominions such markets are allowed to exist, and that they will urge upon all such Powers the propriety and duty of closing such markets effectually, at once and forever.

ARTICLE X.

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum or shall be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE XI.

The eighth article of this treaty shall be in force for five years from the date of the exchange of the ratifications, and afterwards

until one or the other party shall signify a wish to terminate it. The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

ARTICLE XII.

The present treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in London, within six months from the date hereof, or earlier if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this treaty and have hereunto affixed our seals.

Done in duplicate at Washington, the ninth day of August, anno Domini one thousand eight hundred and forty-two.

DANL. WEBSTER. [L.S.]
ASHBURTON. [L.S.]

No. 71. Joint Resolution for the Annexation of Texas

March 1, 1845

IN 1821 the United States of Mexico, until then a part of the Spanish possessions in America, became independent. The provinces of Cohahuila and Texas were united as a State, and in 1827 formed a constitution. In 1835 the State declared its independence of Mexico, and in 1836 proclaimed itself the Republic of Texas. The independence of Texas was acknowledged in 1837 by the United States, Great Britain, France, and Belgium, but not by Mexico; and in 1838 a treaty for marking the boundary between Texas and the United States was concluded at Washington. As early as 1821 attempts had been made by Americans from the southern States to gain a foothold in Texas; but propositions by the United States in 1827 and 1829 to purchase Texas were not accepted, and in 1830 "orders were issued to prevent any further emigration from the United States." From 1843 onward annexation became a prominent question, advocated chiefly in the South. In 1844, however, both Van Buren and Clay, respectively, the leading Democratic and Whig candidates for the presidency, declared against it, and a treaty for annexation, concluded April 12, 1844, was rejected by the Senate. The election of Polk was regarded as a victory for the annexation policy. December 12, 1844, Ingersoll of Pennsylvania, chairman of the House Committee on Foreign Affairs, reported a joint resolution for annexation, which passed the House Jan. 25, by a vote of 120 to 98. February 4, in the Senate, Archer of Virginia, chairman of the Committee on Foreign Relations, to whom had been referred the resolution of the House, together with several similar propositions originating in the Senate, made a report recommending the

rejection of the House resolution. The resolution was, however, taken up by the Senate Feb. 13, and considered daily until the 27th, when it passed, in an amended form, without a division, the vote on the third reading being 27 to 25. On the 28th, by a vote of 134 to 77, the House concurred in the Senate amendments, and March 1 the resolution was approved. The terms proposed were agreed to by the Congress of Texas June 18, and by a convention at Austin July 4. A State constitution was ratified Oct. 13, by popular vote, and by joint resolution of Dec. 29 Texas was admitted as a State. The area acquired by the annexation was 371,063 square miles.

REFERENCES. — *Text* in *U. S. Stat. at Large*, V., 797, 798. For the proceedings of Congress, see the *House and Senate Journals*, 28th Cong., 2d Sess.; for the debates, see the *Cong. Globe*, or Benton's *Abridgment*, XV. For the diplomatic correspondence, etc., see *Senate Doc. 1, 13 and 30*, 28th Cong., 2d Sess., and *Senate Doc. 1*, 29th Cong., 1st Sess. Archer's report is *Senate Doc. 79*, 28th Cong., 2d Sess. Important general references are: Von Holst's *United States*, II., chap. 7; III., chap. 3; Curtis's *Buchanan*, I., chap. 19; Greeley's *American Conflict*, I., chap. 12; Wilson's *Slave Power*, I., chaps. 42, 43, 45; Benton's *Thirty Years' View*, I., chaps. 144, 145; II., chaps. 24, 135, 138–142, 148; Tyler's *Letters and Times of the Tylers*, II., chaps. 9–12; Johnston, in *Lalor's Cyclopædia*, I., 96–98; Pierce's *Sumner*, III., 98–106; Webster's *Works* (ed. 1857), V., 55–59; *Wm. Lloyd Garrison: Story of his Life told by his Children*, III., chap. 5.

Joint Resolution for annexing Texas to the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

2. *And be it further resolved*, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: *First*, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six. *Second*. Said State, when admitted

into the Union, after ceding to the United States, all public edifices, fortifications, barracks, ports and harbors, navy and navy-yards, docks, magazines, arms, armaments, and all other property and means pertaining to the public defence belonging to said Republic of Texas, shall retain all the public funds, debts, taxes, and dues of every kind, which may belong to or be due and owing said republic; and shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge upon the Government of the United States. *Third.* New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal constitution. And such States as may be formed out of that portion of said territory lying south of thirty-six degrees thirty minutes north latitude, commonly known as the Missouri compromise line, shall be admitted into the Union with or without slavery, as the people of each State asking admission may desire. And in such State or States as shall be formed out of said territory north of said Missouri compromise line, slavery, or involuntary servitude, (except for crime,) shall be prohibited.

3. *And be it further resolved,* That if the President of the United States shall in his judgment and discretion deem it most advisable, instead of proceeding to submit the foregoing resolution to the Republic of Texas, as an overture on the part of the United States for admission, to negotiate with that Republic; then,

Be it resolved, That a State, to be formed out of the present Republic of Texas, with suitable extent and boundaries, and with two representatives in Congress, until the next apportionment of representation, shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission, and the cession of the remaining Texian territory to the United States shall be agreed upon by the Governments of Texas and the United States: And that the sum of one hundred thousand dollars be, and the same is hereby, appropriated to defray the expenses of missions and

negotiations, to agree upon the terms of said admission and cession, either by treaty to be submitted to the Senate, or by articles to be submitted to the two houses of Congress, as the President may direct.

No. 72. Polk's War Message

May 11, 1846

MARCH 6, 1845, Mexico entered a formal protest against the joint resolution for the annexation of Texas, and shortly afterwards diplomatic intercourse between Mexico and the United States was suspended. Both parties prepared for war. The condition of affairs was reviewed at length in Polk's annual message of Dec. 2, 1845, while the diplomatic and military manœuvres which paved the way for the special message of May 11, 1846, are set forth in the message itself.

REFERENCES. — *Text* in *House and Senate Journals*, 29th Cong., 1st Sess., the text here given being that of the Senate journal. An interesting account of the circumstances under which the message was written is given by Schouler, in *Atlantic Monthly*, LXXVI., 375, 376; *id.*, *Hist. Briefs*, 149–151.

To the Senate and House of Representatives:

THE existing state of the relations between the United States and Mexico renders it proper that I should bring the subject to the consideration of Congress. In my message at the commencement of your present session, the state of these relations, the causes which led to the suspension of diplomatic intercourse between the two countries in March, 1845, and the long-continued and unredressed wrongs and injuries committed by the Mexican government on citizens of the United States, in their persons and property, were briefly set forth.

As the facts and opinions which were then laid before you were carefully considered, I can not better express my present convictions of the condition of affairs up to that time, than by referring you to that communication.

The strong desire to establish peace with Mexico on liberal and honorable terms, and the readiness of this government to regulate and adjust our boundary, and other causes of difference with that power, on such fair and equitable principles as would lead to permanent relations of the most friendly nature, induced me in September last to seek the reopening of diplomatic relations between the two countries. Every measure adopted on our part

had for its object the furtherance of these desired results. In communicating to Congress a succinct statement of the injuries which we had suffered from Mexico, and which have been accumulating during a period of more than twenty years, every expression that could tend to inflame the people of Mexico, or defeat or delay a pacific result, was carefully avoided. An envoy of the United States repaired to Mexico, with full powers to adjust every existing difference. But though present on the Mexican soil, by agreement between the two governments, invested with full powers, and bearing evidence of the most friendly dispositions, his mission has been unavailing. The Mexican government not only refused to receive him, or listen to his propositions, but, after a long-continued series of menaces, have at last invaded our territory, and shed the blood of our fellow-citizens on our own soil.

It now becomes my duty to state more in detail the origin, progress, and failure of that mission. In pursuance of the instructions given in September last, an inquiry was made, on the 13th of October, 1845, in the most friendly terms, through our consul in Mexico, of the minister for foreign affairs, whether the Mexican government "would receive an envoy from the United States intrusted with full powers to adjust all the questions in dispute between the two governments;" with the assurance that "should the answer be in the affirmative, such an envoy would be immediately despatched to Mexico." The Mexican minister, on the 15th of October, gave an affirmative answer to this inquiry, requesting, at the same time, that our naval force at Vera Cruz might be withdrawn, lest its continued presence might assume the appearance of menace and coercion pending the negotiations. This force was immediately withdrawn. On the 10th of November, 1845, Mr. John Slidell, of Louisiana, was commissioned by me as envoy extraordinary and minister plenipotentiary of the United States to Mexico, and was intrusted with full powers to adjust both the questions of the Texas boundary and of indemnification to our citizens. The redress of the wrongs of our citizens naturally and inseparably blended itself with the question of boundary. The settlement of the one question, in any correct view of the subject, involves that of the other. I could not, for a moment, entertain the idea that the claims of our much injured and long suffering citizens, many of which had existed for more

than twenty years, should be postponed, or separated from the settlement of the boundary question.

Mr. Slidell arrived at Vera Cruz on the 30th of November, and was courteously received by the authorities of that city. But the government of General Herrera was then tottering to its fall. The revolutionary party had seized upon the Texas question to effect or hasten its overthrow. Its determination to restore friendly relations with the United States, and to receive our minister, to negotiate for the settlement of this question, was violently assailed, and was made the great theme of denunciation against it. The government of General Herrera, there is good reason to believe, was sincerely desirous to receive our minister; but it yielded to the storm raised by its enemies, and on the 21st of December refused to accredit Mr. Slidell upon the most frivolous pretexts. These are so fully and ably exposed in the note of Mr. Slidell, of the 24th of December last, to the Mexican minister of foreign relations, herewith transmitted, that I deem it unnecessary to enter into further detail on this portion of the subject.

Five days after the date of Mr. Slidell's note, General Herrera yielded the government to General Paredes, without a struggle, and on the 30th of December resigned the presidency. This revolution was accomplished solely by the army, the people having taken little part in the contest; and thus the supreme power of Mexico passed into the hands of a military leader.

Determined to leave no effort untried to effect an amicable adjustment with Mexico, I directed Mr. Slidell to present his credentials to the government of General Paredes, and ask to be officially received by him. There would have been less ground for taking this step had General Paredes come into power by a regular constitutional succession. In that event his administration would have been considered but a mere constitutional continuance of the government of General Herrera, and the refusal of the latter to receive our minister would have been deemed conclusive, unless an intimation had been given by General Paredes of his desire to reverse the decision of his predecessor. But the government of General Paredes owes its existence to a military revolution, by which the subsisting constitutional authorities had been subverted. The form of government was entirely changed, as well as all the high functionaries by whom it was administered.

Under these circumstances, Mr. Slidell, in obedience to my direction, addressed a note to the Mexican minister of foreign relations, under date of the 1st of March last, asking to be received by that government in the diplomatic character to which he had been appointed. This minister, in his reply under date of the 12th of March, reiterated the arguments of his predecessor, and, in terms that may be considered as giving just grounds of offence to the government and people of the United States, denied the application of Mr. Slidell. Nothing, therefore, remained for our envoy but to demand his passports, and return to his own country.

Thus the government of Mexico, though solemnly pledged by official acts in October last to receive and accredit an American envoy, violated their plighted faith, and refused the offer of a peaceful adjustment of our difficulties. Not only was the offer rejected, but the indignity of its rejection was enhanced by the manifest breach of faith in refusing to admit the envoy, who came because they had bound themselves to receive him. Nor can it be said that the offer was fruitless from the want of opportunity of discussing it: our envoy was present on their own soil. Nor can it be ascribed to a want of sufficient powers: our envoy had full powers to adjust every question of difference. Nor was there room for complaint that our propositions for settlement were unreasonable: permission was not even given our envoy to make any proposition whatever. Nor can it be objected that we, on our part, would not listen to any reasonable terms of their suggestion: the Mexican government refused all negotiation, and have made no proposition of any kind.

In my message at the commencement of the present session, I informed you that, upon the earnest appeal both of the congress and convention of Texas, I had ordered an efficient military force to take a position "between the Nueces and the Del Norte." This had become necessary, to meet a threatened invasion of Texas by the Mexican forces, for which extensive military preparations had been made. The invasion was threatened solely because Texas had determined, in accordance with a solemn resolution of the Congress of the United States, to annex herself to our Union; and, under these circumstances, it was plainly our duty to extend our protection over her citizens and soil.

This force was concentrated at Corpus Christi, and remained

there until after I had received such information from Mexico as rendered it probable, if not certain, that the Mexican government would refuse to receive our envoy.

Meantime Texas, by the final action of our Congress, had become an integral part of our Union. The Congress of Texas, by its act of December 19, 1836, had declared the Rio del Norte to be the boundary of that republic. Its jurisdiction had been extended and exercised beyond the Nueces. The country between that river and the Del Norte had been represented in the congress and in the convention of Texas; had thus taken part in the act of annexation itself; and is now included within one of our congressional districts. Our own Congress had, moreover, with great unanimity, by the act approved December 31, 1845, recognised the country beyond the Nueces as a part of our territory, by including it within our own revenue system; and a revenue officer, to reside within that district, has been appointed, by and with the advice and consent of the senate. It became, therefore, of urgent necessity to provide for the defence of that portion of our country. Accordingly, on the 13th of January last, instructions were issued to the general in command of these troops to occupy the left bank of the Del Norte. This river, which is the southwestern boundary of the state of Texas, is an exposed frontier; from this quarter invasion was threatened; upon it, and in its immediate vicinity, in the judgment of high military experience, are the proper stations for the protecting forces of the government. In addition to this important consideration, several others occurred to induce this movement. Among these are the facilities afforded by the ports at Brazos Santiago and the mouth of the Del Norte, for the reception of supplies by sea; the stronger and more healthful military positions; the convenience for obtaining a ready and a more abundant supply of provisions, water, fuel, and forage; and the advantages which are afforded by the Del Norte in forwarding supplies to such posts as may be established in the interior and upon the Indian frontier.

The movement of the troops to the Del Norte was made by the commanding general, under positive instructions to abstain from all aggressive acts toward Mexico or Mexican citizens, and to regard the relations between that republic and the United States as peaceful, unless she should declare war, or commit acts of

hostility indicative of a state of war. He was specially directed to protect private property, and respect personal rights.

The army moved from Corpus Christi on the 11th of March, and on the 28th of that month arrived on the left bank of the Del Norte, opposite to Matamoras, where it encamped on a commanding position, which has since been strengthened by the erection of field works. A depot has also been established at Point Isabel, near the Brazos Santiago, thirty miles in rear of the encampment. The selection of his position was necessarily confided to the judgment of the general in command.

The Mexican forces at Matamoras assumed a belligerent attitude, and, on the 12th of April, General Ampudia, then in command, notified General Taylor to break up his camp within twenty-four hours, and to retire beyond the Nueces river, and, in the event of his failure to comply with these demands, announced that arms, and arms alone, must decide the question. But no open act of hostility was committed until the 24th of April. On that day, General Arista, who had succeeded to the command of the Mexican forces, communicated to General Taylor that "he considered hostilities commenced, and should prosecute them." A party of dragoons, of sixty-three men and officers, were on the same day despatched from the American camp up the Rio del Norte, on its left bank, to ascertain whether the Mexican troops had crossed, or were preparing to cross, the river, "became engaged with a large body of these troops, and, after a short affair, in which some sixteen were killed and wounded, appear to have been surrounded and compelled to surrender."

The grievous wrongs perpetrated by Mexico upon our citizens throughout a long period of years remain unredressed; and solemn treaties, pledging her public faith for this redress, have been disregarded. A government either unable or unwilling to enforce the execution of such treaties, fails to perform one of its plainest duties.

Our commerce with Mexico has been almost annihilated. It was formerly highly beneficial to both nations; but our merchants have been deterred from prosecuting it by the system of outrage and extortion which the Mexican authorities have pursued against them, whilst their appeals through their own government for indemnity have been made in vain. Our forbearance has gone to such an extreme as to be mistaken in its character. Had we

acted with vigor in repelling the insults and redressing the injuries inflicted by Mexico at the commencement, we should doubtless have escaped all the difficulties in which we are now involved.

Instead of this, however, we have been exerting our best efforts to propitiate her good-will. Upon the pretext that Texas, a nation as independent as herself, thought proper to unite its destinies with our own, she has affected to believe that we have severed her rightful territory, and in official proclamations and manifestoes has repeatedly threatened to make war upon us, for the purpose of reconquering Texas. In the meantime, we have tried every effort at reconciliation. The cup of forbearance had been exhausted, even before the recent information from the frontier of the Del Norte. But now, after reiterated menaces, Mexico has passed the boundary of the United States, has invaded our territory, and shed American blood upon the American soil. She has proclaimed that hostilities have commenced, and that the two nations are now at war.

As war exists, and, notwithstanding all our efforts to avoid it, exists by the act of Mexico herself, we are called upon by every consideration of duty and patriotism to vindicate with decision the honor, the rights, and the interests of our country.

Anticipating the possibility of a crisis like that which has arrived, instructions were given in August last, "as a precautionary measure" against invasion, or threatened invasion, authorizing General Taylor, if the emergency required, to accept volunteers, not from Texas only, but from the States of Louisiana, Alabama, Mississippi, Tennessee, and Kentucky; and corresponding letters were addressed to the respective governors of those states. These instructions were repeated; and, in January last, soon after the incorporation of "Texas into our union of states," General Taylor was further "authorized by the President to make a requisition upon the executive of that State for such of its militia force as may be needed to repel invasion, or to secure the country against apprehended invasion." On the second day of March he was again reminded, "in the event of the approach of any considerable Mexican force, promptly and efficiently to use the authority with which he was clothed to call to him such auxiliary force as he might need." War actually existing, and our territory having been invaded, General Taylor, pursuant to authority vested in him by my direction, has called on the gov-

ernor of Texas for four regiments of state troops — two to be mounted, and two to serve on foot; and on the governor of Louisiana for four regiments of infantry, to be sent to him as soon as practicable.

In further vindication of our rights, and defence of our territory, I invoke the prompt action of Congress to recognise the existence of the war, and to place at the disposition of the Executive the means of prosecuting the war with vigor, and thus hastening the restoration of peace. To this end I recommend that authority should be given to call into the public service a large body of volunteers, to serve for not less than six or twelve months, unless sooner discharged. A volunteer force is beyond question more efficient than any other description of citizen soldiers; and it is not to be doubted that a number far beyond that required would readily rush to the field upon the call of their country. I further recommend that a liberal provision be made for sustaining our entire military force and furnishing it with supplies and munitions of war.

The most energetic and prompt measures, and the immediate appearance in arms of a large and overpowering force, are recommended to Congress as the most certain and efficient means of bringing the existing collision with Mexico to a speedy and successful termination.

In making these recommendations, I deem it proper to declare that it is my anxious desire not only to terminate hostilities speedily, but to bring all matters in dispute between this government and Mexico to an early and amicable adjustment; and, in this view, I shall be prepared to renew negotiations, whenever Mexico shall be ready to receive propositions, or to make propositions of her own.

I transmit herewith a copy of the correspondence between our envoy to Mexico and the Mexican minister for foreign affairs; and so much of the correspondence between that envoy and the Secretary of State, and between the Secretary of War and the general in command on the Del Norte, as is necessary to a full understanding of the subject.

JAMES K. POLK.

No. 73. Act for the Prosecution of the Mexican War

May 13, 1846

A BILL authorizing the President to accept the services of volunteers in certain cases had been introduced in the House early in the session of 1845–46, but no further action in reference to it had been taken. On the receipt of Polk's war message of May 11 the bill was at once taken up, a new first section and preamble substituted, and, with further amendments and a changed title, the bill passed the same day, by a vote of 174 to 14. In the Senate, the following day, a motion to strike out the preamble was lost, 18 to 28, and the bill, with a slight amendment, was passed, the vote being 40 to 2. On the 13th the House concurred in the Senate amendment, the act was approved, and a proclamation by the President was issued.

REFERENCES. — *Text* in *U. S. Stat. at Large*, IX., 9, 10. The brief proceedings and debates may be followed in the *Journals* and *Cong. Globe*, 29th Cong., 1st Sess., or Benton's *Abridgment*, XV. The political causes and aspects of the Mexican war, and its significance in connection with the slavery controversy, are discussed at length in general histories of the period and in biographies of contemporary public men. Important references are: Von Holst's *United States*, III., chaps. 4, 7–12; Curtis's *Buchanan*, I., chap. 21; Greeley's *American Conflict*, I., chap. 14; Benton's *Thirty Years' View*, II., chaps. 149, 161; Pierce's *Sumner*, III., 107–157; Webster's *Works* (ed. 1857), V., 253–261, 271–301; Calhoun's *Works* (ed. 1854), IV., 303–327, 396–424.

An Act providing for the Prosecution of the existing War between the United States and the Republic of Mexico.

