A PLEA FOR THE CONSTITUTION OF THE UNITED STATES
Wounded in the House of Its Guardians
by George Bancroft

Introduction

Good money must have an intrinsic value. The United States of America cannot make its shadow legal tender for debts payable in money without ultimately bringing upon their foreign commerce and their home industry a catastrophe, which will be the more overwhelming the longer the day of wrath puts off its coming. Our federal constitution was designed to end forever the emission of bills of credit as legal tender in payment of debts, alike by the individual states and the United States; and it will have that effect, if it is rightly interpreted and firmly enforced.

The supreme court of the United States was endowed by our fathers with a peculiar tenure of office and high powers of jurisdiction, that it might be able to keep watch over the life and integrity of the constitution. On the third of March, 1884, without having listened to any public argument on the case which was made the occasion of its utterance, it pronounced before a crowd of listeners an opinion in these words: "The power to make the notes of the government a legal tender in payment of private debts being one of the powers belonging to sovereignty in other civilized nations, and not expressly withheld from congress by the constitution; we are irresistibly impelled to the conclusion that the impressing upon the treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of the undoubted powers of congress."

The opinion thus confidently expressed, if it should be accepted as law, would be a death blow to the constitution; in defiance of which it not only gives a sanction to irredeemable paper money, but clothes the government with powers that have no defined limit in its relations to the people. Of the nine who composed the court, Stephen J. Field alone gave a dissenting opinion; but there stood at his side, invincible vouchers for

the rightness of his dissent, James Wilson, Oliver Ellsworth, and William Paterson, all three of whom the president of the convention which formed our constitution selected from among its framers to be its earliest judicial interpreters. And with them are to be counted a cloud of witnesses, among whom are the master-builders of the constitution. Roger Sherman, George Washington, Charles Cotesworth Pinckney, James Madison, and Alexander Hamilton.

The language of the court is of such import to all American industry and intercourse from the most humble to the highest, and is moreover so subversive of a republic composed of states in union, and threatens such injury to the honor and hope of republicanism throughout the world, that I have thought it right to bestow upon it many of the few hours that may remain to me for labor. The decision of the question depends upon facts which are beyond the reach of change, and which for their establishment require only the strict application of the rules of evidence to historical investigations.

When questions of science arise, I shall cite only men that command the confidence of the civilized world; and I shall call the immortal framers of our constitution themselves as my witnesses to prove that it was their deliberate, unalterable purpose to withhold from the federal government the power to emit the promise of money as a legal tender for debt in money; and that they did beyond dispute withhold the power by very large and most determined majorities.

To set the subject in the clearest light, it will be proper to trace the history of American bills of credit until they were abolished by Massachusetts and Connecticut; to revive the memory of the great struggle for their suppression by the separate colonies or states to the end of 1786; and to ascertain what decision on paper money was made by the constitutional convention, and accepted, one by one, by every state. It will then be the time to examine the new interpretation of the constitution by the present court; and ask after the defenses of the people against the revolution with which they are threatened.

PART I.

FROM THE FIRST ISSUE OF BILLS OF PUBLIC CREDIT IN THE AMERICAN COLONIES TO THEIR ABOLITION BY CONNECTICUT. FROM 1690 TO 1755-6.

In the autumn of 1690 an expedition, sent by Massachusetts to capture Quebec, returned without success. To defray its cost, which amounted to forty thousand pounds, and to satisfy complaints of "the want of an adequate measure of commerce," the general court, in December, 1690, ordered the issue of "seven thousand pounds of printed bills of equal value with money;" and of the remainder in May, 1691 In July, 1692, within nineteen months of the earliest emission, the first legislature under the new charter which transformed the self-governing colony of Massachusetts Bay into a direct dependency of Great Britain, made "all" these "bills of public credit current within this province in all payments equivalent to money, excepting specialties and contracts made before the publication" of this new law. Their credit was supported by receiving them in all public payments at a premium of five percent. Immediately all the coin then in Massachusetts was exported to England, and the new stock followed as fast as it came in from abroad. The vain sorrow of the province expressed itself in December, 1697, by the prohibition of "the export of coin, silver money or bullion." In June, 1700, a joint committee of the council and representatives, to be aided by the advice of merchants and others, was appointed to consider how to revive trade, and find out some suitable medium to supply the scarcity of "money;" and it is to be noted, that the word "money" in all colonial legislation was used exclusively for gold and silver coin.

