

JUDGE CLAYTON'S REVIEW

Of the Report of the Committee of Ways and Means, to whom was referred so much of the Message of the President, as relates to the Bank of the United States, which report was, in the House of Representatives of the U. States, read and laid on the table, April 13, 1830.

NO. V.

The above reasoning will equally apply to the two next clauses, 2d and 3d. But we have a little more to say on the 5th, to wit. the power "to coin money, regulate the value thereof, and of foreign coin, & fix the standard of weights and measures." And here we are almost constrained to smile, when we see the shifts to which false reasoning will resort in support of a favorite measure. Who would have ever supposed that any extremity in the progress of a fair and honest argument, could have driven a debater to the farcical idea that Bank bills, nay, the promissory notes of an individual, for bank bills are nothing else, can, by dubbing them with the title of "currency," be made synonymous with "coining of money and fixing the value thereof?" This position is absolutely taken in the Report, and lest we may distress the faith of our readers, or subject our own truth to suspicion, we must beg to submit the exact words of the committee.

"The power to coin money and fix the value thereof," is expressly and exclusively vested in Congress. This grant was evidently intended to invest Congress with the power of regulating the circulating medium. "Coin" was regarded, at the period of framing the Constitution, as synonymous with "currency," as it was generally believed that bank notes could only be maintained in circulation by being the true representative of the precious metals. The word "Coin," therefore, must be regarded as a particular term, standing as the representative of a general idea. No principle of sound construction will justify a rigid adherence to the letter, in opposition to the plain intention of the clause. If, for example, the gold bars of Ricardo should be substituted for our present coins, by the general consent of the commercial world, could it be maintained that Congress would not have the power to *make* such money and fix its value because it is not "coined"? This would be sacrificing sense to sound, and substance to mere form. This clause of the Constitution is analogous to that which gives Congress the power "to establish post roads." Giving to the word "establish" its restricted interpretation, as being equivalent to "fix" or "prescribe," can it be doubted that Congress has the power to establish a canal, or a river, as a post route, as well as a road? Roads were the ordinary channels of conveyance, and the term was, therefore, used as synonymous with "routes," whatever might be the channel of transportation, and, in like manner, "coin" being the ordinary & most known form of a circulating medium, that term was used as synonymous with "currency."

Particular attention is invited to this protracted extract. We were compelled to give the whole of it, for from first to last, it is a wire drawn argument, in many places not very intelligible, each part, however, feebly depending upon its immediate forerunner to carry out the much distressed and worried idea that Congress with the power to "coin money," may denominate any thing money, from "Ricardo bars," to rank bank bills, provided a credulous community will only imagine them "synonymous with currency."

It is a little remarkable that a Constitutional question settled in '91 by Congress, by President Washington, by a second Charter, by the Federal Court, and what is better than all, and very conclusive, by the *change* of certain *great men's* opinions, should at this day want such a defence, and that it is reserved for the sapience of the present generation to make such a discovery, for the decision of a great question, that never once occurred to those who long since determined the point, and made it so clear that it is "forever settled and at rest." It would seem that this argument comes too late. They must stand on the ground upon which the question was originally settled, or admit that such ground was unstable, and wanted proping. If the matter was so plain before, wherefore the necessity of this new argument? Can any thing strengthen that which is as strong as it can be? What higher authorities are wanting than those just mentioned? What are we to

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infer from this overwrought effort to brace that which is said to be so well planted? No! the truth is, there is yet doubt. With all their weighty authorities the point is still tremulous, and wants repose. And whenever we see a reasoner risk, by a dangerous, because weak argument, a cause which he affirms is "steadfast and immovable," we have a right to draw one of two conclusions, either that he is not sincere and doubts his case, or that he believes his adversary is too shallow to detect his sophistry. If the latter, the people will not thank the committee for the compliment, if the former, they are welcome to all its advantages, and in either event, it is a bad cause that requires such a support.

