

FEBRUARY, 1817.

Internal Improvement.

H. OF R.

as far as the Seneca outlet. These people had in some measure the choice of two markets. The expense, indeed, of transportation to New York, was greater than to Montreal—yet, if there were obstacles in their way to the Canada market, they would then use the other, although at somewhat greater expense; but that was not the case with the more Western counties. The counties of Ontario, Genesee, Niagara, Cataraugus, and Chatauqua, contain more than four millions five hundred thousand acres, and more than sixty-three thousand inhabitants. The exports were rapidly increasing, and without the canal they had no other outlet. These people were subject to the harassing policy of the Canadian Government, without remedy, and must become more and more interested in their measures. He held in his hand a letter which had not been intended to be used for this purpose, but which contained information useful to show to what extent our people would become, without some effectual measures on our part, dependent on the Canadas for their market. The letter was directed to his colleague, (Mr. Brooks,) from whom he had just received it. From the port of Sodus only, on Lake Ontario, there were exported, during the last year, for the Canada market—he named a number of articles of produce, among them were ten thousand barrels of flour, a very considerable quantity of wheat, corn, potash, &c. From this, an opinion could be formed of the value of this trade, and of the influence it would hereafter give the Government of Canada in this part of the country. There are, indeed, other objects of great importance, but there are none which so strongly require the attention of Government in every point of view. It was not his intention to enter into an examination of the subject farther. He would only observe that whether the Congress aided or not, he hoped and verily believed that the State of New York would ultimately finish the work without such assistance. Great and important as it is in a national view, yet, if no assistance could be given towards it, he hoped and trusted she would not be wanting in justice to herself, and use her ample means for the accomplishment of an object demanded by every principle of national or State policy.

Mr. BARBOUR, of Virginia, next rose. He said, that he should not have addressed the House at this late hour, had he not been influenced, as well by the importance of the subject, as by the principles which had been assumed, in the progress of the discussion; he would, however, promise not to occupy a moment of their time, more than was indispensably necessary to explain his views.

He said, it was certainly true, that internal improvement, upon an extended scale, by means of artificial roads and inland navigation, was in itself a desirable object; it was desirable, because it would facilitate means of intercourse between the several States; it was desirable, because by diminishing the expense of transportation, and enlarging the market, for the various products of the country, it would enhance their value, and

thus augment the totality of the wealth of the nation; and indeed it might be productive of many other advantages, which had been portrayed, in such glowing colors, by the member from South Carolina, (Mr. CALHOUN.) He thought it, however, well worthy of the serious consideration of the House, how far it was prudent, under the existing circumstances of the country, to embark in the scheme, proposed by the bill upon the table; and especially, to the extent which that bill proposed. He would call the attention of the House for a moment, to the amount of the contemplated appropriation. It consisted in the United States' bonus and dividends in the Bank of the United States; the bonus was one million and a half of dollars, payable in three instalments; the dividends were of course somewhat uncertain; but as the United States had a capital of seven million of dollars in the Bank, if the profits of that institution were only equal to the average of State banks, (and he thought it was obvious they would be greater,) the dividends would amount to \$700,000 per annum. An appropriation, then, of the bonus and the dividends as they should annually accrue, for a period of twenty years, would amount to an immense sum; he had not made the calculation, but he said, it seemed to be agreed amongst political arithmeticians, that one per cent. of any given capital, annually appropriated, and operating at an interest of five per cent. upon a compound principle, and applied to the capital only, would extinguish it in a period of thirty-seven years. Taking this then, as a datum, and recollecting that the sum here would be at an interest of six per cent., he thought it probable, speaking from conjecture, and without the aid of actual calculation, that the proposed appropriation would, in its aggregate result, upon the principles which he had before stated, be equal to the extinguishment of about \$40,000,000 of our national debt. It was for the House to decide, whether they were prepared to go to this extent; it was for them to say, even viewing the question in the light of expediency only, whether it was better to apply the amount of the proposed appropriation to the payment of the public debt, or to the execution of the great scheme of internal improvement, contemplated by the bill.

But, he said, he would not dwell longer upon this view of the subject; because, whatever might be the expediency of the measure, whatever advantage it might promise, he should feel himself constrained to vote against the bill, upon the ground, that it embraced objects not within the sphere of the Constitutional powers of Congress.