WHEREAS, by the act of the Republic of Mexico, a state of war exists between that Government and the United States:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the purpose of enabling the government of the United States to prosecute said war to a speedy and successful termination, the President be, and he is hereby, authorized to employ the militia, naval, and military forces of the United States, and to call for and accept the services of any number of volunteers, not exceeding fifty thousand, who may offer their services, either as cavalry, artillery, infantry, or riflemen, to serve twelve months after they shall have arrived at the place of rendezvous, or to the end of the war, unless sooner discharged, according to the time for which they shall have been mustered into service; and that the sum of ten millions of dollars, out of any moneys in the treasury, or to come

into the treasury, not otherwise appropriated, be, and the same is hereby, appropriated for the purpose of carrying the provisions of this act into effect.

SEC. 2. *And be it further enacted*, That the militia, when called into the service of the United States by virtue of this act, or any other act, may, if in the opinion of the President of the United States the public interest requires it, be compelled to serve for a term not exceeding six months after their arrival at the place of rendezvous, in any one year, unless sooner discharged.

* * * * * * * * * * *

SEC. 8. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized forthwith to complete all the public armed vessels now authorized by law, and to purchase or charter, arm, equip, and man, such merchant vessels and steam-boats as, upon examination, may be found fit, or easily converted into armed vessels fit for the public service, and in such number as he may deem necessary for the protection of the seaboard, lake coast, and the general defence of the country.

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No. 74. Treaty with Great Britain

June 15, 1846

So much of the northern boundary of the United States as lay between the Lake of the Woods and the Rocky Mountains had been fixed by the Ashburton treaty of 1842; west of the mountains, however, the boundary was still undetermined. By virtue of the discovery of the Mississippi, France had claimed all the region west of that river as far as the Pacific; and this claim, of doubtful value at best, had passed to the United States upon the purchase of Louisiana in 1803. The region known as Oregon was also claimed by the United States, on the ground of Gray's discovery of the Columbia River in 1791. Oregon was also claimed by Great Britain; but by a convention of Oct. 20, 1818, the two countries agreed to a joint occupancy of the country for ten years, without prejudice to the rights of either party. By the treaty of 1819 between the United States and Spain, the latter accepted the 42d parallel as the northern limit of its possessions on the Pacific coast; while by treaties of 1824 with the United States, and of 1825 with Great Britain, the southern limit of the Russian possessions was fixed at 54° 40′. The "Oregon country," therefore, was the region between 42° and 54° 40′, and west of the Rocky Mountains. The convention of 1818 was continued indefinitely Aug. 6, 1827, but made terminable by either party after Oct. 20, 1828, on twelve months' notice. In the presidential campaign of 1844 the Democratic plat-

form demanded "the re-occupation of Oregon, and the re-annexation of Texas, at the earliest practicable period," the intention being, of course, to use Oregon as a political offset to Texas. A bill to organize a territorial government for Oregon, with the line of 54° 40′ as the northern limit, passed the House Feb. 3, 1845, but the Senate refused to consider it because slavery was to be prohibited in the proposed territory. A joint resolution of April 27, 1846, authorized the President, at his discretion, to give the required notice of withdrawal from the agreement of 1827 with Great Britain. The matter in dispute was finally settled by the treaty of June 15, 1846, although, owing to the disagreement of the commissioners under the treaty, a portion of the water boundary remained undetermined until 1871.

REFERENCES. — *Text* in *Revised Statutes relating to District of Columbia*, etc. (ed. 1875), 320–322. The message of the President transmitting the treaty and correspondence, together with the proceedings of the Senate, are in *Senate Doc. 489*, 29th Cong., 1st Sess., and *Cong. Globe*, Appendix, 1168–1178; see also *Senate Doc. 1*, pp. 138–192, and *Senate Doc. 117*. The political bearings of the Oregon question are fully exhibited in larger histories of the time, and in biographies of leading public men: see especially Von Holst's *United States*, III., chaps. 2, 6, 13; Curtis's *Buchanan*, I., chap. 20; Tyler's *Letters and Times of the Tylers*, II., chap. 15.

The United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, deeming it to be desirable for the future welfare of both countries that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the northwest coast of America, lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the rights mutually asserted by the two parties over the said territory, have respectively named Plenipotentiaries to treat and agree concerning the terms of such settlement, that is to say:

The President of the United States of America has, on his part, furnished with full powers James Buchanan, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland has, on her part, appointed the Right Honorable Richard Pakenham, a member of Her Majesty's Most Honorable Privy Council, and Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:

ARTICLE I.

From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of Her Britannic Majesty shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel, and of Fuca's Straits, to the Pacific Ocean: Provided, however, that the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties.

ARTICLE II.

From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia River, the navigation of the said branch shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described shall, in like manner, be free and open. In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States; it being, however, always understood that nothing in this article shall be construed as preventing, or intended to prevent, the Government of the United States from making any regulations respecting the navigation of the said river or rivers not inconsistent with the present treaty.

ARTICLE III.

In the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

ARTICLE IV.

The farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company, on the north side of the Columbia River, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States Government should signify a desire to obtain possession of the whole, or of any part thereof, the property so required shall be transferred to the said Government, at a proper valuation, to be agreed upon between the parties.

ARTICLE V.

The present treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by Her Britannic Majesty; and the ratifications shall be exchanged at London, at the expiration of six months from the date hereof, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-six.

JAMES BUCHANAN. [L.S.]
RICHARD PAKENHAM. [L.S.]

No. 75. Independent Treasury Act

August 6, 1846

THE passage of the act of July 4, 1840, "to provide for the collection, safe keeping, transfer, and disbursement of the public revenue," seemed to mark the final success of the so-called independent treasury plan, which had been several times urged by the President, and twice rejected by the House in the twenty-fifth Congress. The success of the Whigs, however, in the election of 1840, was followed, Aug. 13, 1841, by the repeal of the act; while the veto of two successive bank bills by President Tyler, in the same year, led to the immediate resignation of the members of the Cabinet, with the exception of Webster, and to a formal repudiation of Tyler by the Whigs. From 1841 to 1846 the custody of the public funds devolved upon the Treasury Department, without special regulation by law. December 19, 1845, a bill embodying the general features of the independent treasury act of 1840 was reported in the

House. The bill was taken up March 30, and passed April 2 by a vote of 123 to 67. It was not reported in the Senate until June 8, and was not further considered until July 29; Aug. 1 the bill passed the Senate, the vote being 28 to 25. The amendments of the Senate were agreed to by the House Aug. 5, and on the 6th the act was approved.

REFERENCES. — *Text* in *U. S. Stat. at Large*, IX., 59–66. For the proceedings, see the *House and Senate Journals*, 29th Cong., 1st Sess.; for the debates, see the *Cong. Globe*, or Benton's *Abridgment*, XV. The act of 1840 is in *U. S. Stat. at Large*, V., 385–392. On the treatment of the public money after 1841, see *House Exec. Doc. 123*, 27th Cong., 2d Sess. Webster's speech of Aug. 1, 1846, is in his *Works* (ed. 1857), V., 244–252. For Clay's speeches on the various sub-treasury plans, see his *Life and Speeches* (ed. 1844), II., 279–303, 310–349, 384–405, 432–436; for his speech on Tyler's bank vetoes, *ib.*, II., 485–507. See also Kinley's *Independent Treasury*, chap. 2; Johnston, in *Lalor's Cyclopædia*, II., 493–496; Benton's *Thirty Years' View*, II., chaps. 29, 41, 64, 65, 80–85, 90, 91.

An Act to provide for the better Organization of the Treasury, and for the Collection, Safe-Keeping, Transfer, and Disbursement of the public Revenue.

WHEREAS, by the fourth section of the act entitled "An Act to establish the Treasury Department," approved September two, seventeen hundred and eighty-nine, it was provided that it should be the duty of the treasurer to receive and keep the moneys of the United States, and to disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by the comptroller, and recorded by the register, and not otherwise: and whereas it is found necessary to make further provisions to enable the treasurer the better to carry into effect the intent of the said section in relation to the receiving and disbursing the moneys of the United States: Therefore —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the rooms prepared and provided in the new treasury building at the seat of government for the use of the treasurer of the United States, his assistants, and clerks, and occupied by them, and also the fireproof vaults and safes erected in said rooms for the keeping of the public moneys in the possession and under the immediate control of said treasurer, and such other apartments as are provided for in this act as places of deposit of the public money, are hereby constituted and declared to be the treasury of the United States. And all moneys paid into the same shall be subject to the draft of the treasurer, drawn agreeably to appropriations made by law.

[Sections 2–4 provide that the mint at Philadelphia, the branch mint at New Orleans, and the places provided for at New York, Boston, Charleston, and St. Louis, under the act of July 4, 1840, for the use of receivers-general of public money, shall be places of deposit.]

SEC. 5. *And be it further enacted*, That the President shall nominate, and by and with the advice and consent of the Senate appoint, four officers to be denominated "assistant treasurers of the United States," which said officers shall hold their respective offices for the term of four years, unless sooner removed therefrom; one of which shall be located at the city of New York, in the State of New York; one other of which shall be located at the city of Boston, in the State of Massachusetts; one other of which shall be located at the city of Charleston, in the State of South Carolina; and one other at St. Louis, in the State of Missouri. And all of which said officers shall give bonds to the United States, with sureties, according to the provisions hereinafter contained, for the faithful discharge of the duties of their respective offices.

SEC. 6. *And be it further enacted*, That the treasurer of the United States, the treasurer of the mint of the United States, the treasurers, and those acting as such, of the various branch mints, all collectors of the customs, all surveyors of the customs acting also as collectors, all assistant treasurers, all receivers of public moneys at the several land offices, all postmasters, and all public officers of whatsoever character, be, and they are hereby, required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by this act, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper department or officer of the government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the government which may be imposed by this or any other acts of Congress, or by any regulation of the treasury department made in conformity to law; and also to do and perform all acts and duties required by law, or by direction of any of the Executive departments of the government, as agents for paying pensions, or for making any other disbursements which either of the heads of

these departments may be required by law to make, and which are of a character to be made by the depositaries hereby constituted, consistently with the other official duties imposed upon them.

[Sections 7 and 8 relate to the bonds to be given by certain officers.]

SEC. 9. *And be it further enacted*, That all collectors and receivers of public money, of every character and description, within the District of Columbia, shall, as frequently as they may be directed by the Secretary of the Treasury, or the Postmaster-General so to do, pay over to the treasurer of the United States, at the treasury, all public moneys collected by them, or in their hands; that all such collectors and receivers of public moneys within the cities of Philadelphia and New Orleans shall, upon the same direction, pay over to the treasurers of the mints in their respective cities, at the said mints, all public moneys collected by them, or in their hands; and that all such collectors and receivers of public moneys within the cities of New York, Boston, Charleston, and St. Louis, shall, upon the same direction, pay over to the assistant treasurers in their respective cities, at their offices, respectively, all the public moneys collected by them, or in their hands, to be safely kept by the said respective depositaries until otherwise disposed of according to law; and it shall be the duty of the said Secretary and Postmaster-General respectively to direct such payments by the said collectors and receivers at all the said places, at least as often as once in each week, and as much more frequently, in all cases, as they in their discretion may think proper.

SEC. 10. *And be it further enacted*, That it shall be lawful for the Secretary of the Treasury to transfer the moneys in the hands of any depositary hereby constituted to the treasury of the United States, to be there safely kept, to the credit of the treasurer of the United States, according to the provisions of this act; and also to transfer moneys in the hands of any one depositary constituted by this act to any other depositary constituted by the same, at his discretion, and as the safety of the public moneys, and the convenience of the public service, shall seem to him to require; which authority to transfer the moneys belonging to the post-office department is also hereby conferred upon the Postmaster-General, so far as its exercise by him may be consistent with the provisions of existing laws; and every depositary constituted by this act shall

keep his account of the money paid to or deposited with him, belonging to the post-office department, separate and distinct from the account kept by him of other public moneys so paid or deposited. And for the purpose of payments on the public account, it shall be lawful for the treasurer of the United States to draw upon any of the said depositaries, as he may think most conducive to the public interest, or to the convenience of the public creditors, or both. And each depositary so drawn upon shall make returns to the treasury and post-office departments of all moneys received and paid by him, at such times and in such form as shall be directed by the Secretary of the Treasury or the Postmaster-General.

[Sections 11–13 provide for examinations of the books and accounts of depositaries, and for certain necessary expenses.]

SEC. 14. *And be it further enacted*, That the Secretary of the Treasury may, at his discretion, transfer the balances remaining with any of the present depositaries to any other of the present depositaries, as he may deem the safety of the public money or the public convenience may require: *Provided*, That nothing in this act shall be so construed as to authorize the Secretary of the Treasury to transfer the balances remaining with any of the present depositaries to the depositaries constituted by this act before the first day of January next: *And provided*, That, for the purpose of payments on public account, out of balances remaining with the present depositaries, it shall be lawful for the treasurer of the United States to draw upon any of the said depositaries as he may think most conducive to the public interests, or to the convenience of the public creditors, or both.

SEC. 15. *And be it further enacted*, That all marshals, district attorneys, and others having public money to pay to the United States, and all patentees wishing to make payment for patents to be issued, may pay all such moneys to the treasurer of the United States, to the treasurer of either of the mints in Philadelphia or New Orleans, to either of the other assistant treasurers, or to such other depositary constituted by this act as shall be designated by the Secretary of the Treasury in other parts of the United States to receive such payments, and give receipts or certificates of deposit therefor.

[Sec. 16 declares what shall constitute an embezzlement of the public moneys, and provides for the punishment thereof.]

SEC. 17. [The first paragraph of this section provides for temporary accommodations for the several depositaries.]

And whereas, by the thirtieth section of the act entitled "An Act to regulate the Collection of Duties imposed by Law on the Tonnage of Ships or Vessels, and on Goods, Wares, and Merchandises, imported into the United States," approved July thirty-one, seventeen hundred and eighty-nine, it was provided that all fees and dues collected by virtue of that act should be received in gold and silver coin only; and whereas, also, by the fifth section of the act approved May ten, eighteen hundred, entitled "An Act to amend the Act entitled 'An Act providing for the Sale of the Lands of the United States in the Territory North-west of the Ohio, and above the Mouth of Kentucky River,'" it was provided that payment for the said lands shall be made by all purchasers in specie, or in evidences of the public debt; and whereas, experience has proved that said provisions ought to be revived and enforced, according to the true and wise intent of the constitution of the United States. —

SEC. 18. *Be it further enacted*, That on the first day of January, in the year one thousand eight hundred and forty-seven, and thereafter, all duties, taxes, sales of public lands, debts, and sums of money accruing or becoming due to the United States, and also all sums due for postages or otherwise, to the general post-office department, shall be paid in gold and silver coin only, or in treasury notes issued under the authority of the United States: *Provided*, That the Secretary of the Treasury shall publish, monthly, in two newspapers at the city of Washington, the amount of specie at the several places of deposit, the amount of treasury notes or drafts issued, and the amount outstanding on the last day of each month.

SEC. 19. *And be it further enacted*, That on the first day of April, one thousand eight hundred and forty-seven, and thereafter, every officer or agent engaged in making disbursements on account of the United States, or of the general post-office, shall make all payments in gold and silver coin, or in treasury notes, if the creditor agree to receive said notes in payment; and any receiving or disbursing officer or agent who shall neglect, evade, or violate, the provisions of this and the last preceding section of this act, shall, by the Secretary of the Treasury, be immediately reported to the President of the United States, with the facts of such neg-

lect, evasion, or violation; and also to Congress, if in session; and if not in session, at the commencement of its session next after the violation takes place.

SEC. 20. *And be it further enacted*, That no exchange of funds shall be made by any disbursing officers or agents of the government, of any grade or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold and silver; and every such disbursing officer, when the means for his disbursements are furnished to him in gold and silver, shall make his payments in the money so furnished; or when those means are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to the law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. And it shall be and is hereby made the duty of the head of the proper department immediately to suspend from duty any disbursing officer who shall violate the provisions of this section, and forthwith to report the name of the officer or agent to the President, with the fact of the violation, and all the circumstances accompanying the same, and within the knowledge of the said Secretary, to the end that such officer or agent may be promptly removed from office, or restored to his trust and the performance of his duties, as to the President may seem just and proper: *Provided, however*, That those disbursing officers having at present credits in the banks shall, until the first day of January next, be allowed to check on the same, allowing the public creditors to receive their pay from the banks either in specie or bank notes.

SEC. 21. *And be it further enacted*, That it shall be the duty of the Secretary of the Treasury to issue and publish regulations to enforce the speedy presentation of all government drafts for payment at the place where payable, and to prescribe the time, according to the different distances of the depositaries from the seat of government, within which all drafts upon them, respectively, shall be presented for payment; and, in default of such presentation, to direct any other mode and place of payment which he may deem proper; but, in all these regulations and directions, it shall be the duty of the Secretary of the Treasury to guard, as far as may be, against those drafts being used or thrown into circulation as a paper currency or medium of exchange. And no officer

of the United States shall, either directly or indirectly, sell or dispose to any person or persons, or corporations, whatsoever, for a premium, any treasury note, draft, warrant, or other public security, not his private property, or sell or dispose of the avails or proceeds of such note, draft, warrant, or security, in his hands for disbursement, without making return of such premium, and accounting therefor by charging the same in his accounts to the credit of the United States; and any officer violating this section shall be forthwith dismissed from office.

[Sections 22 and 23 provide for salaries and certain expenses, and forbid any official charging or receiving any commission or pay for his services under the act.]

SEC. 24. *And be it further enacted*, That all acts, or parts of acts, which come in conflict with the provisions of this act be, and the same are hereby, repealed.

No. 76. Treaty with Mexico

February 2, 1848

THE treaty which closed the Mexican war was negotiated on the part of the United States by N. P. Trist, who, previous to his appointment as commissioner and confidential agent, had been chief clerk of the Department of State. He was instructed "to demand the cession of New Mexico and California in satisfaction of claims against Mexico." He left Washington April 16, 1847, and arrived at Vera Cruz, the headquarters of the United States army, May 6. November 16 he received a letter of recall, but disregarded it, and Feb. 2, 1848, concluded with Mexico the treaty of Guadalupe Hidalgo. Trist remained in Mexico until April 8, when an order for his arrest compelled him to leave. The treaty was sent to the Senate Feb. 23, and ratified by that body, with amendments, March 10, by a vote of 38 to 14. The suggested amendments were accepted by Mexico, and May 30 ratifications were exchanged. An act of July 29, 1848, provided for the payment of liquidated claims against Mexico. The survey of the boundary line was provided for by an act of Aug. 12, and acts of Feb. 26 and March 3, 1849, and March 3, 1851, made further provision for the settlement of Mexican claims.

REFERENCES. — *Text* in *Revised Statutes relating to District of Columbia*, etc. (ed. 1875), 492–501. The papers accompanying the treaty, and the proceedings of the Senate, are in *Senate Exec. Doc. 52*, 30th Cong., 1st Sess.; other papers are in *House Exec. Doc. 40, 56, 60, 69, and 70*. On the negotiation of the treaty, see *House Exec. Doc. 50*, 30th Cong., 2d Sess.; on the part played by Trist, *Senate Rep. 261*, 41st Cong., 2d Sess. The discussions in Congress may be followed in *Cong. Globe*, 30th Cong., 1st Sess., and appen-

dix. See also Wharton's *Intern. Law Digest* (ed. 1887), II., 256–261; Benton's *Thirty Years' View*, II., chap. 173; Von Holst's *United States*, III., chap. 7.

In the name of Almighty God:

The United States of America and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony, and mutual confidence wherein the two peoples should live, as good neighbours, have for that purpose appointed their respective plenipotentiaries, that is to say:

The President of the United States has appointed Nicholas P. Trist, a citizen of the United States, and the President of the Mexican Republic has appointed Don Luis Gonzaga Cuevas, Don Bernardo Couto, and Don Miguel Atristain, citizens of the said Republic;

Who, after a reciprocal communication of their respective full powers, have, under the protection of Almighty God, the author of peace, arranged, agreed upon, and signed the following

Treaty of Peace, Friendship, Limits, and Settlement between the United States of America and the Mexican Republic.

Article I.

There shall be firm and universal peace between the United States of America and the Mexican Republic, and between their respective countries, territories, cities, towns, and people, without exception of places or persons.

[Articles II.–IV. make the usual provisions for the cessation of hostilities, restoration of certain property and prisoners of war, and withdrawal of United States troops.]

Article V.*

The boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it

* Amended by Article I. of the treaty of Dec. 30, 1853. — Ed.

has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same;) thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

The southern and western limits of New Mexico, mentioned in this article, are those laid down in the map entitled "*Map of the United Mexican States, as organized and defined by various acts of the Congress of said republic, and constructed according to the best authorities. Revised edition. Published at New York, in* 1847, *by J. Disturnell;*" of which map a copy is added to this treaty, bearing the signatures and seals of the undersigned Plenipotentiaries. And, in order to preclude all difficulty in tracing upon the ground the limit separating Upper from Lower California, it is agreed that the said limit shall consist of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean, distant one marine league due south of the southernmost point of the port of San Diego, according to the plan of said port made in the year 1782 by Don Juan Pantoja, second sailing-master of the Spanish fleet, and published at Madrid in the year 1802, in the atlas to the voyage of the schooners Sutil and Mexicana; of which plan a copy is hereunto added, signed and sealed by the respective Plenipotentiaries. . . .