There was no necessity for such a tortured and laboured argument. Why not come out at once & say under the power "to coin money and fix its value," Congress have a right to create a *private corporation* and suffer their promissory notes, not one whit better than any other individual's, to be synonymous with "coin?" Will the committee say *that*? No, they will not so risk their reputation upon such an absurdity, but yet strange to tell, if, by an artful and extended train of sophisms they can make the community believe it, they have not the least objection; this may be Congressional ethics, but belongs to no school where honest purpose of mind is at all regarded. If they can make the bills of a *private company* the same as "coin," they can and ought to make the bills of exchange, drafts, notes and due bills of *private individuals* the same, for they certainly have the same right, and though this last kind of paper may not "be believed" to represent the "precious metals," yet they often times represent very precious property, and are as readily available. Indeed, they may dispense with the precious metals altogether, and rely alone upon a paper currency. To have claimed such a right for the Government paper would have been a little plausible, though equally untenable, but to hazard such a doctrine in favor of private corporation bills because they are bank bills, and because bank bills are generally believed" to represent the precious metals, is too severe a draft upon the charity of an easy, unthinking world.

But why is it, if this is one of the *express powers* intended to be effected by a corporation, that nothing of it is mentioned in the Charter? Have the committee forgotten that this self same *express power*, has already been carried into effect by another well known law, which seems to have bodied out a different construction from that which they have had the honor to submit? For what purpose is the law regulating the *MINT*, and the statutes fixing the value of the different coins, if this clause means nothing more than that "coin" is "currency" and currency is "bank bills?"

Have we come to this, that the *express powers* of Congress mean one thing to day and another to-morrow, that one Congress passes a law to establish a Mint, to coin precious and other metals, regulates the value thereof, and in so doing believes it has fully executed this *express power*, and all at once another version is given to it, and we are gravely told it means nothing more nor less than to authorize the incorporation of a Bank, to regulate the "coining and value of money" by a paper currency!" Wonderful!

Alarming doctrines are every day shooting up in rank growth around the Constitution, and we are prepared almost for any thing, but we confess this is an indication of no common portent. If the express powers of the General Government are nothing but a nose of wax, and liable to be moulded to as many forms as will suit the interest or ambition of wily Statesmen or the avarice of greedy monopolists, if after one power is amply executed and every thing which it contains is fairly yielded and acted upon for years, by well known laws, it is again subjected to the crucible of construction, for the purpose of extracting another and different principle, we confess there is great cause for humiliation and despair, or the exercise of a power very decidedly stronger than the force of human reasoning.

But to put this matter out of all doubt, and to place still further in the wrong that kind of argument which seeks to subvert the constitution of a nation, let us enquire into the origin of this power, and how it came to be vested in the general government, and we hope to be excused, for we despise all kinds of pedantry, if we indulge in a little law learning, on this subject. The word "coin and money," are common law terms, and seem with many others, to have crept into the federal constitution, by virtue of the habits of legal thinking and speaking, imposed by the pre-existing institutions of the country, derived from the laws of Great Britain. When that instrument was under debate, it is needless to disguise the fact, that very many of its principles were cast in the moulds of that government, and there is nothing very surprising in the circumstance, for we had been intimately connected with, indeed, born and raised under it, and knew, by experience, but little of the principles or forms of any other. All our lawyers, of which the convention was chiefly composed, had drawn their stores of legal science from that source, accordingly when fixing the sovereign powers of government, it was very natural to look for the like powers in the government of their model, and it is remarkable that this clause seems to be almost a transcript of what belonged to the sovereign of Great Britain as described in his *Prerogative* by Mr. Blackstone. After speaking of weights and measures (also contained in our clause,) that author says, "as money is the medium of commerce, it is the King's prerogative, as the arbiter of commerce, to give it authority or make it current. Money is a *sign* which represents the respective values of all commodities. Metals are well calculated for this sign, because they are durable and are capable of many sub-divisions. And a precious metal is still better calculated for this purpose, because it is the most portable. A metal is also most proper for a common measure, because it can easily be reduced to the same standard in all nations." Here we have the definition of money and the excellent reasons why it should be metallic. Now as to coin. "Coin seems to come from the French *coign*, that is, *angulus*, a corner, whence it has been held that the ancientest sort of coin was square, with corners, and not round as it now is. It is any sort of money coined.— Coin is a word collective, which contains in it all manner of the several stamps and species of money in any kingdom; and this is one of the royal prerogatives belonging to every sovereign prince, that he alone in his dominions may order and dispose the quantity, value and fashion of his coin. But the coin of one king is not current in the kingdom of another,