Mr. B. said, it was with real reluctance that he entered into this part of the subject; because it was extremely difficult, at the present day, to take any ground in relation to that question, which had not been in some degree pre-occupied, on former occasions, which were memorable in the history of this country; but he felt it to be a duty which he owed to himself, to state to the House his construction of the Federal Constitu-

tion; not only because it influenced his course upon the present bill, but because it had influenced him upon many other important occasions on which he had been called to act, since he had been a member of this House. If, in doing this, he should occasionally tread in the footsteps of those who had gone before him, he must find his apology in this: That when the same text occurred, it could not be explained, without resorting in some degree to the same commentary.

The State governments, Mr. B. said, were abundantly competent to all the purposes of ordinary legislation; to the protection of the lives, liberties, and property of the people; and to their own internal order, improvement, and prosperity. For what purpose, then, he asked, was a Federal Government necessary? He answered, that it was necessary for the purpose of concentrating the strength and resources of the several States, with a view to their defence against foreign danger; it was necessary for the regulation of foreign commerce, and all those external objects which constitute what are usually called the foreign relations of a country. There were also some few internal objects, which, by reason of their very great importance or the necessity for uniformity, called for the superintendency of a Federal Government; such, for example, amongst others, as the regulation of commerce amongst the several States, the coining of money, the establishment of a uniform rule of naturalization.

In conformity with these ideas, the Constitution had delegated to Congress not a general but a partial legislative power; comprehending, indeed, all the external objects of the Government, but only a few specified objects of an internal character, distinctly enumerated. As, however, there was a division of power between the Federal and State Governments, in relation to objects of the kind which he had just mentioned, such was the jealous caution against any possible misconstruction, that it was expressly declared by the tenth amendment, that "all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, were retained to the States, respectively, or to the people."

Whether, then, reference was had to the purposes for which the Federal Government was instituted, or to this explicit declaration, this principle resulted—that when a member of the National Legislature was called on to act, he occupied ground directly the reverse of what he would occupy were he a member of a State Legislature:—there he would be able to do whatever was not prohibited; here he can do nothing but that which is authorized. This principle had been the polar star, by which he had uniformly been governed; and not being able, by the best lights of his judgment, to find in the Constitution any grant of the power proposed to be exercised by the bill upon the table, he felt himself constrained to vote against it. But gentlemen, yielding to the force of the principle which he had just laid down, had entered into an elaborate argument to prove that the Constitution

had delegated to Congress the power of making roads and canals. And here, Mr. B. said, at the very threshold, he could not forbear to remark that scarcely any two gentlemen who had spoken upon the subject had agreed as to the provision of the Constitution from which this power was derivable. From this circumstance alone, he deduced an argument of some weight against them; for if the advocates of the measure, whilst they united in the result, differed essentially amongst themselves in their own principles; if one derived the power from one clause, and another from a different one, this indicated at least such a degree of doubt upon the subject, as should make the House pause, and deliberate seriously, before it adopted a conclusion derived from such different sources, and supported by such contrarian principles.

But, Mr. B. said, that he would now proceed directly to the question, and would endeavor to show that the proposed power was not sustainable upon any of the principles which had been assumed as the basis of its support.

Great reliance had been placed, in the course of the argument, upon the language, in which the power "to lay and collect taxes," &c., was expressed; particularly the words, "to provide for the common defence and general welfare of the United States." If he understood the argument, this broad proposition had been assumed—that Congress, having power to raise money by laying and collecting taxes, might appropriate the money thus raised to any object which, in their opinion, would contribute to the common defence and general welfare; provided the purpose to which it was appropriated was not prohibited in the Constitution. It had been said that roads and canals would contribute to the common defence and general welfare; and hence it had been concluded that Congress had therefore power to make them. If this construction were to prevail, he asked what would become of the specific enumeration of powers which immediately followed the clause in question? Did that enumeration mean anything? He could not suppose that any gentleman would contend it was inserted without meaning. What, then, did it mean? He thought it was obviously designed as a limitation upon the previous general language which had been used; that is, that the "common defence and general welfare" were the end to be obtained. The various enumerated powers which followed, were the means by which they were to be attained. If any other construction than this prevailed, the consequence would be, that a Government which, upon the face of its own charter, was declared to be limited to certain definite objects, would in reality become almost wholly unlimited; for, with the exception of a few prohibitions, (and they were but few,) Congress might appropriate money to any object which, in their opinion, would promote the "general welfare." What was this but a substitution of legislative discretion for Constitutional right?

The power "to establish post offices and post roads," had also been relied upon in justification

FEBRUARY, 1817.