The boundary line established by this article shall be religiously respected by each of the two republics, and no change shall ever be made therein, except by the express and free consent of both nations, lawfully given by the General Government of each, in conformity with its own constitution.

ARTICLE VI.*

The vessels and citizens of the United States shall, in all time, have a free and uninterrupted passage by the Gulf of California,

* Amended by Article IV. of the treaty of Dec. 30, 1853. — ED.

and by the river Colorado below its confluence with the Gila, to and from their possessions situated north of the boundary line defined in the preceding article; it being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government.

If, by the examinations which may be made, it should be ascertained to be practicable and advantageous to construct a road, canal, or railway, which should in whole or in part run upon the river Gila, or upon its right or its left bank, within the space of one marine league from either margin of the river, the Governments of both republics will form an agreement regarding its construction, in order that it may serve equally for the use and advantage of both countries.

ARTICLE VII.*

The river Gila, and the part of the Rio Bravo del Norte lying below the southern boundary of New Mexico, being, agreeably to the fifth article, divided in the middle between the two republics, the navigation of the Gila and of the Bravo below said boundary shall be free and common to the vessels and citizens of both countries; and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right; not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution, under any denomination or title, be levied upon vessels or persons navigating the same, or upon merchandise or effects transported thereon, except in the case of landing upon one of their shores. If, for the purpose of making the said rivers navigable, or for maintaining them in such state, it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both Governments.

The stipulations contained in the present article shall not impair the territorial rights of either republic within its established limits.

ARTICLE VIII.

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to

* Amended by Article IV. of the treaty of Dec. 30, 1853. — ED.

continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.*

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the mean time, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

[Article X., relating to Mexican land grants in the ceded territory, was stricken out by the Senate (see protocol, May 26, 1848). Article XI., binding the United States to prevent Indian incursions into Mexican territory, and to restore Mexican prisoners taken by Indians, was abrogated by Article II. of the treaty of Dec. 30, 1853.]

* See protocol, May 26, 1848: *Revised Statutes relating to District of Columbia*, etc., 502. — ED.

ARTICLE XII.

In consideration of the extension acquired by the boundaries of the United States, as defined in the fifth article of the present treaty, the Government of the United States engages to pay to that of the Mexican Republic the sum of fifteen millions of dollars.

Immediately after this treaty shall have been duly ratified by the Government of the Mexican Republic, the sum of three millions of dollars shall be paid to the said Government by that of the United States, at the city of Mexico, in the gold or silver coin of Mexico. The remaining twelve millions of dollars shall be paid at the same place, and in the same coin, in annual instalments of three millions of dollars each, together with interest on the same at the rate of six per centum per annum. This interest shall begin to run upon the whole sum of twelve millions from the day of the ratification of the present treaty by the Mexican Government, and the first of the instalments shall be paid at the expiration of one year from the same day. Together with each annual instalment, as it falls due, the whole interest accruing on such instalment from the beginning shall also be paid.

ARTICLE XIII.

The United States engage, moreover, to assume and pay to the claimants all the amounts now due them, and those hereafter to become due, by reason of the claims already liquidated and decided against the Mexican Republic, under the conventions between the two republics severally concluded on the eleventh day of April, eighteen hundred and thirty-nine, and on the thirtieth day of January, eighteen hundred and forty-three; so that the Mexican Republic shall be absolutely exempt, for the future, from all expense whatever on account of the said claims.

ARTICLE XIV.

The United States do furthermore discharge the Mexican Republic from all claims of citizens of the United States, not heretofore decided against the Mexican Government, which may have arisen previously to the date of the signature of this treaty; which discharge shall be final and perpetual, whether the said claims be rejected or be allowed by the board of commissioners provided

for in the following article, and whatever shall be the total amount of those allowed.

ARTICLE XV.

The United States, exonerating Mexico from all demands on account of the claims of their citizens mentioned in the preceding article, and considering them entirely and forever cancelled, whatever their amount may be, undertake to make satisfaction for the same, to an amount not exceeding three and one-quarter millions of dollars. . . .

ARTICLE XVI.

Each of the contracting parties reserves to itself the entire right to fortify whatever point within its territory it may judge proper so to fortify for its security.

ARTICLE XVII.*

The treaty of amity, commerce, and navigation, concluded at the city of Mexico on the fifth day of April, A. D. 1831, between the United States of America and the United Mexican States, except the additional article, and except so far as the stipulations of the said treaty may be incompatible with any stipulation contained in the present treaty, is hereby revived for the period of eight years from the day of the exchange of ratifications of this treaty, with the same force and virtue as if incorporated therein; it being understood that each of the contracting parties reserves to itself the right, at any time after the said period of eight years shall have expired, to terminate the same by giving one year's notice of such intention to the other party.

[Articles XVIII.–XX. relate to duties on merchandise, etc., imported into Mexico before the withdrawal of the United States troops.]

ARTICLE XXI.

If unhappily any disagreement should arise between the Governments of the two republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavour, in the most sincere and earnest manner, to settle the differences so arising,

* *Cf.* Article V. of the treaty of Dec. 30, 1853. — ED.

and to preserve the state of peace and friendship in which the two countries are now placing themselves, using, for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighbourship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

[Article XXII. relates to the rules to be observed in case of war.]

ARTICLE XXIII.

This treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by the President of the Mexican Republic, with the previous approbation of its general Congress; and the ratifications shall be exchanged in the city of Washington, or at the seat of Government of Mexico, in four months from the date of the signature hereof, or sooner if practicable.

In faith whereof we, the respective Plenipotentiaries, have signed this treaty of peace, friendship, limits, and settlement, and have hereunto affixed our seals respectively. Done in quintuplicate, at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord one thousand eight hundred and forty-eight.

N. P. TRIST. [L.S.]
LUIS G. CUEVAS. [L.S.]
BERNARDO COUTO. [L.S.]
MIGL. ATRISTAIN. [L.S.]

No. 77. Clayton-Bulwer Treaty

April 19, 1850

THE various isthmus passages between Tehuantepec and Panama afforded the easiest routes for emigrants to California; and the acquisition of California by the United States in 1848, followed by the discovery of gold, made the question of the control of these routes an important one. "It was supposed that the most practicable route for a ship-canal was through the State of Nicaragua, by way of the San Juan River and the lakes through which it passes." Great Britain claimed a protectorate over the Mosquito Indians, on the east coast of Nicaragua, and their territory, and declined to relinquish it to the extent of allowing the construction of a canal under the joint sanction of Nicaragua and the United States. The alleged submission of the Indians of the Mosquito coast to Great Britain, on which the claim of the latter was based, was denied by the United States; but as the construction of the canal without the consent of Great Britain might lead to war, negotiations were opened by Clayton, Secretary of State, with Sir Henry Lytton Bulwer, British minister at Washington, which resulted in the treaty of April 19, 1850. The ratifications were exchanged at Washington July 4.

REFERENCES. — *Text* in *Revised Statutes relating to the District of Columbia*, etc. (ed. 1875), 322–325. For diplomatic correspondence, see *Senate Doc. 12 and 27*, 32d Cong., 2d Sess. The treaty is discussed at length in Wharton's *Intern. Law Digest* (ed. 1887), II., 184–244; see also *ib.*, III., 1–7.

The United States of America and Her Britannic Majesty, being desirous of consolidating the relations of amity which so happily subsist between them by setting forth and fixing in a convention their views and intentions with reference to any means of communication by ship-canal which may be constructed between the Atlantic and Pacific Oceans by the way of the river San Juan de Nicaragua, and either or both of the lakes of Nicaragua or Managua, to any port or place on the Pacific Ocean, the President of the United States has conferred full powers on John M. Clayton, Secretary of State of the United States, and Her Britannic Majesty on the Right Honorable Sir Henry Lytton Bulwer, a member of Her Majesty's Most Honorable Privy Council, Knight Commander of the Most Honorable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States, for the aforesaid purpose; and the said Plenipotentiaries, having exchanged their full powers, which were found to be in proper form, have agreed to the following articles:

ARTICLE I.

The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship-canal; agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the vicinity thereof, or occupy, or fortify, or colonize, or assume or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords or may afford, or any alliance which either has or may have to or with any State or people for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection, or influence that either may possess, with any State or Government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one any rights or advantages in regard to commerce or navigation through the said canal which shall not be offered on the same terms to the citizens or subjects of the other.

ARTICLE II.

Vessels of the United States or Great Britain traversing the said canal shall, in case of war between the contracting parties, be exempted from blockade, detention, or capture by either of the belligerents; and this provision shall extend to such a distance from the two ends of the said canal as may hereafter be found expedient to establish.

ARTICLE III.

In order to secure the construction of the said canal, the contracting parties engage that, if any such canal shall be undertaken upon fair and equitable terms by any parties having the authority of the local government or governments through whose territory the same may pass, then the persons employed in making the said canal, and their property used or to be used for that object, shall be protected, from the commencement of the said canal to its completion, by the Governments of the United States and

Great Britain, from unjust detention, confiscation, seizure, or any violence whatsoever.

ARTICLE IV.

The contracting parties will use whatever influence they respectively exercise with any State, States, or Governments possessing, or claimimg to possess, any jurisdiction or right over the territory which the said canal shall traverse, or which shall be near the waters applicable thereto, in order to induce such States or Governments to facilitate the construction of the said canal by every means in their power; and furthermore, the United States and Great Britain agree to use their good offices, wherever or however it may be most expedient, in order to procure the establishment of two free ports, one at each end of the said canal.

ARTICLE V.

The contracting parties further engage that when the said canal shall have been completed they will protect it from interruption, seizure, or unjust confiscation, and that they will guarantee the neutrality thereof, so that the said canal may forever be open and free, and the capital invested therein secure. Nevertheless, the Governments of the United States and Great Britain, in according their protection to the construction of the said canal, and guaranteeing its neutrality and security when completed, always understand that this protection and guarantee are granted conditionally, and may be withdrawn by both Governments, or either Government, if both Governments or either Government should deem that the persons or company undertaking or managing the same adopt or establish such regulations concerning the traffic thereupon as are contrary to the spirit and intention of this convention, either by making unfair discriminations in favor of the commerce of one of the contracting parties over the commerce of the other, or by imposing oppressive exactions or unreasonable tolls upon passengers, vessels, goods, wares, merchandise, or other articles. Neither party, however, shall withdraw the aforesaid protection and guarantee without first giving six months' notice to the other.

ARTICLE VI.

The contracting parties in this convention engage to invite every State with which both or either have friendly intercourse to enter into stipulations with them similar to those which they have entered into with each other, to the end that all other States may

share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated. And the contracting parties likewise agree that each shall enter into treaty stipulations with such of the Central American States as they may deem advisable for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans, for the benefit of mankind, on equal terms to all, and of protecting the same; and they also agree that the good offices of either shall be employed, when requested by the other, in aiding and assisting the negotiation of such treaty stipulations; and should any differences arise as to right or property over the territory through which the said canal shall pass, between the States or Governments of Central America, and such differences should in any way impede or obstruct the execution of the said canal, the Governments of the United States and Great Britain will use their good offices to settle such differences in the manner best suited to promote the interests of the said canal, and to strengthen the bonds of friendship and alliance which exist between the contracting parties.

ARTICLE VII.

It being desirable that no time should be unnecessarily lost in commencing and constructing the said canal, the Governments of the United States and Great Britain determine to give their support and encouragement to such persons or company as may first offer to commence the same, with the necessary capital, the consent of the local authorities, and on such principles as accord with the spirit and intention of this convention; and if any persons or company should already have, with any State through which the proposed ship-canal may pass, a contract for the construction of such a canal as that specified in this convention, to the stipulations of which contract neither of the contracting parties in this convention have any just cause to object, and the said persons or company shall, moreover, have made preparations and expended time, money, and trouble on the faith of such contract, it is hereby agreed that such persons or company shall have a priority of claim over every other person, persons, or company to the protection of the Governments of the United States and Great Britain, and be allowed a year from the date of the exchange of

the ratifications of this convention for concluding their arrangements and presenting evidence of sufficient capital subscribed to accomplish the contemplated undertaking; it being understood that if, at the expiration of the aforesaid period, such persons or company be not able to commence and carry out the proposed enterprize, then the Governments of the United States and Great Britain shall be free to afford their protection to any other persons or company that shall be prepared to commence and proceed with the construction of the canal in question.

ARTICLE VIII.

The Governments of the United States and Great Britain having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established by the way of Tehuantepec or Panama. In granting, however, their joint protection to any such canals or railways as are by this article specified, it is always understood by the United States and Great Britain that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of as just and equitable; and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford.

ARTICLE IX.

The ratifications of this convention shall be exchanged at Washington within six months from this day, or sooner if possible.

In faith whereof we, the respective Plenipotentiaries, have signed this convention, and have hereunto affixed our seals.

Done at Washington the nineteenth day of April, anno Domini one thousand eight hundred and fifty.

JOHN M. CLAYTON. [L.S.]
HENRY LYTTON BULWER. [L.S.]

Compromise of 1850

AUGUST 8, 1846, in the debate in the House on the bill appropriating $2,000,000 to purchase territory from Mexico, Wilmot of Pennsylvania moved as an amendment the proviso "that, as an express and fundamental condition to the acquisition of any territory from the Republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the Executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted." The amendment was not accepted, and later attempts to engraft the proviso upon bills to organize the Territory of Oregon failed. In 1848 a bill to organize the Territories of Oregon, New Mexico, and California, with a provision "that all questions concerning slavery in those Territories should be referred to the United States Supreme Court for decision," passed the Senate, but failed in the House. The act of Aug. 14, 1848, organizing the Territory of Oregon, applied to the new Territory the provisions of the articles of compact in the ordinance of 1787. A bill to establish territorial governments in New Mexico and California, with the Wilmot proviso, passed the House in 1849, but was not acted on in the Senate. Later in the session, the Senate attempted to provide for the organization of the two Territories by means of a "rider" on the general appropriation bill, but the attempt was defeated in the House.

In May, 1848, the Democratic National Convention had rejected, 36 to 216, a resolution offered by Yancey of Alabama, "That the doctrine of non-interference with the rights of property of any portion of the people of this confederacy, be it in the States or Territories thereof, by any other than the parties interested in them, is the true republican doctrine, recognized by this body." The doctrine of "squatter sovereignty" embodied in this resolution now began to be urged in opposition to the doctrine of the Wilmot proviso, and the issue was joined on the question of prohibiting slavery in the new Territories, or allowing the people of each Territory to establish or exclude slavery as they might see fit.

In June, 1849, the people of California adopted a State constitution prohibiting slavery. In his annual message of Dec. 4, President Taylor recommended the admission of California, but suggested the advisability of awaiting popular action in New Mexico before legislating for the organization of that region. January 29, 1850, Clay submitted in the Senate a series of resolutions, intended to afford a basis for adjusting the differences regarding the status and treatment of slavery in the Territories. On the 13th of February the constitution of California was transmitted to Congress. April 18, by a vote of 30 to 22, Clay's resolutions were referred to a select committee of thirteen, of which Clay was chairman. May 8 the committee submitted its report, together with two bills, one to admit California as a State, to establish territorial governments for Utah and New Mexico, and making proposals to Texas for the establishment of her western and northern boundaries, and the other to suppress the slave trade in the District of Columbia.

The first of these bills, known as the "omnibus bill," was taken up in the Senate May 9. June 17, by a vote of 38 to 12, an amendment applying to Utah the doctrine of "squatter sovereignty" was agreed to; July 31 the sections relating to California, New Mexico, and Texas were stricken out, and Aug. 1 the remainder of the bill passed the Senate as "an act to establish a territorial government for Utah." The House passed the bill Sept. 7, by a vote of 97 to 85, and on the 9th the act was approved. A bill to adjust the Texan boundary passed the Senate Aug. 10, by a vote of 30 to 20; on the 15th the Senate passed the New Mexico bill, the vote being 27 to 10. The House added the New Mexico bill to the Texas bill as an amendment, and Sept. 6 passed the bill in this form by a vote of 108 to 97. The Senate concurred in the House amendment, and on the 9th the act was approved. The bill to admit California passed the Senate Aug. 13, 34 to 18, and the House Sept. 7, 150 to 56; Sept. 9 the act was approved. The fugitive slave bill passed the Senate Aug. 26, without a division, the vote on the third reading being 27 to 12; the House passed the bill Sept. 12, without debate, by a vote of 109 to 76, and on the 18th the act was approved. The act to suppress the slave trade in the District of Columbia, the last of the compromise measures, passed the Senate Sept. 16, by a vote of 33 to 19, and the House on the following day, by a vote of 124 to 59; on the 20th the act was approved.

REFERENCES. — The *text* is indicated at the end of each of the extracts following. For the proceedings of Congress, see the *House and Senate Journals*, 31st Cong., 1st Sess.; for the discussions, see the *Cong. Globe*, and appendix, or Benton's *Abridgment*, XVI. A large number of memorials and resolutions are collected in the *House and Senate Misc. Doc.* of this session; see also *Senate Rep. 12*. The discussions of the compromise of 1850 are voluminous; important references, besides the larger general histories, are: Webster's *Works* (ed. 1857), V., 324–366, 373–405, 412–438; Calhoun's *Works* (ed. 1854), IV., 535–578; Seward's *Works* (ed. 1853), I., 31–131; Pierce's *Sumner*, III., chaps. 34, 35; Benton's *Thirty Years' View*, II., chaps. 182, 183, 186–197; Curtis's *Webster*, II., chaps. 36, 37; Curtis's *Buchanan*, II., chap. 1; Wm. Jay's *Misc. Writings on Slavery*, 491–620; Stephens's *War between the States*, II., 176–240; Wilson's *Slave Power*, II., chaps. 20–24; Davis's *Confederate Government*, I., Appendix C; Johnston, in *Lalor's Cyclopædia*, I., 552–554.

No. 78. Clay's Resolutions

January 29, 1850

It being desirable, for the peace, concord, and harmony of the Union of these States, to settle and adjust amicably all existing questions of controversy between them arising out of the institution of slavery upon a fair, equitable and just basis:, therefore,

1. *Resolved*, That California, with suitable boundaries, ought, upon her application to be admitted as one of the States of this

Union, without the imposition by Congress of any restriction in respect to the exclusion or introduction of slavery within those boundaries.

2. *Resolved*, That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the republic of Mexico, it is inexpedient for Congress to provide by law either for its introduction into, or exclusion from, any part of the said territory; and that appropriate territorial governments ought to be established by Congress in all of the said territory, not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery.

3. *Resolved*, That the western boundary of the State of Texas ought to be fixed on the Rio del Norte, commencing one marine league from its mouth, and running up that river to the southern line of New Mexico; thence with that line eastwardly, and so continuing in the same direction to the line as established between the United States and Spain, excluding any portion of New Mexico, whether lying on the east or west of that river.

4. *Resolved*, That it be proposed to the State of Texas, that the United States will provide for the payment of all that portion of the legitimate and bona fide public debt of that State contracted prior to its annexation to the United States, and for which the duties on foreign imports were pledged by the said State to its creditors, not exceeding the sum of ——— dollars, in consideration of the said duties so pledged having been no longer applicable to that object after the said annexation, but having thenceforward become payable to the United States; and upon the condition, also, that the said State of Texas shall, by some solemn and authentic act of her legislature or of a convention, relinquish to the United States any claim which it has to any part of New Mexico.

5. *Resolved*, That it is inexpedient to abolish slavery in the District of Columbia whilst that institution continues to exist in the State of Maryland, without the consent of that State, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.

6. *But, resolved*, That it is expedient to prohibit, within the District, the slave trade in slaves brought into it from States or places beyond the limits of the District, either to be sold therein

as merchandise, or to be transported to other markets without the District of Columbia.

7. *Resolved*, That more effectual provision ought to be made by law, according to the requirement of the constitution, for the restitution and delivery of persons bound to service or labor in any State, who may escape into any other State or Territory in the Union. And,

8. *Resolved*, That Congress has no power to prohibit or obstruct the trade in slaves between the slaveholding States; but that the admission or exclusion of slaves brought from one into another of them, depends exclusively upon their own particular laws.

[*Senate Jour.*, 31st Cong., 1st Sess., pp. 118, 119.]

No. 79. Extract from the Report of the Committee of Thirteen

May 8, 1850

. . . The views and recommendations contained in this report may be recapitulated in a few words:

1. The admission of any new State or States formed out of Texas to be postponed until they shall hereafter present themselves to be received into the Union, when it will be the duty of Congress fairly and faithfully to execute the compact with Texas by admitting such new State or States;

2. The admission forthwith of California into the Union, with the boundaries which she has proposed;

3. The establishment of territorial governments, without the Wilmot proviso, for New Mexico and Utah, embracing all the territory recently acquired by the United States from Mexico not contained in the boundaries of California;

4. The combination of these two last-mentioned measures in the same bill;

5. The establishment of the western and northern boundary of Texas, and the exclusion from her jurisdiction of all New Mexico, with the grant to Texas of a pecuniary equivalent; and the section for that purpose to be incorporated in the bill admitting California and establishing territorial governments for Utah and New Mexico;

6. More effectual enactments of law to secure the prompt delivery of persons bound to service or labor in one State, under the laws thereof, who escape into another State; and,

7. Abstaining from abolishing slavery; but, under a heavy penalty, prohibiting the slave trade in the District of Columbia.