The bills of credit of the defunct government remained a legal tender in all payments except of special contracts. The first issue of bills of credit of Massachusetts after it became a royal province, was in November, 1702, for ten thousand pounds, in value "equal to money," but to be

accepted in all public payments at the advance of five percent. A tax was ordered for their redemption, and it remained the custom at every emission of bills of credit to grant a seemingly sufficient fund for their payment.

In May, 1703, South Carolina, the first colony which trod in the footsteps of Massachusetts, gave a new development to American paper bills, by enacting not only that its new emission of six thousand pounds should be "a good payment and tender in law," but that whoever should refuse them should "forfeit double the value of bills so refused." For a short time from June, 1716, the fine was "treble the value."

In 1709, Great Britain made a sudden requisition on the American colonies to aid in the conquest of the French possessions in North America. To meet this invitation, all the New England colonies emitted paper bills, and the paper of each one of them found some circulation in the others.

The original act, by which New Hampshire in 1709 emitted its first paper money, was destroyed by fire; a supplemental act of the following year seems to show that they were left to find their own way into circulation.

Connecticut, making its first emission of bills in June, 1709, put forth eight thousand pounds, soon followed by eleven thousand more, which were "to be in value equal to money, and to be accordingly accepted in all public payments."

The terms of the issue of Massachusetts, which was delayed till 1710, corresponded with those of Connecticut; but in 1712 the statute book complains that "money," which in those days meant only coin, "was not to be had;" and it was enacted that for any debt contracted within ten years after the last day of October, 1705, no debtor, after tendering payment of his full debt in lawful bills of credit on the province, should be disturbed in person or estate.

The law of Massachusetts, punishing counterfeiters of its own bills, was courteously extended to the bills of the other New England colonies; but the emissions of one colony were never made a tender in any other. The intercolonial circulation of each other's bills wrought a new uncertainty in prices, for which the currency of each one of the four was steadily declining, it declined in each with unequal speed.

Rhode Island, in July, 1710, on its first emission of bills of credit, declared them equal in value to "money," and made them receivable in all public payments. In October, 1715, they were made lawful pay even for specialties; but as this enactment threatened "great strife and contention among the inhabitants" of the colony, it was repealed in the following June.

New York entered eagerly into the defence of its northern frontier, and in November, 1709, for the first time involved itself in the use of bills of credit.

The Friends in the assembly of New Jersey at first defeated the bill for taking part in the war; but after a short prorogation it was adopted.

In Pennsylvania, where the Friends had more power, the spread of paper money was for a while arrested.

In November, 1711, Rhode Island discharged a claim by a loan of its bills of credit to the amount of three hundred pounds for four years, free of interest. South Carolina gave a wider development to this new form of using paper. Its legislature, on the pretext of creating a fund to sink former bills of credit and to encourage trade and commerce, in July, 1712, ordered fifty-two thousand pounds in new bills of credit to be stamped and put out at interest in loans.

The passion for borrowing spread like flame on the dry prairie. In November, 1714, Massachusetts ordered fifty thousand pounds to be let

out by trustees to the inhabitants of the province for five years on real security at five pounds percent per annum, to be paid back in five annual installments. The act was a sacrifice of the public interests to borrowers, who were to return their loan only after a lapse of time sufficient to insure the very great depreciation of the paper in which it was to be paid. Moreover, the borrowers needed an enforcement by law of the circulation of the paper which they borrowed: swiftly, therefore, in December, 1715, under a pretext "to prevent the oppression of debtors," a stringent statute made the bills legal tender for all debts that had been or should be contracted between the thirtieth of October, 1705, and the thirtieth of October, 1722.

The loan of bills of credit by Massachusetts in 1714 was managed at the seat of government. But why should Boston be favored? "That the husbandry, fishery, and other trade of the province might be encouraged and promoted," "bills of credit on the province to the amount of one hundred thousand pounds" were in 1716 ordered to be distributed through a loan office in each county. But why should borrowers in the smaller townships be forced to travel to their shire town? Let a public money-lender be near every man's door. By the statute of March, 1721, fifty thousand pounds were distributed among borrowers in each several town according to its proportion in the last province tax. Again, in 1728, sixty thousand pounds in bills of credit were proportionately loaned among the several towns, even on personal security, at the rate of six percent for six years, after which repayment was to be made in five yearly installments. Of course "money" disappeared; not even a silver penny was to be had; the small change became of paper.