Internal Improvement.

H. OF R.

of this bill. The first answer which presented itself to this argument was, that this power was not even pretended to embrace canals; and as to the roads for which it provided, he had always considered that nothing else was intended by it, than an authority to designate and fix the mail routes. It must be observed, that the words were not to cut or to make post roads, but to establish them. He thought the obvious meaning of the terms used, justified his constructions. Another argument in favor of this construction was this: at the time when the Constitution was formed, the State governments then were, and long had been in being; and having charge of their own internal improvement, they either then had, or it might be calculated upon that they would make such roads, as the necessity or convenience of their citizens rendered necessary. Considered in this point of view, it was not necessary to give to Congress the power to make roads; all that was requisite was to reserve to them the right of passage, adding such roads as the States had or might make; that right is involved in the power to establish post roads. He would only add that the House had been informed, by the venerable member from Massachusetts, that at an early period after the formation of the Constitution, this power was understood to convey only the authority to designate and fix routes for the mail; this information also went to fortify his construction. There were, he believed, only two other powers to which the right to make roads and canals had been referred, not as being expressly granted by them, but as being incident to them, and, therefore, granted by implication. These were, the power "to regulate commerce amongst the several States," and the power "to raise and support armies." Upon the subject of incidental powers, as growing out of what was generally called the residuary clause in the Constitution, he would remark, that to justify the exercise of a power not granted, as an incident to one which was granted, it was not enough to show that, by indirect and remote consequences, it might conduce to the execution of the granted power; such a construction would break down all the barriers of the Constitution; it must be shown that it had an immediate, direct, and obvious relation to the power granted. He would exemplify his idea by a case which he would put. Congress had power "to lay and collect taxes;" but, as assessment was necessary to collection, therefore they had power to appoint assessors, and, upon the same principle, collectors also; he was satisfied that the power of making roads and canals could not be assumed as incidental to either of the powers which had been mentioned; either according to the definition, or the exemplification which he had given.

To regulate, was to prescribe, to direct; the power, therefore, "to regulate commerce amongst the several States," meant the right to prescribe the manner, terms, and conditions, on which that commerce should be carried on. This, he thought, was the plain meaning of the terms; but he referred also to the history of the times, and to the

14th CON. 2d Sess.—29

local circumstances of the United States, in proof of this idea. Some States were advantageously situated for commerce, others were much less so; it was apprehended, that the desire of the first to make the most of their advantages would cause them to establish partial commercial regulations; the latter class, or States less advantageously situated, would endeavor to escape from their operation, hence were feared jealousies and feuds amongst them; to avoid these evils, to put commerce amongst the States upon a footing of equality, it was thought right to give to the Federal Government the power to regulate it; and in further confirmation of this idea, even the Federal Government was forbidden, by the Constitution, from giving, "by any regulation of commerce, a preference to the ports of one State over those of another." His colleague (Mr. SHEFFEY) had contended that, before the formation of the Constitution, the States had the power to regulate commerce; that if they had thought proper to facilitate it by roads and canals, they would have had the power to have done so. He had said, that the power to regulate commerce being exclusive, whatever belonged to the States had been delegated to Congress; hence he inferred that, as the States might have made roads and canals, as incident to the regulation of commerce, that power having been granted to Congress, the incident passed with the principal; and that, therefore, they might make roads and canals. The error of this argument consisted in this: that the power to make roads and canals existed in the State governments, not merely as an incident to any other power, but as a substantive, independent attribute of sovereignty. His conclusion, therefore, which depended mainly upon the assumed principle, that the power of making roads and canals was incident to the regulation of commerce, as this principle failed, was, as it respected the premises which remained, if he might be allowed the expression, a *non sequitur*; in one word, the grant of one independent power did not carry with it another independent power.

The last power by which this bill was attempted to be justified, was the "power to raise and support armies." This, it has been said, involved the incidental power of making roads: he had already expressed his opinion as to the nature and extent of incidental powers; he had already endeavored to give both a definition and exemplification of that kind of powers; he was satisfied that the making of permanent military roads was not incident to the power of raising and supporting armies, according to either of those standards. A remark which he had made in relation to post roads was equally applicable to military roads—the States having already made such roads, as necessity or convenience required; and it being a reasonable expectation that such other roads should be made by them, from a regard to their own interest, as further experience should show to be necessary, the fair presumption was, that it was not within the contemplation of the Constitution, either by express grant or by implication, to give to Congress the power of making perma-