If such of these several measures as require legislation should be carried out by suitable acts of Congress, all controversies to which our late territorial acquisitions have given rise, and all existing questions connected with the institution of slavery, whether resulting from those acquisitions or from its existence in the States and the District of Columbia, will be amicably settled and adjusted, in a manner, it is confidently believed, to give general satisfaction to an overwhelming majority of the people of the United States. Congress will have fulfilled its whole duty in regard to the vast country which, having been ceded by Mexico to the United States, has fallen under their dominion. It will have extended to it protection, provided for its several parts the inestimable blessing of free and regular government adapted to their various wants, and placed the whole under the banner and the flag of the United States. Meeting courageously its clear and entire duty, Congress will escape the unmerited reproach of having, from considerations of doubtful policy, abandoned to an undeserved fate territories of boundless extent, with a sparse, incongruous, and alien, if not unfriendly, population, speaking different languages, and accustomed to different laws, whilst that population is making irresistible appeals to the new sovereignty to which they have been transferred for protection, for government, for law, and for order. . . .

[*Senate Rep. 123*, 31st Cong., 1st Sess., p. 11.]

No. 80. Extract from the Utah Act

September 9, 1850

An Act to establish a Territorial Government for Utah.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, to wit: bounded on the west by the State of California, on the north by the Territory of Oregon, and on the east by the

summit of the Rocky Mountains, and on the south by the thirty-seventh parallel of north latitude, be, and the same is hereby, created into a temporary government, by the name of the Territory of Utah; and, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States. . . .

[*U. S. Stat. at Large*, IX., 453.]

No. 81. Extract from the Texas and New Mexico Act

September 9, 1850

An Act proposing to the State of Texas the Establishment of her Northern and Western Boundaries, the Relinquishment by the said State of all Territory claimed by her exterior to said Boundaries, and of all her claims upon the United States, and to establish a territorial Government for New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following propositions shall be, and the same hereby are, offered to the State of Texas, which, when agreed to by the said State, in an act passed by the general assembly, shall be binding and obligatory, upon the United States, and upon the said State of Texas: *Provided*, The said agreement by the said general assembly shall be given on or before the first day of December, eighteen hundred and fifty:

FIRST. The State of Texas will agree that her boundary on the north shall commence at the point at which the meridian of one hundred degrees west from Greenwich is intersected by the parallel of thirty-six degrees thirty minutes north latitude, and shall run from said point due west to the meridian of one hundred and three degrees west from Greenwich; thence her boundary shall

run due south to the thirty-second degree of north latitude; thence on the said parallel of thirty-two degrees of north latitude to the Rio Bravo del Norte, and thence with the channel of said river to the Gulf of Mexico.

SECOND. The State of Texas cedes to the United States all her claim to territory exterior to the limits and boundaries which she agrees to establish by the first article of this agreement.

THIRD. The State of Texas relinquishes all claim upon the United States for liability of the debts of Texas, and for compensation or indemnity for the surrender to the United States of her ships, forts, arsenals, custom-houses, custom-house revenue, arms and munitions of war, and public buildings with their sites, which became the property of the United States at the time of the annexation.

FOURTH. The United States, in consideration of said establishment of boundaries, cession of claim to territory, and relinquishment of claims, will pay to the State of Texas the sum of ten millions of dollars in a stock bearing five per cent. interest, and redeemable at the end of fourteen years, the interest payable half-yearly at the treasury of the United States.

* * * * * * * * * * *

SEC. 2. *And be it further enacted*, That all that portion of the Territory of the United States bounded as follows: Beginning at a point in the Colorado River where the boundary line with the republic of Mexico crosses the same; thence eastwardly with the said boundary line to the Rio Grande; thence following the main channel of said river to the parallel of the thirty-second degree of north latitude; thence east with said degree to its intersection with the one hundred and third degree of longitude west of Greenwich; thence north with said degree of longitude to the parallel of thirty-eighth degree of north latitude; thence west with said parallel to the summit of the Sierra Madre; thence south with the crest of said mountains to the thirty-seventh parallel of north latitude; thence west with said parallel to its intersection with the boundary line of the State of California; thence with said boundary line to the place of beginning — be, and the same is hereby, erected into a temporary government, by the name of the Territory of New Mexico: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Ter-

ritories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other Territory or State: *And provided, further,* That, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission.

[*U. S. Stat. at Large,* IX., 446, 447.]

No. 82. Fugitive Slave Act

September 18, 1850

An Act to amend, and supplementary to, the Act entitled "An Act respecting Fugitives from Justice, and Persons escaping from the Service of their Masters," approved February twelfth, one thousand seven hundred and ninety-three.

[Sections 1–4 relate to the appointment of commissioners, having concurrent jurisdiction with the judges of the circuit and district courts of the United States, and the superior courts of the territories, to perform the duties specified in the act.]

SEC. 5. *And be it further enacted,* That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant, or other process, when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of such claimant, on the motion of such claimant, by the Circuit or District Court for the district of such marshal; and after arrest of such fugitive, by such marshal or his deputy, or whilst at any time in his custody under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, Territory, or District whence he escaped: and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the Constitution of the United States and of this

act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus* of the proper county, when necessary to ensure a faithful observance of the clause of the Constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose; and said warrants shall run, and be executed by said officers, any where in the State within which they are issued.

SEC. 6. *And be it further enacted*, That when a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal officer or court of the State or Territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached,

which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the State or Territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first [fourth] section mentioned, shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

SEC. 7. *And be it further enacted*, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding

six months, by indictment and conviction before the District Court of the United States for the district in which such offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars, for each fugitive so lost as aforesaid, to be recovered by action of debt, in any of the District or Territorial Courts aforesaid, within whose jurisdiction the said offence may have been committed.

[Sec. 8 relates to fees for services under the act.]

SEC. 9. *And be it further enacted*, That, upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent, or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require. The said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses, as are now allowed by law for transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States.

SEC. 10. *And be it further enacted*, That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being

produced in any other State, Territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped: *Provided*, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid. But in its absence the claim shall be heard and determined upon other satisfactory proofs, competent in law.

[*U. S. Stat. at Large*, IX., 462–465.]

No. 83. Act abolishing the Slave Trade in the District of Columbia

September 20, 1850

An Act to suppress the Slave Trade in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January, eighteen hundred and fifty-one, it shall not be lawful to bring into the District of Columbia any slave whatever, for the purpose of being sold, or for the purpose of being placed in depot, to be subsequently transferred to any other State or place to be sold as merchandize. And if any slave shall be brought into the said District by its owner, or by the

authority or consent of its owner, contrary to the provisions of this act, such slave shall thereupon become liberated and free.

SEC. 2. *And be it further enacted*, That it shall and may be lawful for each of the corporations of the cities of Washington and Georgetown, from time to time, and as often as may be necessary, to abate, break up, and abolish any depot or place of confinement of slaves brought into the said District as merchandize, contrary to the provisions of this act, by such appropriate means as may appear to either of the said corporations expedient and proper. And the same power is hereby vested in the Levy Court of Washington county, if any attempt shall be made, within its jurisdictional limits, to establish a depot or place of confinement for slaves brought into the said District as merchandize for sale contrary to this act.

[*U. S. Stat. at Large*, IX., 467, 468.]

No. 84. Treaty with Mexico

December 30, 1853

THE interest of the United States in a transportation route across the isthmus of Tehuantepec occasioned extended diplomatic correspondence between the United States and Mexico. In addition, the running of the boundary line under the treaty of Guadalupe Hidalgo had been attended with difficulties. Both questions were dealt with in the treaty of Dec. 30, 1853, usually known as the Gadsden treaty. The ratifications were exchanged at Washington June 30, 1854. The area acquired from Mexico was 45,535 square miles.

REFERENCES. — *Text* in *Revised Statutes relating to District of Columbia*, etc. (ed. 1875), 503–506. The diplomatic correspondence is in *Senate Doc. 97*, 32d Cong., 1st Sess. On the question of boundary, see *Senate Doc. 34*, 31st Cong., 1st Sess.; *Senate Doc. 119, 120, 121, 131*, 32d Cong., 1st Sess.; *Senate Rep., 345*, 32d Cong., 1st Sess.; *Senate Doc. 55*, 33d Cong., 2d Sess.; *Senate Doc. 57*, 34th Cong., 1st Sess.

In the name of Almighty God.

The Republic of Mexico and the United States of America, desiring to remove every cause of disagreement which might interfere in any manner with the better friendship and intercourse between the two countries, and especially in respect to the true limits which should be established, when, notwithstanding what was covenanted in the treaty of Gaudalupe Hidalgo in the year 1848, opposite interpretations have been urged, which might give

occasion to questions of serious moment: To avoid these, and to strengthen and more firmly maintain the peace which happily prevails between the two republics, the President of the United States has, for this purpose, appointed James Gadsden, Envoy Extraordinary and Minister Plenipotentiary of the same near the Mexican Government, and the President of Mexico has appointed as Plenipotentiary "*ad hoc*" his excellency Don Manuel Diez de Bonilla, cavalier grand cross of the national and distinguished order of Guadalupe, and Secretary of State and of the office of Foreign Relations, and Don José Salazar Ylarregui and General Mariano Monterde, as scientific commissioners, invested with full powers for this negotiation; who, having communicated their respective full powers, and finding them in due and proper form, have agreed upon the articles following:

ARTICLE I.

The Mexican Republic agrees to designate the following as her true limits with the United States for the future: Retaining the same dividing line between the two Californias as already defined and established, according to the 5th article of the treaty of Guadalupe Hidalgo, the limits between the two republics shall be as follows: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article of the treaty of Guadalupe Hidalgo; thence, as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′ north latitude crosses the same; thence due west one hundred miles; thence south to the parallel of 31° 20′ north latitude; thence along the said parallel of 31° 20′ to the 111th meridian of longitude west of Greenwich; thence in a straight line to a point on the Colorado River twenty English miles below the junction of the Gila and Colorado Rivers; thence up the middle of the said river Colorado until it intersects the present line between the United States and Mexico.

[Commissioners to be appointed to survey and mark the boundary.]

The dividing line thus established shall, in all time, be faithfully respected by the two Governments, without any variation therein, unless of the express and free consent of the two, given in conformity to the principles of the law of nations, and in accordance with the constitution of each country, respectively.

In consequence, the stipulation in the 5th article of the treaty of Guadalupe upon the boundary line therein described is no longer of any force, wherein it may conflict with that here established, the said line being considered annulled and abolished wherever it may not coincide with the present, and in the same manner remaining in full force where in accordance with the same.

ARTICLE II.

The Government of Mexico hereby releases the United States from all liability on account of the obligations contained in the eleventh article of the treaty of Guadalupe Hidalgo; and the said article and the thirty-third article of the treaty of amity, commerce, and navigation between the United States of America and the United Mexican States, concluded at Mexico on the fifth day of April, 1831, are hereby abrogated.

ARTICLE III.

In consideration of the foregoing stipulations, the Government of the United States agrees to pay to the Government of Mexico, in the city of New York, the sum of ten millions of dollars, of which seven millions shall be paid immediately upon the exchange of the ratifications of this treaty, and the remaining three millions as soon as the boundary line shall be surveyed, marked, and established.*

ARTICLE IV.

The provisions of the 6th and 7th articles of the treaty of Guadalupe Hidalgo having been rendered nugatory for the most part by the cession of territory granted in the first article of this treaty, the said articles are hereby abrogated and annulled, and the provisions as herein expressed substituted therefor. The vessels and citizens of the United States shall in all time, have free and uninterrupted passage through the Gulf of California, to and from their possessions situated north of the boundary line of the two countries. It being understood that this passage is to be by navigating the Gulf of California and the river Colorado, and not by land, without the express consent of the Mexican Government; and precisely the same provisions, stipulations, and restrictions, in all respects, are hereby agreed upon and adopted,

* The appropriation was made by act of June 29, 1854. *U. S. Stat. at Large*, X., 301. — ED.

and shall be scrupulously observed and enforced, by the two contracting Governments, in reference to the Rio Colorado, so far and for such distance as the middle of that river is made their common boundary line by the first article of this treaty.

The several provisions, stipulations, and restrictions contained in the 7th article of the treaty of Guadalupe Hidalgo shall remain in force only so far as regards the Rio Bravo del Norte, below the initial of the said boundary provided in the first article of this treaty; that is to say, below the intersection of the 31° 47′ 30″ parallel of latitude, with the boundary line established by the late treaty dividing said river from its mouth upwards, according to the 5th article of the treaty of Guadalupe.

ARTICLE V.

All the provisions of the eighth and ninth, sixteenth and seventeenth articles of the treaty of Guadalupe Hidalgo, shall apply to the territory ceded by the Mexican Republic in the first article of the present treaty, and to all the rights of persons and property, both civil and ecclesiastical, within the same, as fully and as effectually as if the said articles were herein again recited and set forth.

ARTICLE VI.

No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the day — twenty-fifth of September — when the Minister and subscriber to this treaty on the part of the United States proposed to the Government of Mexico to terminate the question of boundary, will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.

ARTICLE VII.

Should there at any future period (which God forbid) occur any disagreement between the two nations which might lead to a rupture of their relations and reciprocal peace, they bind themselves in like manner to procure by every possible method the adjustment of every difference; and should they still in this manner not succeed, never will they proceed to a declaration of war without having previously paid attention to what has been set forth

in article 21 of the treaty of Guadalupe for similar cases; which article, as well as the 22d, is here re-affirmed.

ARTICLE VIII.

The Mexican Government having on the 5th of February, 1853, authorized the early construction of a plank and rail road across the Isthmus of Tehuantepec, and, to secure the stable benefits of said transit way to the persons and merchandize of the citizens of Mexico and the United States, it is stipulated that neither Government will interpose any obstacle to the transit of persons and merchandize of both nations; and at no time shall higher charges be made on the transit of persons and property of citizens of the United States than may be made on the persons and property of other foreign nations, nor shall any interest in said transit way, nor in the proceeds thereof, be transferred to any foreign government.

The United States, by its agents, shall have the right to transport across the isthmus, in closed bags, the mails of the United States not intended for distribution along the line of communication; also the effects of the United States Government and its citizens, which may be intended for transit, and not for distribution on the isthmus, free of custom-house or other charges by the Mexican Government. Neither passports nor letters of security will be required of persons crossing the isthmus and not remaining in the country.

When the construction of the railroad shall be completed, the Mexican Government agrees to open a port of entry in addition to the port of Vera Cruz, at or near the terminus of said road on the Gulf of Mexico.

The two Governments will enter into arrangements for the prompt transit of troops and munitions of the United States, which that Government may have occasion to send from one part of its territory to another, lying on opposite sides of the continent.

The Mexican Government having agreed to protect with its whole power the prosecution, preservation, and security of the work, the United States may extend its protection as it shall judge wise to it when it may feel sanctioned and warranted by the public or international law.

ARTICLE IX.

This treaty shall be ratified, and the respective ratifications shall be exchanged at the city of Washington within the exact period of six months from the date of its signature, or sooner if possible.

In testimony whereof we, the Plenipotentiaries of the contracting parties, have hereunto affixed our hands and seals at Mexico, the thirtieth (30th) day of December, in the year of our Lord one thousand eight hundred and fifty-three, in the thirty-third year of the Independence of the Mexican Republic, and the seventy-eighth of that of the United States.

JAMES GADSDEN. [L.S.]
MANUEL DIEZ DE BONILLA. [L.S.]
JOSÉ SALAZAR YLARREGUI. [L.S.]
J. MARIANO MONTERDE. [L.S.]

Kansas-Nebraska Act

1854

THE first suggestion of a territorial organization for the region between the western boundary of Missouri and the Rocky Mountains, which had been left without organization upon the admission of Missouri in 1821, seems to have been made in 1844, when Wilkins, Secretary of War, proposed the formation of Nebraska Territory, as preliminary to the extension of military posts in that direction. A bill to establish the Territory of Nebraska was introduced in the House Dec. 17, 1844, by Douglas of Illinois, but no action was taken. A bill with the same object, brought in March 15, 1848, by Douglas, now a member of the Senate, likewise came to nothing. A bill to attach Nebraska to the surveying district of Arkansas, introduced in the Senate July 28, 1848, stopped with the Committee on Public Lands. A third bill to organize the Territory of Nebraska, also introduced by Douglas, was considered by the Senate Dec. 20, 1848, and recommitted.

December 13, 1852, Hall of Missouri introduced in the House a bill to organize the Territory of Platte. The bill went to the Committee on Territories, and as such was not reported. February 2, 1853, however, Richardson of Illinois reported from the committee a bill to organize the Territory of Nebraska, which passed the House Feb. 10, by a vote of 98 to 43. The Senate Committee on Territories reported the bill on the 17th, without amendments; March 4, by a vote of 23 to 17, consideration was refused. This bill did not propose to legislate slavery into the new territory. "The opposition to it came from Southern members who were preparing, but were not yet ready to

announce, their next advanced claim, that the compromise of 1850 had superseded and voided that of 1820, abolished the prohibition of slavery in the territory north of the Missouri compromise line, and opened it to the operation of squatter sovereignty" (Johnston).

The thirty-third Congress met Dec. 5, 1853. December 14 Senator Dodge of Iowa introduced a bill to organize the Territory of Nebraska. The bill, which appears to have been identical with Richardson's bill of the previous session, provided for the organization of the whole region between the parallels of 36° 30′ and 43° 30′ on the south and north, Missouri and Iowa on the east, and the Rocky Mountains on the west. A substitute for this bill, with the same provision as to slavery as that which had been inserted in the Utah and New Mexico bills, was reported by Douglas, from the Committee on Territories, Jan. 4, 1854. The declaration regarding slavery was satisfactory to neither party, and on the 16th Dixon of Kentucky gave notice of an amendment explicitly exempting the proposed territory from the operation of the Missouri compromise, to which Sumner of Massachusetts responded with an amendment extending the Missouri compromise to the new territory. On the 23d Douglas reported that the committee had prepared several new amendments to the bill, changing the southern boundary from 36° 30′ to 37°, providing for two territories instead of one, and declaring the Missouri compromise inoperative in the new territories, on the ground that it had been superseded by the compromise measures of 1850. The bill as thus amended Douglas proposed to substitute for the bill previously reported. Debate in Committee of the Whole began Jan. 30. February 6 Douglas offered an amendment by which the Missouri compromise was to be declared "inconsistent" with the legislation of 1850, following this the next day with another amendment in the words of sec. 14 of the act as finally passed. This last amendment was agreed to on the 15th, by a vote of 35 to 10. March 4 the bill passed the Senate, after an all-night session, by a vote of 37 to 14.

In the meantime Representative Miller of Missouri had introduced in the House, Dec. 22, a bill to organize the Territory of Nebraska. The bill went to the Committee on Territories, from which Richardson reported, Jan. 31, a bill to organize the Territories of Nebraska and Kansas. A minority report, advocating the application of squatter sovereignty to the two territories, was submitted by English of Indiana. The House bill did not regularly come up for consideration until May 8, but from Feb. 14 to April 28 either the House or Senate bill, and the general subject of territorial governments for Kansas and Nebraska, were discussed almost daily, regardless of the business nominally before the House. March 21 the Senate bill was disposed of by referring it to the Committee of the Whole, and was not again considered. May 8 Richardson called up the Kansas-Nebraska bill, thirty bills and resolutions being successively laid aside until the bill was reached. The debate continued with increasing violence until the 22d, when, by a vote of 113 to 100, the House passed the bill with amendments. Douglas championed the bill in the Senate, where the debate was attended with intense excitement and frequent disorder. The bill passed the Senate May 26, without a division, and on the 30th the act was approved.

The form of government provided by the act did not differ essentially from

that contained in other territorial acts. The extracts from the act following are limited to the sections defining the boundaries of the two territories, and the status of slavery.

REFERENCES. — The *text* is indicated in connection with each extract, following. The *House and Senate Journals*, 33d Cong., 1st Sess., give the record of proceedings; both proceedings and debates are reported at length in the *Cong. Globe*, and appendix. Von Holst's *United States*, IV., chaps. 6–8, and Rhodes's *United States*, I., chap. 5, are the most important general accounts. Other important references are: Pierce's *Sumner*, III., chap. 38; *Wm. Lloyd Garrison: Story of his Life told by his Children*, III., chap. 14; Greeley's *Amer. Conflict*, I., chap. 17; Stephens's *War between the States*, II., 241–257; Davis's *Confederate Government*, I., chap. 5; Johnston, in *Lalor's Cyclopædia*, II., 667–670.

No. 85. Douglas's Report

January 4, 1854

Mr. DOUGLAS made the following

REPORT.

[To accompany bill S. 22.]

