J. Catrup

EASTON GAZETTE.

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MESSAGE

FROM

THE PRESIDENT OF THE U. STATES,

Returning the Bank Bill with his objections &c.

TO THE SENATE:

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

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

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

An apology may be found for the failure to [illegible] this result, in the consideration that the effect of the original act of incorporation could not be certainly foreseen at the time of its passage. The act before me proposes another gratuity to the holders of the same stock and in many cases, to the same men, of at least seven millions more. This donation finds no apology in any uncertainty as to the effect of the act. On all hands it is conceded that its passage will increase at least twenty or thirty per cent. more, the market price of the stock, subject to the payment of the annuity of $200,000 per year, secured by the act; thus adding, in a moment, one fourth to its par value. It is not our own citizens only who are to receive the bounty of our Government. More than eight millions of the stock of this Bank are held by foreigners. By this act, the American Republic proposes virtually to make them a present of some millions of dollars. For these gratuities to foreigners, and to some of our own opulent citizens, the act secures no equivalent whatever. They are the certain gains of the present stockholders under the operation of the acts after making full allowance for the payment of the bonus.

Every monopoly, and all exclusive privileges are granted at the expense of the public which ought to receive a fair equivalent. The many millions which this act proposes to bestow on the stockholders of the existing Bank must come directly or indirectly, out of the earnings of the American people. It is due to them, therefore, if their Government sell monopolies and exclusive privileges, that they should at least exact for them as much as they are worth in open market. The value of the monopoly in this case may be correctly ascertained. The twenty eight millions of stock would probably be at an advance of 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.

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

But this proposition, although made by men whose aggregate wealth is believed to be equal to all the the private stock in the existing Bank has been set aside, and the bounty of our Government is proposed to be again bestowed on the few who have been fortunate enough to secure the stock, and at this moment, wield the power of the existing institution. I cannot perceive the justice or policy of this course. If our Government must sell monopolies, it would seem to be its duty to take nothing less than their full value; and if gratuities must be made once in fifteen or twenty years, let them not be bestowed on the subjects of a foreign government, nor upon a designated and favored class of men in our own country. It is but justice and good policy, as far as the nature of the case will admit, to confine our favors to our fellow citizens, and let each in his turn enjoy an opportunity to profit by our bounty. In the bearings of the act before me upon these points, I find ample reasons why, it should not become a law.

It has been urged as an argument in favor of re-chartering the prerent 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 would furnish a reason against renewing a power which has been so obviously abused. But will there ever be a time when this reason will be less powerful? To acknowledge its force, is to admit that the bank ought to be perpetual, and as a consequence, the present stockholders and those inheriting their rights, as successors, be established a privileged order, clothed both with great political power and enjoying immense pecuniary advantages from their connection with the government.

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

The fourth section provides "that the notes or bills of the said corporation, although the same be on the faces thereof, respectively made payable at one place only, shall, nevertheless be received by the said corporation at the Bank, or at any of the offices of discount and deposit thereof, if tendered in liquidation or payment of any balance or balances, due to said corporation or to such office of discount and deposit from any other incorporated Bank. This provision secures to the State Banks a legal privilege in the Bank of the United States, which is withheld from all private citizens. If a State Bank in Philadelphia, owe the Bank of the United States and have notes issued by the St. Louis Branch, it can pay the debt with those notes; but if a merchant, mechanic, or other private citizen be in like circumstances, he cannot by law pay his debts with those notes, but must sell them at a discount or send them to St. Louis to be cashed. This boon, conceeded to the State Banks though not unjust in itself, is most odious, because it does not measure out equal justice to the high and the low, the rich and the poor.

To the extent of its practical effect, it is a bond of union among the banking establishments of the nation, erecting them into an interest, separate from that of the people, and its necessary tendency is to unite the Bank of the United States and the State Banks in any measure which may be thought conducive to their common interest.

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

It enacts that "the Cashier of the Bank shall annually report to the Secretary of the Treasury the names of all stockholders who are not resident citizens of the United States, and on the application of the Treasurer of any State, shall make out and transmit to such Treasurer a list of stockholders residing in or citizens of such State, with the amount of stock owned by each." Although this provision taken in connexion with a decision of the Supreme Court, surrenders by its silence, the right of the States to tax the banking institutions created by this corporation, under the name of branches, throughout the Union,—it is evidently intended to be construed as a concession of their right to tax that portion of the stock which may be held by their own citizens and residents. *In* this light, if the act becomes a law, it will be understood by the States, who will probably proceed to levy a tax equal to that paid upon the stock of banks incorporated by themselves. In some States that tax is now one per cent, either on the capital or on the shares, and that may be assumed as the amount which all citizens or resident stockholders will be taxed under the operation of this act. As it is only the stock held in the States and not that employed within them, which would be subject to taxation, and as the names of foreign stockholders are not to be reported to the Treasurers of the States, it is obvious that the stock held by them will be exempt from this burden. Their annual profits, will, therefore be one per cent. more than the citizen stockholders, and as the annual dividends of the Bank may be safely estimated at seven per cent., the stock will be worth ten or fifteen per cent more to foreigners than to citizens of the United States. To appreciate the effects which this state of things will produce, we must take a brief review of the operations and present condition of the Bank of the United States.