ment roads for the use of the United States. All that the United States wanted with roads for the use of their armies, was a mere right of passage, for which the roads of the States would be sufficient; if, indeed, in time of actual war the cutting of a road were unnecessary to enable our armies to march, he would not deny them the power to do so; but the difference between such a case and the present bill is: the power to make the road being, in the case stated, deduced from the necessity of the occasion, would only be co-extensive with that necessity, and as the one would be temporary, so likewise would the other be; whereas the bill on the table proposed a system under which roads might be made without knowing, other than by conjecture, whether they ever would be used as military roads, under which roads were to be made for commercial purposes; but, above all, roads in which the United States would have not a mere right of passage or temporary use, but a continuing and permanent interest. The difference between these rights was important. Mr. B. would endeavor to show it by a case which he would put. Suppose the United States to determine to turnpike the great road leading from Richmond to Fredericksburg, and for that purpose to establish a company; suppose the Virginia Legislature to incorporate another company to turnpike the same road; in this collision between Federal and State authority, which should prevail? He thought that the difficulty of answering this, and many other questions which might be put upon this subject, was sufficient to show that a doctrine which led to such consequences could not be sustainable.

Mr. T. WILSON, of Pennsylvania, said, the degree of attention which I have had occasion, at various times, to direct to the subject embraced in the bill before the House, induces me to submit a few observations. My intention is, principally, to present to the view of the House some prominent facts—some which have come within my own observation, and others derived from sources which I rely upon as unquestionable authority; of such notoriety, indeed, that their admission is expected without a question; while their application, it is hoped, will be pointedly directed to the subject in discussion. They go, however, wholly in illustration of the expediency of the measure proposed—and here I must be permitted, first, to remark, that I find myself disappointed and unprepared upon another point drawn into argument, which seems to arrest, in the outset, all other considerations—Constitutional exceptions are taken to the measure. This I had not expected upon the present bill, because its provisions seem carefully guarded upon all the points upon which I had apprehended any Constitutional question to arise. In its present form, it proposes nothing without the consent of the States, respectively, and leaves the particular objects and mode of application to a future Congress, which, it is fairly presumed, will keep within the pale of the Constitution. The contrary is certainly not to be presumed. If, then, any provision whatever can be made by law on the subject, re-

quiring an appropriation, this bill must be found free from all Constitutional objection, because it does nothing more than set apart a fund, without making any specific appropriation. I shall not attempt to discuss the question which has arisen, especially after the able discussion it has had already.

The gentleman from Virginia, (Mr. BARBOUR,) himself, has given a most lucid and eloquent exposition of the Constitution, in the principles of which I am ready to agree with him. I only differ with him in the application of the principle; in the practical detail of measures under the Constitution, and especially in its application to the principle of the bill.

Whenever a Constitutional doubt is opposed to any measure of great importance, I am compelled to recur to the *spirit* of the Constitution—to the original necessity which at first declared its adoption. What was that, sir? It was that of the common defence of numerous separate communities, requiring a unity of design and of action—trial was made of an ordinary confederacy—experience demonstrated that it could only be held together under the pressure of a defensive war—in times of tranquillity it was found inadequate to the measures requisite to the security of all, and a Federal Government was substituted; to which, by its Constitution, was assigned the all-important powers of peace and war; the raising of armies; the regulation of commerce between the States, and with foreign States. The national revenues and domain were assigned, with those powers, to this Government; and it was charged with the guarantee to each State of a Republican form of government—to regulate the currency, and provide for the common defence and general welfare—in a word, it became necessary to organize a General Government for the general interest, because there are things which no single State can be bound, or under any obligation to do; which no single State has the ability to do, and which things are necessary to the common defence and general welfare. While we confine ourselves to these objects, the Constitution is secure; but when we fail or neglect those great common interests, the spirit of the Constitution is broken—we abandon our trust. As a national Representative, I feel myself bound, by every obligation of duty and allegiance, to provide for the common defence and general welfare—to provide for them in the best manner, by the most appropriate means. I know of no single measure so essentially necessary to these ends, as that which proposes to facilitate the internal intercourse of this great country. Without intercourse, we can have no common interest; and without roads and canals our intercourse is difficult or impracticable.

The gentleman from Virginia admits that, in time of war, such a measure would be proper; but, in time of peace, premature—you know not by what route your enemy may approach. This last position is untenable. The great lines of communication, which are properly national objects, either in peace or war, cannot be mistaken;