The Committee on Territories, to which was referred a bill for an act to establish the Territory of Nebraska, have given the same that serious and deliberate consideration which its great importance demands, and beg leave to report it back to the Senate with various amendments, in the form of a substitute for the bill:

The principal amendments which your committee deem it their duty to commend to the favorable action of the Senate, in a special report, are those in which the principles established by the compromise measures of 1850, so far as they are applicable to territorial organizations, are proposed to be affirmed and carried into practical operation within the limits of the new Territory.

The wisdom of those measures is attested, not less by their salutary and beneficial effects, in allaying sectional agitation and restoring peace and harmony to an irritated and distracted people, than by the cordial and almost universal, approbation with which they have been received and sanctioned by the whole country. In the judgment of your committee, those measures were intended to have a far more comprehensive and enduring effect than the mere adjustment of the difficulties arising out of the recent acquisition of Mexican territory. They were designed to establish

certain great principles, which would not only furnish adequate remedies for existing evils, but, in all time to come, avoid the perils of a similar agitation, by withdrawing the question of slavery from the halls of Congress and the political arena, and committing it to the arbitrament of those who were immediately interested in, and alone responsible for its consequences. With the view of conforming their action to what they regard the settled policy of the government, sanctioned by the approving voice of the American people, your committee have deemed it their duty to incorporate and perpetuate, in their territorial bill, the principles and spirit of those measures. If any other consideration were necessary, to render the propriety of this course imperative upon the committee, they may be found in the fact, that the Nebraska country occupies the same relative position to the slavery question, as did New Mexico and Utah, when those territories were organized.

It was a disputed point, whether slavery was prohibited by law in the country acquired from Mexico. On the one hand it was contended, as a legal proposition, that slavery having been prohibited by the enactments of Mexico, according to the laws of nations, we received the country with all its local laws and domestic institutions attached to the soil, so far as they did not conflict with the Constitution of the United States; and that a law, either protecting or prohibiting slavery, was not repugnant to that instrument, as was evidenced by the fact, that one-half of the States of the Union tolerated, while the other half prohibited, the institution of slavery. On the other hand it was insisted that, by virtue of the Constitution of the United States, every citizen had a right to remove to any Territory of the Union, and carry his property with him under the protection of law, whether that property consisted in persons or things. The difficulties arising from this diversity of opinion were greatly aggravated by the fact, that there were many persons on both sides of the legal controversy who were unwilling to abide the decision of the courts on the legal matters in dispute; thus, among those who claimed that the Mexican laws were still in force, and consequently that slavery was already prohibited in those territories by valid enactment, there were many who insisted upon Congress making the matter certain, by enacting another prohibition. In like manner, some of those who argued that the Mexican laws had ceased to have any binding force, and that the Constitution tolerated and protected slave

property in those territories, were unwilling to trust the decision of the courts upon that point, and insisted that Congress should, by direct enactment, remove all legal obstacles to the introduction of slaves into those territories.

Such being the character of the controversy, in respect to the territory acquired from Mexico, a similar question has arisen in regard to the right to hold slaves in the proposed territory of Nebraska when the Indian laws shall be withdrawn, and the country thrown open to emigration and settlement. By the 8th section of "an act to authorize the people of the Missouri Territory 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 to prohibit slavery in certain territories," approved March 6, 1820, it was provided: "That, in all that territory ceded by France to the United States under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed, in any State or Territory of the United States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service, as aforesaid."

Under this section, as in the case of the Mexican law in New Mexico and Utah, it is a disputed point whether slavery is prohibited in the Nebraska country by *valid* enactment. The decision of this question involves the constitutional power of Congress to pass laws prescribing and regulating the domestic institutions of the various territories of the Union. In the opinion of those eminent statesmen, who hold that Congress is invested with no rightful authority to legislate upon the subject of slavery in the territories, the 8th section of the act preparatory to the admission of Missouri is null and void; while the prevailing sentiment in large portions of the Union sustains the doctrine that the Constitution of the United States secures to every citizen an inalienable right to move into any of the territories with his property, of whatever kind and description, and to hold and enjoy the same under the sanction of law. Your committee do not feel themselves called upon to enter into the discussion of these controverted

questions. They involve the same grave issues which produced the agitation, the sectional strife, and the fearful struggle of 1850. As Congress deemed it wise and prudent to refrain from deciding the matters in controversy then, either by affirming or repealing the Mexican laws, or by an act declaratory of the true intent of the Constitution and the extent of the protection afforded by it to slave property in the territories, so your committee are not prepared now to recommend a departure from the course pursued on that memorable occasion, either by affirming or repealing the 8th section of the Missouri act, or by any act declaratory of the meaning of the Constitution in respect to the legal points in dispute.

Your committee deem it fortunate for the peace of the country, and the security of the Union, that the controversy then resulted in the adoption of the compromise measures, which the two great political parties, with singular unanimity, have affirmed as a cardinal article of their faith, and proclaimed to the world, as a final settlement of the controversy and an end of the agitation. A due respect, therefore, for the avowed opinions of Senators, as well as a proper sense of patriotic duty, enjoins upon your committee the propriety and necessity of a strict adherence to the principles, and even a literal adoption of the enactments of that adjustment in all their territorial bills, so far as the same are not locally inapplicable. Those enactments embrace, among other things, less material to the matters under consideration, the following provisions:

"When admitted as a State, the said Territory or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission."

"That the legislative power and authority of said Territory shall be vested in the governor and a legislative assembly."

"That the legislative power of said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents."

"Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the Supreme Court of the United States in the same manner and under the

same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars, except only that, in all cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by the said supreme court, without regard to the value of the matter, property, or title in controversy; and except, also, that a writ of error or appeal shall also be allowed to the Supreme Court of the United States, from the decisions of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus involving the question of personal freedom; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said Territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia."

To which may be added the following proposition affirmed by the act of 1850, known as the fugitive slave law:

That the provisions of the "act respecting fugitives from justice, and persons escaping from the service of their masters," approved February 12, 1793, and the provisions of the "act to amend and supplementary to the aforesaid act, approved September 18, 1850, shall extend to, and be in force, in all the organized territories," as well as in the various States of the Union.

From these provisions it is apparent that the compromise measures of 1850 affirm and rest upon the following propositions — First: That all questions pertaining to slavery in the territories, and in the new States to be formed therefrom, are to be left to the decision of the people residing therein, by their appropriate representatives, to be chosen by them for that purpose.

Second: That "all cases involving title to slaves," and "questions of personal freedom" are referred to the adjudication of the local tribunals, with the right of appeal to the Supreme Court of the United States.

Third: That the provisions of the Constitution of the United States, in respect to fugitives from service, is to be carried into

faithful execution in all "the organized territories" the same as in the States. The substitute for the bill which your committee have prepared, and which is commended to the favorable action of the Senate, proposes to carry these propositions and principles into practical operation, in the precise language of the compromise measures of 1850.

[*Senate Rep. 15*, 33d Cong., 1st Sess.]

No. 86. Dixon's Proposed Amendment

January 16, 1854

SEC. 22. *And be it further enacted*, That so much of the 8th section of an act approved March 6, 1820, entitled "An act to authorize the people of the Missouri Territory 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 to prohibit slavery in certain Territories," as declares "That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36 degrees 30 minutes north latitude, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the parties shall have been duly convicted, shall be forever prohibited," shall not be so construed as to apply to the Territory contemplated by this act, or to any other Territory of the United States; but that the citizens of the several States or Territories shall be at liberty to take and hold their slaves within any of the Territories of the United States, or of the States to be formed therefrom, as if the said act, entitled as aforesaid, and approved as aforesaid, had never been passed.

[*Cong. Globe*, 33d Cong., 1st Sess., 175.]

No. 87. Sumner's Proposed Amendment

January 17, 1854

Provided, That nothing herein contained shall be construed to abrogate or in any way contravene the act of March 6, 1820, entitled "An act to authorize the people of Missouri Territory 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 to prohibit slavery in certain Territories;" wherein it is expressly enacted that "in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted, shall be, and is hereby, forever prohibited."

[*Cong. Globe*, 33d Cong., 1st Sess., 186.]

No. 88. Extract from the Act to Organize the Territories of Nebraska and Kansas

May 30, 1854

An Act to Organize the Territories of Nebraska and Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: beginning at a point in the Missouri River where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the territory of Minnesota; thence southward on said boundary to the Missouri River; thence down the main channel of said river to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Nebraska; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: . . .

* * * * * * * * * * *

SEC. 9. [The section relates to the judicial system of the Territory.] . . . Writs of error, and appeals from the final decisions of said Supreme Court [of the Territory], shall be allowed, and

may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writs of error, or appeals shall be allowed and decided by the said Supreme Court, without regard to the value of the matter, property, or title in controversy; . . . *Provided*, that nothing herein contained shall be construed to apply to or affect the provisions of the "act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the "act to amend and supplementary to the aforesaid act," approved September eighteen, eighteen hundred and fifty; . . .

SEC. 10. *And be it further enacted*, That the provisions of an act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelve, seventeen hundred and ninety-three, and the provisions of the act entitled "An act to amend, and supplementary to, the aforesaid act," approved September eighteen, eighteen hundred and fifty, be, and the same are hereby, declared to extend to and be in full force within the limits of said Territory of Nebraska.

* * * * * * * * * * *

SEC. 14. *And be it further enacted*, . . . That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or

regulation which may have existed prior to the act of sixth March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

* * * * * * * * * * *

SEC. 19. *And be it further enacted,* That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit, beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their Constitution may prescribe at the time of their admission: . . .

[Sections 27, 28, and 32 apply to the Territory of Kansas the provisions of sections 9, 10, and 14, respectively.]

[*U. S. Stat. at Large*, X., 277–290.]

No. 89. Ostend Manifesto

October 18, 1854

THE annexation of Cuba had been looked upon with favor in the United States, particularly in the South, ever since the downfall of Spanish rule in America; but an offer of $100,000,000 for the island, made by the United States in 1848, was regarded by Spain as a "national indignity." The fitting out in this country, in 1848–50, of expeditions designed to aid in stirring up revolution in Cuba led, in 1852, to an invitation from England and France to the United States to join those powers in a "tripartite convention for guaranteeing the Spanish dominion over Cuba"; the invitation, however, was declined. As Spain refused to make reparation for alleged injuries to American commerce with Cuba, the United States ministers to England, France, and Spain were directed by President Pierce, in 1854, to "compare opinions and

to adopt measures for perfect concert of action in aid of the negotiations at Madrid." The outcome of their conference was the dispatch to the Secretary of State, since known as the Ostend manifesto.

REFERENCES. — *Text* in *House Exec. Doc. 93*, 33d Cong., 2d Sess., where will also be found the diplomatic correspondence. The relations between the United States and Spain with regard to Cuba are treated in Wharton's *Intern. Law Digest* (ed. 1887), I., 361–411. See also Curtis's *Buchanan*, II., chap. 6; Wilson's *Slave Power*, II., chap. 47.

AIX LA CHAPELLE, *October* 18, 1854.

SIR: — The undersigned, in compliance with the wish expressed by the President in the several confidential despatches you have addressed to us, respectively, to that effect, have met in conference, first at Ostend, in Belgium, on the 9th, 10th, and 11th instant, and then at Aix la Chapelle, in Prussia, on the days next following, up to the date hereof.

There has been a full and unreserved interchange of views and sentiments between us, which we are most happy to inform you has resulted in a cordial coincidence of opinion on the grave and important subjects submitted to our consideration.

We have arrived at the conclusion, and are thoroughly convinced, that an immediate and earnest effort ought to be made by the government of the United States to purchase Cuba from Spain at any price for which it can be obtained, not exceeding the sum of $

The proposal should, in our opinion, be made in such a manner as to be presented through the necessary diplomatic forms to the Supreme Constituent Cortes about to assemble. On this momentous question, in which the people both of Spain and the United States are so deeply interested, all our proceedings ought to be open, frank, and public. They should be of such a character as to challenge the approbation of the world.

We firmly believe that, in the progress of human events, the time has arrived when the vital interests of Spain are as seriously involved in the sale, as those of the United States in the purchase, of the island and that the transaction will prove equally honorable to both nations.

Under these circumstances we cannot anticipate a failure, unless possibly through the malign influence of foreign powers who possess no right whatever to interfere in the matter.

We proceed to state some of the reasons which have brought

us to this conclusion, and, for the sake of clearness, we shall specify them under two distinct heads:

1. The United States ought, if practicable, to purchase Cuba with as little delay as possible.

2. The probability is great that the government and cortes of Spain will prove willing to sell it, because this would essentially promote the highest and best interests of the Spanish people.

Then, 1. It must be clear to every reflecting mind that, from the peculiarity of its geographical position, and the considerations attendant on it, Cuba is as necessary to the North American republic as any of its present members, and that it belongs naturally to that great family of States of which the Union is the providential nursery.

From its locality it commands the mouth of the Mississippi and the immense and annually increasing trade which must seek this avenue to the ocean.

On the numerous navigable streams, measuring an aggregate course of some thirty thousand miles, which disembogue themselves through this magnificent river into the Gulf of Mexico, the increase of the population within the last ten years amounts to more than that of the entire Union at the time Louisiana was annexed to it.

The natural and main outlet to the products of this entire population, the highway of their direct intercourse with the Atlantic and the Pacific States, can never be secure, but must ever be endangered whilst Cuba is a dependency of a distant power in whose possession it has proved to be a source of constant annoyance and embarrassment to their interests.

Indeed, the Union can never enjoy repose, nor possess reliable security, as long as Cuba is not embraced within its boundaries.

Its immediate acquisition by our government is of paramount importance, and we cannot doubt but that it is a consummation devoutly wished for by its inhabitants.

The intercourse which its proximity to our coasts begets and encourages between them and the citizens of the United States, has, in the progress of time, so united their interests and blended their fortunes that they now look upon each other as if they were one people and had but one destiny.

Considerations exist which render delay in the acquisition of this island exceedingly dangerous to the United States.

The system of immigration and labor lately organized within its limits, and the tyranny and oppression which characterize its immediate rulers, threaten an insurrection at every moment which may result in direful consequences to the American people.

Cuba has thus become to us an unceasing danger, and a permanent cause of anxiety and alarm.

But we need not enlarge on these topics. It can scarcely be apprehended that foreign powers, in violation of international law, would interpose their influence with Spain to prevent our acquisition of the island. Its inhabitants are now suffering under the worst of all possible governments, that of absolute despotism, delegated by a distant power to irresponsible agents, who are changed at short intervals, and who are tempted to improve the brief opportunity thus afforded to accumulate fortunes by the basest means.

As long as this system shall endure, humanity may in vain demand the suppression of the African slave trade in the island. This is rendered impossible whilst that infamous traffic remains an irresistible temptation and a source of immense profit to needy and avaricious officials, who, to attain their ends, scruple not to trample the most sacred principles under foot. The Spanish government at home may be well disposed, but experience has proved that it cannot control these remote depositaries of its power.

Besides, the commercial nations of the world cannot fail to perceive and appreciate the great advantages which would result to their people from a dissolution of the forced and unnatural connexion between Spain and Cuba, and the annexation of the latter to the United States. The trade of England and France with Cuba would, in that event, assume at once an important and profitable character, and rapidly extend with the increasing population and prosperity of the island.

2. But if the United States and every commercial nation would be benefited by this transfer, the interests of Spain would also be greatly and essentially promoted.

She cannot but see what such a sum of money as we are willing to pay for the island would effect in the development of her vast natural resources.

Two-thirds of this sum, if employed in the construction of a system of railroads, would ultimately prove a source of greater wealth to the Spanish people than that opened to their vision by

Cortez. Their prosperity would date from the ratification of the treaty of cession.

France has already constructed continuous lines of railways from Havre, Marseilles, Valenciennes, and Strasbourg, *via* Paris, to the Spanish frontier, and anxiously awaits the day when Spain shall find herself in a condition to extend these roads through her northern provinces to Madrid, Seville, Cadiz, Malaga, and the frontiers of Portugal.

This object once accomplished, Spain would become a centre of attraction for the travelling world, and secure a permanent and profitable market for her various productions. Her fields, under the stimulus given to industry by remunerating prices, would teem with cereal grain, and her vineyards would bring forth a vastly increased quantity of choice wines. Spain would speedily become, what a bountiful Providence intended she should be, one of the first nations of Continental Europe — rich, powerful, and contented.

Whilst two-thirds of the price of the island would be ample for the completion of her most important public improvements, she might, with the remaining forty millions, satisfy the demands now pressing so heavily upon her credit, and create a sinking fund which would gradually relieve her from the overwhelming debt now paralyzing her energies.

Such is her present wretched financial condition, that her best bonds are sold upon her own Bourse at about one-third of their par value; whilst another class, on which she pays no interest, have but a nominal value, and are quoted at about one-sixth of the amount for which they were issued.

Besides, these latter are held principally by British creditors who may, from day to day, obtain the effective interposition of their own government for the purpose of coercing payment. Intimations to that effect have been already thrown out from high quarters, and unless some new source of revenue shall enable Spain to provide for such exigencies, it is not improbable that they may be realized.

Should Spain reject the present golden opportunity for developing her resources, and removing her financial embarrassments, it may never again return.

Cuba, in its palmiest days, never yielded her exchequer, after deducting the expenses of its government, a clear annual income of more than a million and a half of dollars. These expenses

have increased to such a degree as to leave a deficit chargeable on the treasury of Spain to the amount of six hundred thousand dollars.

In a pecuniary point of view, therefore, the island is an incumbrance, instead of a source of profit, to the mother country.

Under no probable circumstances can Cuba ever yield to Spain one per cent. on the large amount which the United States are willing to pay for its acquisition. But Spain is in imminent danger of losing Cuba, without remuneration.

Extreme oppression, it is now universally admitted, justifies any people in endeavoring to relieve themselves from the yoke of their oppressors. The sufferings which the corrupt, arbitrary, and unrelenting local administration necessarily entails upon the inhabitants of Cuba, cannot fail to stimulate and keep alive that spirit of resistance and revolution against Spain, which has, of late years, been so often manifested. In this condition of affairs it is vain to expect that the sympathies of the people of the United States will not be warmly enlisted in favor of their oppressed neighbors.

We know that the President is justly inflexible in his determination to execute the neutrality laws; but should the Cubans themselves rise in revolt against the oppression which they suffer, no human power could prevent citizens of the United States and liberal minded men of other countries from rushing to their assistance. Besides, the present is an age of adventure, in which restless and daring spirits abound in every portion of the world.

It is not improbable, therefore, that Cuba may be wrested from Spain by a successful revolution; and in that event she will lose both the island and the price which we are now willing to pay for it — a price far beyond what was ever paid by one people to another for any province.

It may also be remarked that the settlement of this vexed question, by the cession of Cuba to the United States, would forever prevent the dangerous complications between nations to which it may otherwise give birth.

It is certain that, should the Cubans themselves organize an insurrection against the Spanish government, and should other independent nations come to the aid of Spain in the contest, no human power could, in our opinion, prevent the people and government of the United States from taking part in such a civil war in support of their neighbors and friends.

But if Spain, dead to the voice of her own interest, and actuated by stubborn pride and a false sense of honor, should refuse to sell Cuba to the United States, then the question will arise, What ought to be the course of the American government under such circumstances? Self-preservation is the first law of nature, with States as well as with individuals. All nations have, at different periods, acted upon this maxim. Although it has been made the pretext for committing flagrant injustice, as in the partition of Poland and other similar cases which history records, yet the principle itself, though often abused, has always been recognized.

The United States have never acquired a foot of territory except by fair purchase, or, as in the case of Texas, upon the free and voluntary application of the people of that independent State, who desired to blend their destinies with our own.

Even our acquisitions from Mexico are no exception to this rule, because, although we might have claimed them by the right of conquest in a just war, yet we purchased them for what was then considered by both parties a full and ample equivalent.

Our past history forbids that we should acquire the island of Cuba without the consent of Spain, unless justified by the great law of self-preservation. We must, in any event, preserve our own conscious rectitude and our own self-respect.

Whilst pursuing this course we can afford to disregard the censures of the world, to which we have been so often and so unjustly exposed.

After we shall have offered Spain a price for Cuba far beyond its present value, and this shall have been refused, it will then be time to consider the question, does Cuba, in the possession of Spain, seriously endanger our internal peace and the existence of our cherished Union?

Should this question be answered in the affirmative, then, by every law, human and divine, we shall be justified in wresting it from Spain if we possess the power; and this upon the very same principle that would justify an individual in tearing down the burning house of his neighbor if there were no other means of preventing the flames from destroying his own home.

Under such circumstances we ought neither to count the cost nor regard the odds which Spain might enlist against us. We forbear to enter into the question, whether the present condition of the island would justify such a measure? We should, however, be

recreant to our duty, be unworthy of our gallant forefathers, and commit base treason against our posterity, should we permit Cuba to be Africanized and become a second St. Domingo, with all its attendant horrors to the white race, and suffer the flames to extend to our own neighboring shores, seriously to endanger or actually to consume the fair fabric of our Union.

We fear that the course and current of events are rapidly tending towards such a catastrophe. We, however, hope for the best, though we ought certainly to be prepared for the worst.