'By documents submitted to Congress at the present session, it appears that on the 1st of January, 1832, of the 28 millions of private stock in the corporation, $8,405,500 were held by foreigners, mostly of Great Britain.—The amount of stock held in the nine Western and Southwestern States, is $140,200; and in the four Southern States, $5,623,100; and in the Middle and Eastern States is about $13,522,000. The profits of the bank in 1831, as shown in a statement to Congress, were about $3,455,598; of this there accrued in the nine western States, about $,640,048; in the four Southern States, about $535,507; and in the middle and eastern States about $1,463,041. As little stock is held in the West, it is obvious that the debt of the people, in that section, to the Bank is principally a debt to the eastern and foreign stockholders, that the interest they pay upon it, is carried into the eastern States and into Europe; and that it is a burden upon their industry and a drain of their currency, which no country can bear without inconvenience and occasional distress. To meet this burden, and equalize the exchange operations of the Bank, the amount of specie drawn from those States through its branches within the last two years, as shewn by its official report was about $6,000,000. More than half a million of this amount does not stop in the eastern States, but passes on to Europe to pay dividends of the foreign stockholders. In the principle of taxation recognized by this act, the western States find no adequate compensation for this perpetual burden on their industry, and drain of their currency. The Branch Bank at Mobile made, last year, $95,140, yet under the provisions of this act, the State of Alabama can raise no revenue from these profitable operations, because not a share of the stock is held by any of her citizens. Mississippi and Missouri are in the same condition in relation to the branches at Natchez and St. Louis; and such, in a greater or less degree, is the condition of every western State.

The tendency of the plan of taxation which this act proposes, will be to place the whole United States in the same relation to foreign countries, which the western States now bear to the eastern. When by a tax on resident stockholders, the stock of this Bank is made worth ten or fifteen per cent more to foreigners than to residents, most of it will inevitably leave the country.

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

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

Is there no danger to our liberty and independence in a Bank, that in its nature has so little to bind it to our country? The President of the Bank has told us, that most of the State Banks exist by its forbearance. Should its influence become 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 citizens, 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; controling our currency; receiving our public moneys, and holding thousands of our citizens in dependence, it would be more formidable and dangerous than the naval and military power of the enemy.

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

It is maintained by the advocates of the Bank that its constitutionality in all its features ought to be considered as settled by precedent, and by the decision of the Supreme Court. To this conclusion, I cannot assent. Mere precedent is a dangerous source of authority, and should not be regarded as deciding questions of constitutional power, except where the acquiescence of the people and the States can be considered as well settled. So far from this being the case on this subject, an argument against the Bank might be passed 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 enquire into the degree of its necessity, would be to pass the line which circumscribes the Judicial Department and to tread on Legislative ground.'

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

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

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

If Congress possessed the power to establish one Bank, they had power to establish more than one, if, in their opinion, two or more Banks had been 'necessary' to facilitate the execution of the powers delegated to them in the constitution. If they possessed the power to establish a second Bank, it was a power derived from the constitution, to be exercised from time to time, and at any time when the interests of the country or the emergencies of the Government might make it expedient. It was possessed by one Congress as well as another, and by all Congresses alike, and alike at every session. But the Congress of 1816 has taken it away from their successors for twenty years, and the Congress of 1832 proposes to abolish it for fifteen years more. It cannot be 'necessary' or 'proper' for Congress to barter away or divest themselves of any of the powers, vested in them by the constitution, to be exercised for the public good. It is not 'necessary' to the efficiency of the Bank, nor is it 'proper' in relation to themselves and their successors. They may properly use the discretion vested in them; but they may not limit the discretion of their successors. This restriction on themselves and grant of a monopoly to the Bank, is therefore, unconstitutional.

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

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

The act authorises and encourages transfers of its stock to foreigners, and grants them an exemption from all state and national taxation. So far from being 'necessary and proper' that the bank should possess this power, to make it a safe and efficient agent of the Government in its fiscal operations, it is calculated to convert the Bank of the United States into a foreign bank, to impoverish our people in time of peace to disseminate a foreign influence through every section of the republic—and in war, to endanger our independence.

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

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

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

The government is the only 'proper' judge where its agents should reside and keep their offices because it best knows where their presence will be 'necessary.' It cannot, therefore be 'necessary' or 'proper' to authorize the Bank to locate branches where it pleases to perform the public service, without consulting the government, and contrary to its will. The principle laid down by the Supreme Court concedes, that Congress cannot establish a bank for purposes of private speculation and gain, but only as a means of executing the delegated powers of the general government. By the same principle, a branch bank cannot be constitutionally established for other than public purposes. The power which this act gives to establish two branches in any State without the injunction or request of the government, and for other than public purposes, is not 'necessary' to the due execution of the powers delegated to Congress.

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

It is maintained by some that the Bank is a means of executing the constitutional power to coin money and regulate the value thereof.' Congress have established a mint to coin money and passed laws to regulate the value thereof. The money so coined, with its value so regulated, and such foreign coins as Congress may adopt, are the only currency known to the Constitution But if they have other power to regulate the currency, it was conferred to be

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