though *one king* may make any foreign coin lawful money at his pleasure." This quotation shows what is "coin, who may regulate its value, and also that of *foreign coin*, of which our clause is a close imitation. Mr. Blackstone observes further, "with respect to *coinage* in general, there are three things to be considered therein: the materials, the impression, and the denomination. With regard to the materials, Sir Edward Coke lays it down 'that the *money* of England must either be of gold or silver,' though copper coins have since been introduced," &c. He proceeds to the mention of the impression, denomination and many other matters on this subject, not necessary to our present purpose, and we have been thus particular to shew, first, that if the Convention did not alter the meaning of terms borrowed from the common law, they must be understood in the manner they are used, whence they are drawn, and secondly to shew that *paper currency* was never considered, in the remotest degree, related to the coining of money or regulating its value, and still less, that it was ever used as synonymous with "coin," and such has always been the interpretation of Congress in legislating upon this power. There is not an act of theirs, in the establishment of the Mint or the regulation of "Coins or money" that is not in perfect accordance with the principles above referred to, as practised by the sovereign power of Great Britain, or, in any manner, favoring the new fangled construction set up by the Committee.

But besides this view of the subject, which would seem to be conclusive, what can be said, what tongue will not be mute, when our last argument on this subject shall be heard? And it shows how dangerous it is for Statesmen to probe and feel for powers in the Constitution, with a view to establish a favorite theory, without a proper knowledge of the organic structure of that wonderful instrument. When the question to grant the power "to borrow money" was under discussion, there was connected with it, in the reported draft, these words, "and emit bills, on the credit of the United States."

A motion was made to strike out the words "and emit bills," which was carried, nine States to two. Can any power be more subservient to that of raising armies, borrowing money, laying and collecting taxes, transmitting funds, regulating commerce, indeed to do every thing that can promote the public defence and general welfare, than this of emitting bills on the credit of the U. States, and yet the Convention would not grant it! Where, if a paper currency was thought to be necessary and proper, was there a better opportunity for the grant than at this particular junction? Will they incidentally confer upon a private corporation what they expressly denied to the Government itself? But it may be supposed that the Convention struck out the power because they believed it was fairly to be inferred from those already granted. If such a delusion be not too deeply seated, we think we have for it a complete relief. In the progress of the debate, Mr. Luther Martin, a member of the Convention, and one of no common powers, contended "that it would be improper to deprive the Congress of the power to issue paper money; that it would be a novelty unprecedented, to establish a government, which should not have such an authority. That it was impossible to look forward to futurity, so far as to decide, that events might not happen, that would render the exercise of such a power, absolutely necessary." These were his arguments in the Convention, and when they proved unavailing, he wrote home to his Legislature, that "a majority of the Convention being willing to risk any political evil, rather than the idea of a "paper emission" in any possible case, refused to trust this authority to a Government, on which they were lavishing the most unlimited powers of taxation, and to the mercy of which, they were willing to trust the liberty and property of the citizens of every State in the Union, and they erased that clause from the system." (Yates' Debates, p. 57.) These are the sort of arguments upon which stand the Constitutionality of the Bank Charter! For the safety of their cause and the sake of their reputations, let the committee take back this *new trial* argument, resting upon the grounds of *fresh discovered* testimony found in the clause "to coin money," and let them be candid enough to own, that if the Convention would not trust their masters to issue paper money, it would much less confide such a suspected power to the veriest "money changers" of the nation.

We have now done with the Constitutional part of this question, and shall proceed to consider the subject in reference to its expediency.

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