We also forbear to investigate the present condition of the questions at issue between the United States and Spain. A long series of injuries to our people have been committed in Cuba by Spanish officials and are unredressed. But recently a most flagrant outrage on the rights of American citizens and on the flag of the United States was perpetrated in the harbor of Havana under circumstances which, without immediate redress, would have justified a resort to measures of war in vindication of national honor. That outrage is not only unatoned, but the Spanish government has deliberately sanctioned the acts of its subordinates and assumed the responsibility attaching to them.

Nothing could more impressively teach us the danger to which those peaceful relations it has ever been the policy of the United States to cherish with foreign nations are constantly exposed than the circumstances of that case. Situated as Spain and the United States are, the latter have forborne to resort to extreme measures.

But this course cannot, with due regard to their own dignity as an independent nation, continue; and our recommendations, now submitted, are dictated by the firm belief that the cession of Cuba to the United States, with stipulations as beneficial to Spain as those suggested, is the only effective mode of settling all past differences and of securing the two countries against future collisions.

We have already witnessed the happy results for both countries which followed a similar arrangement in regard to Florida.

Yours, very respectfully,

JAMES BUCHANAN.
J. Y. MASON.
PIERRE SOULÉ.

HON. WM. L. MARCY, *Secretary of State.*

No. 90. Report of the House Committee on Affairs in Kansas

July 1, 1856

JANUARY 24, 1856, President Pierce sent to Congress a special message on the condition of affairs in Kansas. February 14 a memorial from Andrew H. Reeder was presented in the House, contesting the election of John W. Whitfield, who had taken his seat at the beginning of the session as delegate from Kansas Territory. On the 18th, copies of the territorial laws and executive papers of the governor were called for. On the 19th the Committee of Elections moved for leave to send for persons and papers in connection with the Kansas contested election. The resolution was recommitted, with instructions to the committee to report the reasons and grounds on which such authority was desired. The report of the committee was presented March 5, and 20,000 extra copies ordered to be printed. On the 17th, Dunn of Indiana moved the appointment of a select committee of three to investigate the troubles in Kansas. The motion was agreed to on the 19th, by a vote of 102 to 93, and Lewis D. Campbell of Ohio, William A. Howard of Michigan, and Mordecai Oliver of Missouri were named as the committee. Campbell was later excused, and John Sherman of Ohio was appointed in his place. The papers called for Feb. 18 were sent in March 24. The majority report of the select committee was submitted July 1, Oliver's minority report following on the 11th. July 24 the Committee of Elections reported in favor of Reeder, who on the 31st submitted a further statement in his own behalf. August 1, by a vote of 110 to 92, Whitfield was unseated, and then, by a vote of 88 to 113, Reeder's claim was also rejected.

The reports submitted July 1 and 11, with the accompanying testimony, are very long. The extracts following give the summary statements of conclusions with which the majority and minority portions close.

REFERENCES. — The report of the select committee is *House Rep. 200*, 34th Cong., 1st Sess.; the extracts here given are on pp. 67 and 109. The proceedings and debates in the House may be followed in the *Journal*, and the *Cong. Globe*. The special message of Jan. 24 is in the *Journal*, and also *House Exec. Doc. 28;* the papers transmitted March 24 are in *House Exec. Doc. 66*. The report of the Committee of Elections March 5 is *House Rep. 3;* the report July 24 is *House Rep. 275*. Reeder's memorial submitted July 31 is *House Misc. Doc. 3*. On the Kansas struggle as a whole, see the annual messages of the Presidents, 1854–61, and accompanying documents. The papers of the territorial governors are in the *Kansas Hist. Collections*. Important general references are: Von Holst's *United States*, V., chaps. 2, 3, 5, 6, 8; VI., chaps. 2, 4, 5; Rhodes's *United States*, II., *passim;* Nicolay and Hay's *Lincoln*, II., chap. 6; Wilson's *Slave Power*, II., chaps. 35, 37, 40–42, 49; Greeley's *Amer. Conflict*, I., chap. 17; Johnston, in *Lalor's Cyclopædia*, II., 664–667; Sumner's *Works* (ed. 1880), IV., V., *passim*.

. . . Your committee report the following facts and conclusions as established by the testimony:

First. That each election in the Territory, held under the organic or alleged Territorial law, has been carried by organized invasion from the State of Missouri, by which the people of the Territory have been prevented from exercising the rights secured to them by the organic law.

Second. That the alleged Territorial legislature was an illegally constituted body, and had no power to pass valid laws, and their enactments are therefore null and void.

Third. That these alleged laws have not, as a general thing, been used to protect persons and property, and to punish wrong, but for unlawful purposes.

Fourth. That the election under which the sitting delegate, John W. Whitfield, holds his seat, was not held in pursuance of any valid law, and that it should be regarded only as the expression of the choice of those resident citizens who voted for him.

Fifth. That the election, under which the contesting delegate, Andrew H. Reeder, claims his seat, was not held in pursuance of law, and that it should be regarded only as the expression of the resident citizens who voted for him.

Sixth. That Andrew H. Reeder received a greater number of votes of resident citizens than John W. Whitfield, for delegate.

Seventh. That in the present condition of the Territory a fair election cannot be held without a new census, a stringent and well-guarded election law, the selection of impartial judges, and the presence of United States troops at every place of election.

Eighth. That the various elections held by the people of the Territory preliminary to the formation of the State government, have been as regular as the disturbed condition of the Territory would allow; and that the constitution passed by the convention, held in pursuance of said elections, embodies the will of a majority of the people.

As it is not the province of your committee to suggest remedies for the existing troubles in the Territory of Kansas, they content themselves with the foregoing statement of facts.

All of which is respectfully submitted.

WM. A. HOWARD.
JOHN SHERMAN.

Minority Report

. . . In conclusion, the undersigned begs to report the following facts and conclusions, as he believes, established by the testimony and sanctioned by the law:

First. That at the first election held in the Territory under the organic act, for delegate to Congress, Gen. John W. Whitfield received a plurality of the legal votes cast, and was duly elected such delegate, as stated in the majority report.

Second. That the Territorial legislature was a legally constituted body, and had power to pass valid laws, and their enactments are therefore valid.

Third. That these laws, when appealed to, have been used for the protection of life, liberty and property, and for the maintenance of law and order in the Territory.

Fourth. That the election under which the sitting delegate, John W. Whitfield, was held, was in pursuance of valid law, and should be regarded as a valid election.

Fifth. That as said Whitfield, at said election, received a large number of legal votes without opposition, he was duly elected as a delegate to this body, and is entitled to a seat on this floor as such.

Sixth. That the election under which the contesting delegate, Andrew H. Reeder, claims his seat, was not held under any law, but in contemptuous disregard of all law; and that it should only be regarded as the expression of a band of malcontents and revolutionists, and consequently should be wholly disregarded by the House.

Seventh. As to whether or not Andrew H. Reeder received a greater number of votes of resident citizens on the 9th, than J. W. Whitfield did on the 1st of October, 1855, no testimony was taken by the committee, so far as the undersigned knows, nor is it material to the issue.

All of which is respectfully submitted.

M. Oliver.

No. 91. Dred Scott Decision

March 6, 1857

THE main facts of the Dred Scott case (Dred Scott *v.* Sandford) are as follows: Dred Scott was a negro slave, the property of Dr. Emerson, a surgeon in the United States army. In 1834 Scott was taken by his owner from Missouri to the military post at Rock Island, Ill., and from thence, in 1836, to Fort Snelling, on the west bank of the Mississippi, within the limits of the territory acquired from France in 1803, and north of 36° 30′. There Scott, with the consent of his owner, married. In 1838 Emerson took Scott and his family back to Missouri. In 1847 Scott brought suit in the circuit court of the State of Missouri to recover his freedom, on the ground of previous residence in free territory. Judgment was rendered in his favor, but was reversed in 1848 by the Missouri supreme court, to which the case was carried on writ of error. In the meantime, Scott and his family passed under the control of John F. A. Sandford of New York. In 1853 Scott brought suit for damages against Sandford, in the United States circuit court for the district of Missouri, on the alleged ground of illegal detention of himself and family as slaves. The defendant pleaded that Scott, being a negro, and born of slave parents, could not be a citizen of Missouri, and hence could not be a party to a suit in the United States courts. The plea was overruled, but on other grounds Scott's claim to freedom was denied, and judgment rendered against him. The case was then appealed to the United States Supreme Court, where it was twice argued, in February and December, 1856. The decision was rendered March 6, 1857. Chief Justice Taney delivered the opinion of the court, but separate opinions were read by each of the eight associate justices. It has been well said that "to ascertain what the judgment of the court really was, it is necessary to compare the nine opinions and tabulate the results." The legal doctrine of the decision, so far as the question of slavery was concerned, was set aside by the fourteenth amendment to the Constitution.

REFERENCES. — *Text* in *19 Howard*, 393–633. Important general discussions are: Von Holst's *United States*, VI., chap. 1; Rhodes's *United States*, II., 249–271; Nicolay and Hay's *Lincoln*, II., chaps. 4, 5; Johnston, in *Lalor's Cyclopædia*, I., 838–841; Burgess's *Middle Period*, chap. 21; Wilson's *Slave Power*, II., chap. 39; Tyler's *Taney*, chap. 5. For contemporary discussions, see Benton's *Historical and Legal Examination of the Dred Scott Case;* Gray and Lowell's *Legal Review of the Case of Dred Scott;* Foot's *Examination of the Case of Dred Scott.*

[*Opinion of the Court.*]

. . . There are two leading questions presented by the record:

1. Had the Circuit Court of the United States jurisdiction to hear and determine the case between these parties? And,

2. If it had jurisdiction, is the judgment it has given erroneous or not?

The plaintiff in error, who was also the plaintiff in the court below, was, with his wife and children, held as slaves by the defendant, in the State of Missouri, and he brought this action in the Circuit Court of the United States for that district, to assert the title of himself and his family to freedom.

The declaration is in the form usually adopted in that State to try questions of this description, and contains the averment necessary to give the court jurisdiction; that he and the defendant are citizens of different States; that is, that he is a citizen of Missouri, and the defendant a citizen of New York.

The defendant pleaded in abatement to the jurisdiction of the court, that the plaintiff was not a citizen of the State of Missouri, as alleged in his declaration, being a negro of African descent, whose ancestors were of pure African blood, and who were brought into this country and sold as slaves.

To this plea the plaintiff demurred, and the defendant joined in demurrer. The court overruled the plea, and gave judgment that the defendant should answer over. And he therefore put in sundry pleas in bar, upon which issues were joined, and at the trial the verdict and judgment were in his favor. Whereupon the plaintiff brought this writ of error.

Before we speak of the pleas in bar, it will be proper to dispose of the questions which have arisen on the plea in abatement.

That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated.

If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed.

It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that the defendant waived this defense by pleading over, and thereby admitted the jurisdiction of the court.

But in making this objection, we think the peculiar and limited jurisdiction of courts of the United States has not been adverted to. This peculiar and limited jurisdiction has made it necessary, in these courts, to adopt different rules and principles of pleading,

so far as jurisdiction is concerned, from those which regulate courts of common law in England and in the different States of the Union which have adopted the common law rules. . . . This difference arises . . . from the peculiar character of the government of the United States. . . . In regulating the Judicial Department, the cases in which the courts of the United States shall have jurisdiction are particularly and specifically enumerated and defined; and they are not authorized to take cognizance of any case which does not come within the description therein specified. . . . The jurisdiction would not be presumed, as in the case of a common law, English, or state court, unless the contrary appeared. But the record, when it comes before the appellate court, must show, affirmatively, that the inferior court had authority, under the Constitution, to hear and determine the case. And if the plaintiff claims a right to sue in a circuit court of the United States, under that provision of the Constitution which gives jurisdiction in controversies between citizens of different states, he must distinctly aver in his pleading that they are citizens of different states; and he cannot maintain his suit without showing that fact in the pleadings. . . .

. . . In this case, the citizenship is averred, but it is denied by the defendant in the manner required by the rules of pleading, and the fact upon which the denial is based is admitted by the demurrer. And if the plea and demurrer, and judgment of the court below upon it, are before us upon this record, the question to be decided is, whether the facts stated in the plea are sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

We think they are before us . . . and it becomes, therefore, our duty to decide whether the facts stated in the plea are or are not sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet it and decide it.

The question is simply this: can a negro, whose ancestors were imported into this country and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled

to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen. One of these rights is the privilege of suing in a court of the United States in the cases specified in the Constitution. . . . The court must be understood as speaking in this opinion . . . of those persons [only] who are the descendants of Africans who were imported into this country and sold as slaves. . . .

We proceed to examine the case as presented by the pleadings.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can, therefore, claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them. . . .

In discussing this question, we must not confound the rights of citizenship which a state may confer within its own limits, and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State. For, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of a citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and

gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. . . .

It is very clear, therefore, that no State can, by any Act or law of its own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the Constitution, in relation to the personal rights and privileges to which the citizen of a State should be entitled, embraced the negro African race, at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent. Does the Constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained. And if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution

recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several state communities, or who should afterwards, by birthright or otherwise, become members, according to the provisions of the Constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.

It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And in order to do this, we must recur to the governments and institutions of the thirteen Colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognized as the people or citizens of a State, whose rights and liberties had been outraged by the English government; and who declared their independence, and assumed the powers of government to defend their rights by force of arms.

In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument. . . .

The legislation of the different Colonies furnishes positive and indisputable proof of this fact. . . .

The language of the Declaration of Independence is equally conclusive. . . .

This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language.

The legislation of the States therefore shows, in a manner not to be mistaken, the inferior and subject condition of that race at the time the Constitution was adopted, and long afterwards, throughout the thirteen States by which that instrument was framed; and it is hardly consistent with the respect due to these States, to suppose that they regarded at that time, as fellow-citizens and members of the sovereignty, a class of beings whom they had thus stigmatized; whom, as we are bound, out of respect to the State sovereignties, to assume they had deemed it just and necessary thus to stigmatize, and upon whom they had impressed such deep and enduring marks of inferiority and degradation; or that when they met in convention to form the Constitution, they looked upon them as a portion of their constituents, or designed to include them in the provisions so carefully inserted for the security and protection of the liberties and rights of their citizens. It cannot be supposed that they intended to secure to them rights, and privileges, and rank, in the new political body throughout the Union, which every one of them denied within the limits of its own dominion. More especially, it cannot be believed that the large slave-holding States regarded them as included in the word "citizens," or would have consented to a constitution which might compel them to receive them in that character from another State. For if they were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State. . . .

To all this mass of proof we have still to add, that Congress has repeatedly legislated upon the same construction of the Constitution that we have given. . . .

The conduct of the Executive Department of the government has been in perfect harmony upon this subject with this course of legislation. . . .

But it is said that a person may be a citizen, and entitled to that character, although he does not possess all the rights which may belong to other citizens; as, for example, the right to vote, or to hold particular offices; and that yet, when he goes into another State, he is entitled to be recognized there as a citizen, although the State may measure his rights by the rights which it allows to persons of a like character or class, resident in the State, and refuse to him the full rights of citizenship.

This argument overlooks the language of the provision in the Constitution of which we are speaking.

Undoubtedly, a person may be a citizen, that is, a member of the community who form the sovereignty, although he exercises no share of the political power, and is incapacitated from holding particular offices. Women and minors, who form a part of the political family, cannot vote; and when a property qualification is required to vote or hold a particular office, those who have not the necessary qualification cannot vote or hold the office, yet they are citizens.

So, too, a person may be entitled to vote by the law of the State, who is not a citizen even of the State itself. And in some of the States of the Union foreigners not naturalized are allowed to vote. And the State may give the right to free negroes and mulattoes, but that does not make them citizens of the State, and still less of the United States. And the provision in the Constitution giving privileges and immunities in other States, does not apply to them.

Neither does it apply to a person who, being the citizen of a State, migrates to another State. For then he becomes subject to the laws of the State in which he lives, and he is no longer a citizen of the State from which he removed. And the State in which he resides may then, unquestionably, determine his *status* or condition, and place him among the class of persons who are not recognized as citizens, but belong to an inferior and subject race; and may deny him the privileges and immunities enjoyed by its citizens.

But so far as mere rights of person are concerned, the provision in question is confined to citizens of a State who are temporarily in another State without taking up their residence there. It gives them no political rights in the state as to voting or holding office, or in any other respect. For a citizen of one State has no right to participate in the government of another. But if he ranks as a citizen of the State to which he belongs, within the meaning of the Constitution of the United States, then, whenever he goes into another State, the Constitution clothes him, as to the rights of person, with all the privileges and immunities which belong to citizens of the State. And if persons of the African race are citizens of a state, and of the United States, they would be entitled to all of these privileges and immunities in every State, and the State could not restrict them; for they would hold these privileges and immunities, under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and laws of the State to the contrary notwithstanding. And if the State could limit or restrict them, or place the party in an inferior grade, this clause of the Constitution would be unmeaning, and could have no operation; and would give no rights to the citizen when in another State. He would have none but what the State itself chose to allow him. This is evidently not the construction or meaning of the clause in question. It guaranties rights to the citizen, and the State cannot withhold them. And these rights are of a character and would lead to consequences which make it absolutely certain that the African race were not included under the name of citizens of a State, and were not in the contemplation of the framers of the Constitution when these privileges and immunities were provided for the protection of the citizen in other States. . . .

No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted. Such an argument would be altogether inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was

understood at the time of its adoption. . . . Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. . . . What the construction was at that time, we think can hardly admit of doubt. . . . And if anything in relation to the construction of the Constitution can be regarded as settled, it is that which we now give to the word "citizen" and the word "people."

And upon a full and careful consideration of the subject, the court is of opinion that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous. . . .

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom. . . .

In considering this part of the controversy, two questions arise: 1st, Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And 2d, If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois, as stated in the above admissions?

We proceed to examine the first question.

The Act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude, except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France, under the name of Louisiana, which lies north of thirty-six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is, whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution; for if the authority is not given by that instrument, it is the duty of this court to declare it void and inoperative, and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States.

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;"

but, in the judgment of the court, that provision has no bearing on the present controversy, and the power there given, whatever it may be, is confined, and was intended to be confined, to the territory which at that time belonged to, or was claimed by, the United States, and was within their boundaries as settled by the Treaty with Great Britain, and can have no influence upon a territory afterwards acquired from a foreign government. It was a special provision for a known and particular Territory, and to meet a present emergency, and nothing more. . . .

At the time when the Territory in question was obtained by cession from France, it contained no population fit to be associated together and admitted as a State; and it therefore was absolutely necessary to hold possession of it as a Territory belonging to the United States until it was settled and inhabited by a civilized community capable of self-government, and in a condition to be admitted on equal terms with the other States as a member of the Union. But, as we have before said, it was acquired by the general government as the representative and trustee of the people of the United States, and it must, therefore, be held in that character for their common and equal benefit; for it was the people of the several States, acting through their agent and representative, the Federal Government, who in fact acquired the territory in question, and the government holds it for their common use until it shall be associated with the other States as a member of the Union.

But until that time arrives, it is undoubtedly necessary that some government should be established, in order to organize society, and to protect the inhabitants in their persons and property; and as the people of the United States could act in this matter only through the government which represented them, and through which they spoke and acted when the territory was obtained, it was not only within the scope of its powers, but it was its duty to pass such laws and establish such a government as would enable those by whose authority they acted to reap the advantages anticipated from its acquisition, and to gather there a population which would enable it to assume the position to which it was destined among the States of the Union. . . .

It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the

United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which governments may exercise over it, have been dwelt upon in the argument.

But in considering the question before us, it must be borne in mind that there is no law of nations standing between the people of the United States and their government and interfering with their relation to each other. The powers of the government, and the rights of the citizen under it, are positive and practical regulations plainly written down. The people of the United States have delegated to it certain enumerated powers, and forbidden it to exercise others. It has no power over the person or property of a citizen but what the citizens of the United States have granted. And no laws or usages of other nations, or reasoning of statesmen or jurists upon the relations of master and slave, can enlarge the powers of the government, or take from the citizens the rights they have reserved. And if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which have been provided for the protection of private property against the encroachments of the government.

Now, as we have already said in an earlier part of this opinion, upon a different point, the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guarantied to the citizens of the United States, in every State that might desire it, for twenty years. And the government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words — too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the Act of Congress which prohibited a citizen from holding and

owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident. . . .

But there is another point in the case which depends on state power and state law. And it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, in the State of Illinois, independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri.

Our notice of this part of the case will be very brief; for the principle on which it depends was decided in this court, upon much consideration, in the case of *Strader et al. v. Graham*, reported in 10th Howard, 82. In that case, the slaves had been taken from Kentucky to Ohio, with the consent of the owner, and afterwards brought back to Kentucky. And this court held that their *status* or condition, as free or slave, depended upon the laws of Kentucky, when they were brought back into that State, and not of Ohio; and that this court had no jurisdiction to revise the judgment of a state court upon its own laws. . . .

So in this case: as Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his *status*, as free or slave, depended on the laws of Missouri, and not of Illinois.

It has, however, been urged in the argument, that by the laws of Missouri he was free on his return, and that this case, therefore, cannot be governed by the case of *Strader et al. v. Graham*, where it appeared, by the laws of Kentucky, that the plaintiffs continued to be slaves on their return from Ohio. But whatever doubts or opinions may, at one time, have been entertained upon this subject, we are satisfied, upon a careful examination of all the cases decided in the State courts of Missouri referred to, that it is now firmly settled by the decisions of the highest court in the State, that Scott and his family upon their return were not free, but were, by the laws of Missouri, the property of the defendant; and that the Circuit Court of the United States had no jurisdiction, when, by the laws of the State, the plaintiff was a slave, and not a citizen. . . .

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it.

Its judgment for the defendant must, consequently, be reversed, and a mandate issued directing the suit to be dismissed for want of jurisdiction.

[Justice Wayne concurred in the opinion of the court, and undertook to show that the court had not acted extrajudicially in giving an opinion on the constitutionality of the Missouri compromise.]

JUSTICE NELSON'S OPINION

I shall proceed to state the grounds upon which I have arrived at the conclusion that the judgment of the court below should be affirmed. . . .

. . . The question upon the merits, in general terms, is whether or not the removal of the plaintiff, who was a slave, with his master, from the State of Missouri to the State of Illinois, with a view to a temporary residence, and after such residence and return to the slave State, such residence in the free State works an emancipation.

As appears from an agreed statement of facts, this question has been before the highest court of the State of Missouri, and a judgment rendered that this residence in the free State has no such effect; but, on the contrary, that his original condition continued unchanged.

The court below, the Circuit Court of the United States for Missouri, in which this suit was afterwards brought, followed the decision of the State court, and rendered a like judgment against the plaintiff.

The argument against these decisions is, that the laws of Illinois, forbidding slavery within her territory, had the effect to set the slave free while residing in that State, and to impress upon him the condition and *status* of a freeman; and that, by force of these laws, this *status* and condition accompanied him on his return to the slave State, and of consequence he could not be there held as a slave.

This question has been examined in the courts of several of the slaveholding States, and different opinions expressed and conclusions arrived at. We shall hereafter refer to some of them, and to the principles upon which they are founded. Our opinion is, that the question is one which belongs to each State to decide for itself, either by its Legislature or courts of justice; and hence in respect to the case before us, to the State of Missouri — a question exclusively of Missouri law, and which, when determined by that State, it is the duty of the federal courts to follow it. In other words, except in cases where the power is restrained by the Constitution of the United States, the law of the State is supreme over the subject of slavery within its jurisdiction. . . .

The remaining question for consideration is: what is the law of the State of Missouri on this subject. . . . As we have already stated, this case was originally brought in the Circuit Court of the State, which resulted in a judgment for the plaintiff. The case was carried up to the Supreme Court for revision. That court reversed the judgment below, and remanded the cause to the Circuit, for a new trial. In that state of the proceeding, a new suit was brought by the plaintiff in the Circuit Court of the United States, and tried upon the issues and agreed case before us, and a verdict and judgment for the defendant, that court following the decision of the Supreme Court of the State. The judgment of the Supreme Court is reported in the 15 Mo., p. 576. The court placed the decision upon the temporary residence of the master with the slaves in the State and territory to which they removed, and their return to the slave State; and upon the principles of international law, that foreign laws have no extraterritorial force, except such as the State within which they are sought to be enforced may see fit to extend to them, upon the doctrine of comity of nations. . . .

[Justice Grier concurred in the opinion of Justice Nelson on the questions discussed by the latter, and in the opinion of the court as to the unconstitutionality of the Missouri compromise. Justices Daniel, Campbell, and Catron concurred in the general positions taken in the opinion of the court, but dissented on various law points. Justices McLean and Curtis dissented, the opinion of Curtis being the more important.]

JUSTICE CURTIS'S DISSENTING OPINION

[After a learned discussion of law points, the opinion continues:]

So that, under the allegations contained in this plea, and admitted by the demurrer, the question is, whether any person of African descent, whose ancestors were sold as slaves in the United States, can be a citizen of the United States. If any such person can be a citizen, this plaintiff has the right to the judgment of the court that he is so; for no cause is shown by the plea why he is not so, except his descent and the slavery of his ancestors.

The 1st Section of the 2d Article of the Constitution uses the language, "a citizen of the United States at the time of the adoption of the Constitution." One mode of approaching this question is, to inquire who were citizens of the United States at the time of the adoption of the Constitution.

Citizens of the United States at the time of the adoption of the Constitution can have been no other than the citizens of the United States under the Confederation. . . .

To determine whether any free persons, descended from Africans held in slavery, were citizens of the United States under the Confederation, and consequently at the time of the adoption of the Constitution of the United States, it is only necessary to know whether any such persons were citizens of either of the States under the Confederation at the time of the adoption of the Constitution.

Of this there can be no doubt. At the time of the ratification of the Articles of Confederation, all free native-born inhabitants of the States of New Hampshire, Massachusetts, New York, New Jersey and North Carolina, though descended from African slaves, were not only citizens of those States, but such of them as had the other necessary qualifications possessed the franchise of electors, on equal terms with other citizens. . . .

I can find nothing in the Constitution which, *proprio vigore*, deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native-born citizens of any State after its adoption; nor any power enabling Congress to disfranchise persons born on the soil of any State, and entitled to citizenship of such State by its constitution and laws. And my opinion is, that, under the Constitution of the

United States, every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States. . . .

The Constitution having recognized the rule that persons born within the several States are citizens of the United States, one of four things must be true:

First. That the Constitution itself has described what native-born persons shall or shall not be citizens of the United States; or,

Second. That it has empowered Congress to do so; or,

Third. That all free persons, born within the several States, are citizens of the United States; or,

Fourth. That it is left to each State to determine what free persons, born within its limits, shall be citizens of such State, and thereby be citizens of the United States. . . .

The conclusions at which I have arrived on this part of the case are:

First. That the free native-born citizens of each State are citizens of the United States.

Second. That as free colored persons born within some of the States are citizens of those States, such persons are also citizens of the United States.

Third. That every such citizen, residing in any State, has the right to sue and is liable to be sued in the federal courts, as a citizen of that State in which he resides.

Fourth. That as the plea to the jurisdiction in this case shows no facts, except that the plaintiff was of African descent, and his ancestors were sold as slaves, and as these facts are not inconsistent with his citizenship of the United States, and his residence in the State of Missouri, the plea to the jurisdiction was bad, and the judgment of the Circuit Court overruling it, was correct.

I dissent, therefore, from that part of the opinion of the majority of the court, in which it is held that a person of African descent cannot be a citizen of the United States; and I regret I must go further, and dissent both from what I deem their assumption of authority to examine the constitutionality of the Act of Congress commonly called the Missouri Compromise Act, and the grounds and conclusions announced in their opinion. . . .

But as, in my opinion, the Circuit Court had jurisdiction, I am obliged to consider the question whether its judgment on the merits of the case should stand or be reversed.

The residence of the plaintiff in the State of Illinois, and the residence of himself and his wife in the Territory acquired from France lying north of latitude thirty-six degrees thirty minutes, and north of the State of Missouri, are each relied on by the plaintiff in error. As the residence in the Territory affects the plaintiff's wife and children as well as himself, I must inquire what was its effect.

The general question may be stated to be, whether the plaintiff's *status*, as a slave, was so changed by his residence within that Territory, that he was not a slave in the State of Missouri, at the time this action was brought.

In such cases, two inquiries arise, which may be confounded, but should be kept distinct.

The first is, what was the law of the Territory into which the master and slave went, respecting the relation between them?

The second is, whether the State of Missouri recognizes and allows the effect of that law of the Territory, on the *status* of the slave, on his return within its jurisdiction. . . .

To avoid misapprehension on this important and difficult subject, I will state, distinctly, the conclusions at which I have arrived. They are:

First. The rules of international law respecting the emancipation of slaves, by the rightful operation of the laws of another State or country upon the *status* of the slave, while resident in such foreign State or country, are part of the common law of Missouri, and have not been abrogated by any statute law of that State.

Second. The laws of the United States, constitutionally enacted, which operated directly on and changed the *status* of a slave coming into the Territory of Wisconsin with his master, who went thither to reside for an indefinite length of time, in the performance of his duties as an officer of the United States, had a rightful operation on the *status* of the slave, and it is in conformity with the rules of international law that this change of *status* should be recognized everywhere.

Third. The laws of the United States, in operation in the Territory of Wisconsin at the time of the plaintiff's residence there, did act directly on the *status* of the plaintiff, and change his *status* to that of a free man. . . .

Fifth. That the consent of the master that his slave, residing in a country which does not tolerate slavery, may enter into a

lawful contract of marriage, attended with the civil rights and duties which belong to that condition, is an effectual act of emancipation. And the law does not enable Dr. Emerson, or anyone claiming under him, to assert a title to the married persons as slaves, and thus destroy the obligation of the contract of marriage, and bastardize their issue, and reduce them to slavery. . . .

I have thus far assumed, merely for the purpose of the argument, that the laws of the United States, respecting slavery in this Territory, were Constitutionally enacted by Congress. It remains to inquire whether they are constitutional and binding laws. . . .

But it is insisted, that whatever other power Congress may have respecting the Territory of the United States, the subject of negro slavery forms an exception. . . .

While the regulation is one "respecting the Territory," while it is, in the judgment of Congress, "a needful regulation," and is thus completely within the words of the grant, while no other clause of the Constitution can be shown, which requires the insertion of an exception respecting slavery, and while the practical construction for a period of upwards of fifty years forbids such an exception, it would, in my opinion, violate every sound rule of interpretation to force that exception into the Constitution upon the strength of abstract political reasoning, which we are bound to believe the people of the United States thought insufficient to induce them to limit the power of Congress, because what they have said contains no such limitation. . . .

But it is further insisted that the Treaty of 1803, between the United States and France, by which this Territory was acquired, has so restrained the constitutional powers of Congress, that it cannot, by law, prohibit the introduction of slavery into that part of this Territory north and west of Missouri, and north of thirty-six degrees thirty minutes north latitude.

By a treaty with a foreign nation, the United States may rightfully stipulate that the Congress will or will not exercise its legislative power in some particular manner, on some particular subject. . . . But that a treaty with a foreign nation can deprive the Congress of any part of the legislative power conferred by the people, so that it no longer can legislate as it was empowered by the Constitution to do, I more than doubt. . . .

But, in my judgment, this Treaty contains no stipulation in any manner affecting the action of the United States respecting the

Territory in question. . . . In my opinion, this Treaty has no bearing on the present question.

For these reasons, I am of opinion that so much of the several Acts of Congress as prohibited slavery and involuntary servitude within that part of the Territory of Wisconsin lying north of thirty-six degrees thirty minutes north latitude, and west of the River Mississippi, were constitutional and valid laws. . . .

In my opinion, the judgment of the Circuit Court should be reversed, and the cause remanded for a new trial.

No. 92. Lecompton Constitution

November 7, 1857

A FREE State convention sitting at Topeka, in Kansas Territory, from Oct. 23 to Nov. 5, 1855, drew up a State constitution prohibiting slavery, which was submitted to the people Dec. 15, and adopted by a vote of 1,731 to 46, only free State men voting. A bill to admit Kansas under this constitution passed the House July 3, 1856, but failed in the Senate. A free State legislature, assuming to meet under the Topeka constitution, was dispersed by the United States troops, and a period of civil war in the Territory followed. September 5, 1857, a convention called by the proslavery legislature of the Territory met at Lecompton and drew up a constitution, which was submitted to the people for adoption "with slavery" or "without slavery." The free State men, who objected to having the Lecompton constitution on any terms, refrained from voting, and Dec. 21 the constitution "with slavery" was adopted by a vote of 6,143, against 589 for the constitution "without slavery." In the meantime, however, the free State party had got control of the Territorial legislature, and Jan. 4, 1858, the constitution was rejected by a majority of more than 10,000. A bill to admit Kansas under the Lecompton constitution passed the Senate March 23, 1858, by a vote of 33 to 25. April 1 the House, by a vote of 120 to 112, substituted a bill resubmitting the constitution to popular vote. The two Houses then compromised on the "English bill" (act of May 4, 1858), "according to which a substitute for the land ordinance of the Lecompton constitution was to be submitted to popular vote in Kansas; if it was accepted, the State was to be considered as admitted; if it was rejected, the Lecompton constitution was to be considered as rejected by the people, and no further constitutional convention was to be held until a census should have shown that the population of the Territory equalled or exceeded that required for a representative" (Johnston). August 3 the land ordinance was rejected by a vote of 11,088 to 1,788. The Wyandotte constitution, prohibiting slavery, was ratified by popular vote Oct. 4, 1859. Under this constitution Kansas was admitted to the Union Jan. 29, 1861.

The following extracts comprise the provisions of the Lecompton constitution relating to slavery, the status of negroes, and ratification.

REFERENCES. — *Text* in Poore's *Federal and State Constitutions*, I., 598-613, *passim*. For the struggle in Congress over the admission of Kansas, see the *House and Senate Journals*, 34th, 35th, and 36th Cong., and the *Cong. Globe*. For general references, see under No. 90.

ARTICLE V.

SEC. 25. It shall be the duty of all civil officers of this State to use due diligence in the securing and rendition of persons held to service or labor in this State, either of the States or Territories of the United States; and the legislature shall enact such laws as may be necessary for the honest and faithful carrying out of this provision of the constitution.

ARTICLE VII.

SLAVERY.

SECTION 1. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same, and as inviolable as the right of the owner of any property whatever.

SEC. 2. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners previous to their emancipation a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to the State from bringing with them such persons as are deemed slaves by the laws of any one of the United States or Territories, so long as any person of the same age or description shall be continued in slavery by the laws of this State: *Provided*, That such person or slave be the *bona-fide* property of such emigrants: *And provided also*, That laws may be passed to prohibit the introduction into this State of slaves who have committed high crimes in other States or Territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have power to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the direction of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

SEC. 3. In the prosecution of slaves for crimes of higher grade than petit larceny, the legislature shall have no power to deprive them of an impartial trial by a petit jury.

SEC. 4. Any person who shall maliciously dismember or deprive a slave of life shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

BILL OF RIGHTS.

23. Free negroes shall not be permitted to live in this State under any circumstances.

SCHEDULE.

SEC. 7. This constitution shall be submitted to the Congress of the United States at its next ensuing session, . . .

Before this constitution shall be sent to Congress, asking for admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory, for approval or disapproval, as follows: . . . The voting shall be by ballot. The judges of said election shall cause to be kept two poll-books by two clerks, by them appointed. The ballots cast at said election shall be endorsed, "Constitution with slavery," and "Constitution with no slavery." One of said poll-books shall be returned within eight days to the president of this convention, and the other shall be retained by the judges of election and kept open for inspection. The president, with two or more members of this convention, shall examine said poll-books, and if it shall appear upon said examination that a majority of the legal votes cast at said election be in favor of the "Constitution with slavery," he shall immediately have the same transmitted to the Congress of the United States, as hereinbefore provided; but if, upon such examination of said poll-books, it shall appear that a majority of the legal votes cast at said election be in favor of the "Constitution with no slavery," then the article providing for slavery shall be stricken from this constitution by the president of this convention, and slavery shall no longer exist in the State of Kansas, except that the right of property in slaves now in this Territory shall in no manner be interfered with, and shall have transmitted the constitution, so ratified, (to Congress the constitution, so ratified,) to the Congress of the United States, as hereinbefore provided. . . .

No. 93. Crittenden Compromise

December 18, 1860

OF the numerous compromise propositions brought forward in the second session of the thirty-sixth Congress, the resolutions submitted Dec. 18, 1860, by Senator John J. Crittenden of Kentucky, attracted the most attention. January 14, however, a motion by English of Indiana, in the House, to substitute the Crittenden resolutions for the report of the committee of thirty-three, appointed Dec. 6 to consider so much of the President's message as related to "the present perilous condition of the country," was lost. March 2 the Senate rejected, by a vote of 7 to 28, an amendment offered by Crittenden, to substitute the amendments proposed by the Peace Congress for the resolutions originally presented, and then, by a vote of 19 to 20, declared against the resolutions themselves.

REFERENCES. — *Text* in *Cong. Globe*, 36th Cong., 2d Sess., 114. The resolutions were discussed at intervals for nearly three months: see especially, in the *Globe*, Crittenden's speech introducing the resolutions, and discussions on the other dates mentioned above. See also Wilson's *Slave Power*, III., chap. 6; Curtis's *Buchanan*, II., chap. 21; Nicolay and Hay's *Lincoln*, II., chaps. 26–28; III., chap. 14; Greeley's *Amer. Conflict*, I., chap. 24.

A joint resolution (S. No. 50) proposing certain amendments to the Constitution of the United States.

Whereas serious and alarming dissensions have arisen between the northern and southern States, concerning the rights and security of the rights of the slaveholding States, and especially their rights in the common territory of the United States; and whereas it is eminently desirable and proper that these dissensions, which now threaten the very existence of this Union, should be permanently quieted and settled by constitutional provisions, which shall do equal justice to all sections, and thereby restore to the people that peace and good-will which ought to prevail between all the citizens of the United States: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two thirds of both Houses concurring,) That the following articles be, and are hereby, proposed and submitted as amendments to the Constitution of the United States, which shall be valid to all intents and purposes, as part of said Constitution, when ratified by conventions of three fourths of the several States:

ARTICLE 1. In all the territory of the United States now held, or hereafter acquired, situate north of latitude 36° 30', slavery or

involuntary servitude, except as punishment for a crime, is prohibited while such territory shall remain under territorial government. In all the territory south of said line of latitude, slavery of the African race is hereby recognized as existing, and shall not be interfered with by Congress, but shall be protected as property by all the departments of the territorial government during its continuance. And when any Territory, north or south of said line, within such boundaries as Congress may prescribe, shall contain the population requisite for a member of Congress according to the then Federal ratio of representation of the people of the United States, it shall, if its form of government be republican, be admitted into the Union, on an equal footing with the original States, with or without slavery, as the constitution of such new State may provide.

ART. 2. Congress shall have no power to abolish slavery in places under its exclusive jurisdiction, and situate within the limits of States that permit the holding of slaves.

ART. 3. Congress shall have no power to abolish slavery within the District of Columbia, so long as it exists in the adjoining States of Virginia and Maryland, or either, nor without the consent of the inhabitants, nor without just compensation first made to such owners of slaves as do not consent to such abolishment. Nor shall Congress at any time prohibit officers of the Federal Government, or members of Congress, whose duties require them to be in said District, from bringing with them their slaves, and holding them as such during the time their duties may require them to remain there, and afterwards taking them from the District.

ART. 4. Congress shall have no power to prohibit or hinder the transportation of slaves from one State to another, or to a Territory in which slaves are by law permitted to be held, whether that transportation be by land, navigable rivers, or by the sea.

ART. 5. That in addition to the provisions of the third paragraph of the second section of the fourth article of the Constitution of the United States, Congress shall have power to provide by law, and it shall be its duty so to provide, that the United States shall pay to the owner who shall apply for it, the full value of his fugitive slave in all cases when the marshal or other officer whose duty it was to arrest said fugitive was prevented from so doing by violence or intimidation, or when, after arrest, said fugitive was rescued by force, and the owner thereby prevented and

obstructed in the pursuit of his remedy for the recovery of his fugitive slave under the said clause of the Constitution and the laws made in pursuance thereof. And in all such cases, when the United States shall pay for such fugitive, they shall have the right, in their own name, to sue the county in which said violence, intimidation, or rescue was committed, and to recover from it, with interest and damages, the amount paid by them for said fugitive slave. And the said county, after it has paid said amount to the United States, may, for its indemnity, sue and recover from the wrong-doers or rescuers by whom the owner was prevented from the recovery of his fugitive slave, in like manner as the owner himself might have sued and recovered.

ART. 6. No future amendment of the Constitution shall affect the five preceding articles; nor the third paragraph of the second section of the first article of the Constitution; nor the third paragraph of the second section of the fourth article of said Constitution; and no amendment shall be made to the Constitution which shall authorize or give to Congress any power to abolish or interfere with slavery in any of the States by whose laws it is, or may be, allowed or permitted.

And whereas, also, besides those causes of dissension embraced in the foregoing amendments proposed to the Constitution of the United States, there are others which come within the jurisdiction of Congress, and may be remedied by its legislative power; and whereas it is the desire of Congress, as far as its power will extend, to remove all just cause for the popular discontent and agitation which now disturb the peace of the country, and threaten the stability of its institutions: Therefore,

1. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the laws now in force for the recovery of fugitive slaves are in strict pursuance of the plain and mandatory provisions of the Constitution, and have been sanctioned as valid and constitutional by the judgment of the Supreme Court of the United States; that the slaveholding States are entitled to the faithful observance and execution of those laws, and that they ought not to be repealed, or so modified or changed as to impair their efficiency; and that laws ought to be made for the punishment of those who attempt by rescue of the slave, or other illegal means, to hinder or defeat the due execution of said laws.

2. That all State laws which conflict with the fugitive slave acts of Congress, or any other constitutional acts of Congress, or which, in their operation, impede, hinder, or delay the free course and due execution of any of said acts, are null and void by the plain provisions of the Constitution of the United States; yet those State laws, void as they are, have given color to practices, and led to consequences, which have obstructed the due administration and execution of acts of Congress, and especially the acts for the delivery of fugitive slaves, and have thereby contributed much to the discord and commotion now prevailing. Congress, therefore, in the present perilous juncture, does not deem it improper, respectfully and earnestly to recommend the repeal of those laws to the several States which have enacted them, or such legislative corrections or explanations of them as may prevent their being used or perverted to such mischievous purposes.

3. That the act of the 18th of September, 1850, commonly called the fugitive slave law, ought to be so amended as to make the fee of the commissioner, mentioned in the eighth section of the act, equal in amount in the cases decided by him, whether his decision be in favor of or against the claimant. And to avoid misconstruction, the last clause of the fifth section of said act, which authorizes the person holding a warrant for the arrest or detention of a fugitive slave, to summon to his aid the *posse comitatus*, and which declares it to be the duty of all good citizens to assist him in its execution, ought to be so amended as to expressly limit the authority and duty to cases in which there shall be resistance or danger of resistance or rescue.

4. That the laws for the suppression of the African slave trade, and especially those prohibiting the importation of slaves in the United States, ought to be made effectual, and ought to be thoroughly executed; and all further enactments necessary to those ends ought to be promptly made.

No. 94. South Carolina Ordinance of Secession

December 20, 1860

IT was clear that the success of the Republicans in the election of 1860 would mean the exclusion of slavery from the Territories. The legislature of

South Carolina met Nov. 4 to choose presidential electors, and remained in session until it was known that Lincoln had been elected. On the 7th an act was passed calling a State convention, to meet at Columbia Dec. 17, to consider the question of withdrawing from the Union. The convention met at the time and place appointed, but adjourned to Charleston because of an epidemic of small-pox in Columbia. On the 20th an ordinance of secession was unanimously adopted by the one hundred and sixty-nine delegates present, and the president of the convention proclaimed South Carolina to be "an independent Commonwealth." On the 21st the Representatives of the State in Congress announced their withdrawal from the House. A "Declaration of the immediate causes which induce and justify the secession of South Carolina from the Federal Union" was adopted on the 24th.

REFERENCES. — *Text* in *War of the Rebellion, Official Records*, Series I., vol. I., p. 110. For the proceedings of the convention, see *Amer. Annual Cyclopædia*, 1861, pp. 646–657; Moore's *Rebellion Record*, I., Doc. 2. The declaration of causes, and ordinances of secession passed by the other Southern States, are collected in *Amer. Hist. Leaflets*, No. 12. On the general progress of events, see especially Von Holst's *United States*, VII., chap. 11; Rhodes's *United States*, III., chaps. 13, 14. On the steps preliminary to secession, see Pike's *First Blows of the Civil War*. Buchanan defended his official conduct during 1860–61 in *The Administration on the Eve of the Rebellion* (London, 1865); a later defence is in Curtis's *Buchanan*, II., chap. 15. See also Davis's *Confederate Government*, I., part III; Wilson's *Slave Power*, III., chaps. 10, 11; Greeley's *Amer. Conflict*, I., chap. 22; Nicolay and Hay's *Lincoln*, III., chap. 1; Pierce's *Sumner*, III., chap. 40; IV., chap. 44.

AN ORDINANCE to dissolve the union between the State of South Carolina and the other States united with her under the compact entitled "The Constitution of the United States of America":

We, the people of the State of South Carolina in convention assembled, do declare and ordain, and it is hereby declared and ordained, that the ordinance adopted by us in convention on the twenty-third day of May, in the year of our Lord one thousand seven hundred and eighty-eight, whereby the Constitution of the United States of America was ratified, and also all acts and parts of acts of the general assembly of this State ratifying amendments of the said Constitution, are hereby repealed; and that the union now subsisting between South Carolina and other States, under the name of the "United States of America," is hereby dissolved.

No. 95. Peace Congress: Proposed Constitutional Amendment

February 27, 1861

IN response to a resolution of the Virginia legislature a peace congress met at Washington Feb. 4, 1861, remaining in session until Feb. 27. Twenty-one States were represented by one hundred and thirty-three commissioners. The delegates were variously instructed, but a majority were opposed to the adoption of a modified form of the Crittenden compromise, as favored by Virginia. The convention adopted a proposed amendment to the Constitution, which was transmitted to Congress Feb. 27 by John Tyler of Virginia, president of the convention, with a request that it be submitted to the States for approval. The amendment was discussed at intervals until the end of the session, but no favorable action was taken.

REFERENCES. — *Text* in *Senate Misc. Doc. 20*, 36th Cong., 2d Sess. The work of the congress is set forth at length in Chittenden's *Report of the Debates and Proceedings*, etc. (1864); for the discussions in Congress, see the *Cong. Globe*. See also Wilson's *Slave Power*, III., chap. 7; Greeley's *Amer. Conflict*, I., chap. 25; Curtis's *Buchanan*, II., 439–444; Johnston, in *Lalor's Cyclopædia*, I., 578–580; Davis's *Confederate Government*, I., part III., chap. 8.

ARTICLE 13.

SECTION 1. In all the present territory of the United States, north of the parallel of thirty-six degrees and thirty minutes of north latitude, involuntary servitude, except in punishment of crime, is prohibited. In all the present territory south of that line, the status of persons held to involuntary service or labor, as it now exists, shall not be changed; nor shall any law be passed by Congress or the territorial legislature to hinder or prevent the taking of such persons from any of the States of this Union to said territory, nor to impair the rights arising from said relation; but the same shall be subject to judicial cognizance in the federal courts, according to the course of the common law. When any Territory north or south of said line, within such boundary as Congress may prescribe, shall contain a population equal to that required for a member of Congress, it shall, if its form of government be republican, be admitted into the Union on an equal footing with the original States, with or without involuntary servitude, as the Constitution of such State may provide.

SECTION 2. No territory shall be acquired by the United States, except by discovery and for naval and commercial stations, depots,

and transit routes, without the concurrence of a majority of all the Senators from States which allow involuntary servitude, and a majority of all the Senators from States which prohibit that relation; nor shall territory be acquired by treaty, unless the votes of a majority of the Senators from each class of States hereinbefore mentioned be cast as a part of the two-thirds majority necessary to the ratification of such treaty.

SECTION 3. Neither the Constitution, nor any amendment thereof, shall be construed to give Congress power to regulate, abolish, or control within any State the relation established or recognized by the laws thereof touching persons held to labor or involuntary service therein, nor to interfere with or abolish involuntary service in the District of Columbia without the consent of Maryland and without the consent of the owners, or making the owners who do not consent just compensation; nor the power to interfere with or prohibit representatives and others from bringing with them to the District of Columbia, retaining and taking away, persons so held to labor or service; nor the power to interfere with or abolish involuntary service in places under the exclusive jurisdiction of the United States within those States and Territories where the same is established or recognized; nor the power to prohibit the removal or transportation of persons held to labor or involuntary service in any State or Territory of the United States to any other State or Territory thereof where it is established or recognized by law or usage; and the right during transportation, by sea or river, of touching at ports, shores, and landings, and of landing in case of distress, shall exist; but not the right of transit in or through any State or Territory, or of sale or traffic, against the laws thereof. Nor shall Congress have power to authorize any higher rate of taxation on persons held to labor or service than on land.

The bringing into the District of Columbia of persons held to labor or service, for sale, or placing them in depots to be afterwards transferred to other places for sale as merchandise, is prohibited.

SECTION 4. The third paragraph of the second section of the fourth article of the Constitution shall not be construed to prevent any of the States, by appropriate legislation, and through the action of their judicial and ministerial officers, from enforcing the delivery of fugitives from labor to the person to whom such service or labor is due.

SECTION 5. The foreign slave trade is hereby forever prohibited; and it shall be the duty of Congress to pass laws to prevent the importation of slaves, coolies, or persons held to service or labor, into the United States and the Territories from places beyond the limits thereof.

SECTION 6. The first, third, and fifth sections, together with this section of these amendments, and the third paragraph of the second section of the first article of the Constitution, and the third paragraph of the second section of the fourth article thereof, shall not be amended or abolished without the consent of all the States.

SECTION 7. Congress shall provide by law that the United States shall pay to the owner the full value of his fugitive from labor, in all cases where the marshal, or other officer, whose duty it was to arrest such fugitive, was prevented from so doing by violence or intimidation from mobs or riotous assemblages, or when, after arrest, such fugitive was rescued by like violence or intimidation, and the owner thereby deprived of the same; and the acceptance of such payment shall preclude the owner from further claim to such fugitive. Congress shall provide by law for securing to the citizens of each State the privileges and immunities of citizens in the several States.

No. 96. Proposed Constitutional Amendment

March 2, 1861

THE House committee of thirty-three (see note to No. 93) reported Jan. 14, 1861. February 27 Corwin of Ohio, chairman of the committee, offered, as an amendment to the second proposition reported by the committee, the proposed constitutional amendment, the text of which follows. The resolution passed the House the next day, by a vote of 133 to 65, and the Senate March 4 (session of March 2), by a vote of 24 to 12. The amendment was spoken of with approval by Lincoln in his inaugural address, and was agreed to by Ohio and Maryland, but failed to be ratified by the required number of States.

REFERENCES. — *Text* in *U. S. Stat. at Large*, XII., 251. For the proceedings and discussions in Congress, see the *House and Senate Journals*, 36th Cong., 2d Sess., and *Cong. Globe*. See also Nicolay and Hay's *Lincoln*, III., chap. 15; Wilson's *Slave Power*, III., chap. 8; and references under Nos. 86 and 88.

Joint Resolution to amend the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three fourths of said Legislatures, shall be valid, to all intents and purposes, as part of the said Constitution, viz:

ARTICLE THIRTEEN.

"No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."

No. 97. Constitution of the Confederate States of America

March 11, 1861

THE secession of South Carolina was followed, Jan. 9, 1861, by similar action in Mississippi. Ordinances of secession were adopted by Florida Jan. 10, Alabama Jan. 11, Georgia Jan. 19, and Louisiana Jan. 26. A resolution of the legislature of Mississippi, Jan. 19, in favor of a congress of representatives from the seceded States, to form a provisional government, was endorsed by the other States, and Feb. 8 a congress at Montgomery, Ala., adopted a provisional constitution. A permanent constitution was adopted March 11, and signed by delegates from each of the States above named, and by those of Texas, which had passed an ordinance of secession Feb. 1. The constitution was ratified by conventions in the several States. The first election under the permanent constitution was held Nov. 6, 1861. The congress under the permanent constitution met Feb. 18, 1862, superseding the provisional congress. The Confederate States of America were accorded belligerent rights by England and France, through proclamations of neutrality, but were never formally recognized as a government, either by the United States or by any foreign power.

The permanent constitution was modelled after the Constitution of the United States, and is in the main a reproduction of that instrument, with verbal or minor changes necessary to adapt it to the style of the new confederacy. All the sections embodying other than formal changes are given in

the extracts following, with references to facilitate comparison between the two documents.

REFERENCES. — *Text* in *Conf. Stat. at Large* (Richmond, 1864, ed. Matthews), 11–22, where is also the provisional constitution. A convenient reprint, with the texts of the Confederate constitution and the Constitution of the United States in parallel columns, is in Davis's *Confederate Government*, I., 648–673. The archives of the Confederate government are (1897) in the possession of the War Department; printed documentary material is scanty and rare. The official acts of the Confederacy are best followed in Moore's *Rebellion Record*, and *Amer. Annual Cyclopædia*, 1861–65; a few documents are also given in McPherson's *Hist. of the Rebellion*. For general accounts, see Rhodes's *United States*, III., chap. 14; Von Holst's *United States*, VII., chap. 11; Nicolay and Hay's *Lincoln*, III., chap. 13; Johnston, in *Lalor's Cyclopædia*, I., 566–571; Wilson's *Slave Power*, III., chap. 9; Greeley's *Amer. Conflict*, I., chap. 26; Davis's *Confederate Government*, I., part III., chaps. 5–7; Stephens's *War between the States*, II., 312–345; Pollard's *Lost Cause*, chap. 5.

WE, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity — invoking the favor and guidance of Almighty God — do ordain and establish this Constitution for the Confederate States of America.*

ARTICLE I.

SECTION 1.

All legislative powers herein delegated shall be vested in a Congress of the Confederate States, which shall consist of a Senate and House of Representatives.†

SECTION 2.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall be citizens of the Confederate States, and have the qualifications requisite for electors of the most numerous branch of the State Legislature; but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.‡

* * * * * * * * * * *

* [*Cf.* Const. U. S., Preamble.] † [*Cf.* Const. U. S., Art. I., Sec. 1.]

‡ [*Cf.* Const. U. S., Art. I., Sec. 2.]

3. Representatives and direct taxes shall be apportioned among the several States, which may be included within this Confederacy, according to their respective numbers, which shall be determined, by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all slaves. The actual enumeration shall be made within three years after the first meeting of the Congress of the Confederate States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every fifty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of South Carolina shall be entitled to choose six; the State of Georgia ten; the State of Alabama nine; the State of Florida two; the State of Mississippi seven; the State of Louisiana six; and the State of Texas six.*

* * * * * * * * * * *

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment; except that any judicial or other Federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two-thirds of both branches of the Legislature thereof.†

SECTION 3.

1. The Senate of the Confederate States shall be composed of two Senators from each State, chosen for six years by the Legislature thereof, at the regular session next immediately preceding the commencement of the term of service; and each Senator shall have one vote.‡

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SECTION 6.

. . . No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the Confederate States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the Confederate States shall be a member of either House during his continuance

* [*Cf.* Const. U. S., Art. I., Sec. 2, Par. 3.]
† [*Cf.* Const. U. S., Art. I., Sec. 2, Par. 5.]
‡ [*Cf.* Const. U. S., Art. I., Sec. 3, Par. 1.]

in office. But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his department.*

SECTION 7.

2. . . . The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President.†

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SECTION 8.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, for revenue necessary to pay the debts, provide for the common defence, and carry on the government of the Confederate States; but no bounties shall be granted from the treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States:‡

* * * * * * * * * * *

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this, nor any other clause contained in the constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aids to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation, in all which cases, such duties shall be laid on the navigation facilitated thereby, as may be necessary to pay the costs and expenses thereof:§

* [*Cf.* Const. U. S., Art. I., Sec. 6, Par. 2.]
† [*Cf.* Const. U. S., Art. I., Sec. 7, Par. 2.]
‡ [*Cf.* Const. U. S., Art. I., Sec. 8, Par. 1.]
§ [*Cf.* Const. U. S., Art. I., Sec. 8, Par. 3.]

4. To establish uniform laws of naturalization, and uniform laws on the subject of bankruptcies, throughout the Confederate States; but no law of Congress shall discharge any debt contracted before the passage of the same: *

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7. To establish post-offices and post-routes; but the expenses of the Post-Office Department, after the first day of March in the year of our Lord eighteen hundred and sixty-three, shall be paid out of its own revenue: †

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SECTION 9.

1. The importation of negroes of the African race, from any foreign country other than the slaveholding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectually prevent the same.

2. Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy.‡

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4. No bill of attainder, *ex post facto* law, or law denying or impa[i]ring the right of property in negro slaves shall be passed.§

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6. No tax or duty shall be laid on articles exported from any State, except by a vote of two-thirds of both Houses.‖

* * * * * * * * * * *

9. Congress shall appropriate no money from the treasury except by a vote of two-thirds of both Houses, taken by yeas and nays, unless it be asked and estimated for by some one of the heads of departments, and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by

* [*Cf.* Const. U. S., Art. I., Sec. 8, Par. 4.]
† [*Cf.* Const. U. S., Art. I., Sec. 8, Par. 7.]
‡ [*Cf.* Const. U. S., Art. I., Sec. 9, Par. 1.]
§ [*Cf.* Const. U. S., Art. I., Sec. 9, Par. 3.]
‖ [*Cf.* Const. U. S., Art. I., Sec. 9, Par. 5.]

a tribunal for the investigation of claims against the government, which it is hereby made the duty of Congress to establish.

10. All bills appropriating money shall specify in federal currency the exact amount of each appropriation and the purposes for which it is made; and Congress shall grant no extra compensation to any public contractor, officer, agent or servant, after such contract shall have been made or such service rendered.*

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20. Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.

SECTION 10.

3. No State shall, without the consent of Congress, lay any duty on tonnage, except on sea-going vessels, for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the Confederate States with foreign nations; and any surplus revenue, thus derived, shall, after making such improvement, be paid into the common treasury. Nor shall any State keep troops or ships-of-war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. But when any river divides or flows through two or more States, they may enter into compacts with each other to improve the navigation thereof.†

ARTICLE II.

SECTION 1.

1. The executive power shall be vested in a President of the Confederate States of America. He and the Vice President shall hold their offices for the term of six years; but the President shall not be re-eligible. . . .‡

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7. No person except a natural born citizen of the Confederate States, or a citizen thereof at the time of the adoption of this Constitution, or a citizen thereof born in the United States prior

* [This and the preceding paragraphs are in addition to a provision identical with Const. U. S., Art. I., Sec. 9, Par. 7.]

† [*Cf.* Const. U. S., Art. I., Sec. 10, Par. 3.]

‡ [*Cf.* Const. U. S., Art. II., Sec. 1, Par. 1.]

to the 20th of December, 1860, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the limits of the Confederate States, as they may exist at the time of his election.*

* * * * * * * * * * *

SECTION 2.

3. The principal officer in each of the executive departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the President. All other civil officers of the executive departments may be removed at any time by the President, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty; and when so removed, the removal shall be reported to the Senate, together with the reasons therefor.

4. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; but no person rejected by the Senate shall be re-appointed to the same office during their ensuing recess.†

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ARTICLE IV.

SECTION 2.

1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States; and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.‡

2. A person charged in any State with treason, felony, or other crime against the laws of such State, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.§

* [*Cf.* Const. U. S., Art. II., Sec. 1, Par. 5.]
† [*Cf.* Const. U. S., Art. II., Sec. 2, Par. 3.]
‡ [*Cf.* Const. U. S., Art. IV., Sec. 2, Par. 1.]
§ [*Cf.* Const. U. S., Art. IV., Sec. 2, Par. 2.]

3. No slave or other person held to service or labor in any State or Territory of the Confederate States, under the laws thereof, escaping or lawfully carried into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such slave belongs, or to whom such service or labor may be due.*

SECTION 3.

1. Other States may be admitted into this Confederacy by a vote of two-thirds of the whole House of Representatives and two-thirds of the Senate, the Senate voting by States; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State 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 Congress.†

2. The Congress shall have power to dispose of and make all needful rules and regulations concerning the property of the Confederate States, including the lands thereof.‡

3. The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them, at such times, and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory, the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the territorial government: and the inhabitants of the several Confederate States and Territories shall have the right to take to such territory any slaves lawfully held by them in any of the States or Territories of the Confederate States.

4. The Confederate States shall guarantee to every State that now is, or hereafter may become, a member of this Confederacy, a republican form of government; and shall protect each of them against invasion; and on application of the Legislature, (or of the executive, when the legislature is not in session,) against domestic violence.§

* [*Cf.* Const. U. S., Art. IV., Sec. 2, Par. 3.]
† [*Cf.* Const. U. S., Art. IV., Sec. 3, Par. 1.]
‡ [*Cf.* Const. U. S., Art. IV., Sec. 3, Par. 2.]
§ [*Cf.* Const, U. S., Art. IV., Sec. 4.]

ARTICLE V.

SECTION 1.

1. Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said convention — voting by States — and the same be ratified by the legislatures of two-thirds of the several States, or by conventions in two-thirds thereof — as the one or the other mode of ratification may be proposed by the general convention — they shall thenceforward form a part of this Constitution. But no State shall, without its consent, be deprived of its equal representation in the Senate.*

ARTICLE VI.

1. The Government established by this Constitution is the successor of the Provisional Government of the Confederate States of America, and all the laws passed by the latter shall continue in force until the same shall be repealed or modified: and all the officers appointed by the same shall remain in office until their successors are appointed and qualified, or the offices abolished.

* * * * * * * * * * *

5. The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people of the Several States.†

6. The powers not delegated to the Confederate States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people thereof.‡

ARTICLE VII.

1. The ratification of the conventions of five States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.§

* [*Cf.* Const. U. S., Art. V.]
† [*Cf.* Const. U. S., Amend., Art. IX.]
‡ [*Cf.* Const. U. S., Amend., Art. X.]
§ [*Cf.* Const. U. S., Art. VII.]

2. When five States shall have ratified this Constitution, in the manner before specified, the Congress under the Provisional Constitution shall prescribe the time for holding the election of President and Vice President; and for the meeting of the Electoral College; and for counting the votes, and inaugurating the President. They shall, also, prescribe the time for holding the first election of members of Congress under this Constitution, and the time for assembling the same. Until the assembling of such Congress, the Congress under the Provisional Constitution shall continue to exercise the legislative powers granted them; not extending beyond the time limited by the Constitution of the Provisional Government.

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[TITLES IN *ITALICS* INDICATE A TEXT WITH ACCOMPANYING NOTES AND REFERENCES.]