In 1717, the council of New Hampshire was zealous to follow the fashion of issuing paper money by loans. Its more cautious Assembly restrained their zeal, and confined the issue to fifteen thousand pounds. New Hampshire remained one of the most cautious of the colonies.

In October, 1718, Connecticut, to prevent oppression by the rigorous exaction of money, declared its bills of credit legal tender for debts

contracted between the twelfth day of July, 1709, and the twelfth day of July, 1727. The time for the operation of the law was afterwards extended to 1735.

In the year 1733 Connecticut loaned interest-bearing bills for near fifty thousand pounds. In May, 1740, it issued thirty thousand pounds of a new tenor of which twenty-two thousand pounds were to be loaned to freeholders of the colony on mortgage or personal security to be repaid one half in four years, the other in eight years in current bills, or hemp, or duck, or canvas at their current market price. These bills were made legal tender in all payments; but this provision was censured by the lords of trade in England, and in the following November it was repealed.

The eagerness of borrowers undermined the scruples of Pennsylvania; in March, 1723, when there was universal peace, that colony issued bills of credit for loans to individuals, and not only compelled creditors to receive the bills at par or "lose their debts," but ordered sellers to receive them at their nominal value in the sale of goods or lands or tenements, or "forfeit a sum from thirty shillings to fifty pounds."

This law, so wrote Adam Smith, the calm and wise defender of the commercial rights of our fathers, "bears the evident mark of a scheme of fraudulent debtors to cheat their creditors. A positive law may render a shilling a legal tender for a guinea, because it may direct the courts of justice to discharge the debtor who has made that tender; but no positive law can oblige a person who sells goods and who is at liberty to sell or not to sell as he pleases, to accept of a shilling as equivalent to a guinea in the price of them."

In 1731 the legislature of Maryland would have emitted bills of credit but for the negative of the proprietary of the province. In 1733, ninety thousand pounds in its bills of credit were brought into circulation by loans at four percent. The bills were a tender for contracts made after the enactment, and for twenty-three years their amount was not enlarged.

In this early period Virginia alone escaped the contagion of a paper currency.

The next development of the colonial system of paper money was a partial repudiation. In February, 1737, less than forty-seven years after the first emission of bills of credit by Massachusetts, that colony issued nine thousand pounds of a new tenor, of which one dollar was to be equal to three of the old, and which, after five years, was to be redeemed at par in silver and gold. When the time of redemption came round they were not paid off, but by a further repudiation four pounds for one was made the rate in exchanging the old tenor for the new.

The people of South Carolina, having the best opportunity to grow rich by the great returns made to them for the products of their soil, have recorded their sense of their mistake in the statute of the eleventh of December, 1717, in which they said: "It is found by experience that the multiplicity of the bills of credit hath been the cause of the ruin of our trade and commerce and hath been the great evil of this province, and that it ought with all expedition to be remedied." To obtain the means for absorbing their bills of credit they enacted a tax on imports and exports; but when the act reached England, it was disallowed from fear that it might prove unfavorable to the interests of Great Britain.

On the ninth of January, 1739, the general court of Massachusetts made this confession: "The emission of great quantities of bills of public credit without certain provision for their redemption by lawful money in convenient time, hath already stript us of all our money and brought them into contempt to the great scandal of the government; for the remedy thereof, this province hath fixed the value of their bills in lawful money and the time of their redemption in" 1742, New Style.

But that year went by and relief had not been found. In 1744, James Allen, the preacher of the annual election sermon, from the pulpit addressed the governor in this wise: "Be the means of delivering us from the perplexing difficulties we are involved in by an unhappy medium,

uncertain as the wind and fluctuating like the waves of the sea, through the unrighteousness whereof the land mourneth, and the cries of many are going up into the ears of the Lord of Sabaoth."

The people of Massachusetts were moral and enterprising, laborious and thrifty; they knew how to tax themselves heavily, and abhorred permanent public debt. In 1745 they took the largest part in the brilliant enterprise which ended in the reduction of Louisburg, and were to receive from the British parliament some payment for their extraordinary expenses in the expedition.

In February, 1748, New Style, Massachusetts, while awaiting its share of this remuneration, invited the governments of Connecticut, New Hampshire, and Rhode Island to join in abolishing the use of bills of credit; but as no one of the three gave effectual heed to the summons, the people of Massachusetts proceeded alone. It was estimated that about two millions two hundred thousand pounds of their bits of credit would be outstanding in the year 1749. In January of that year an act was passed, redeeming the bills of the old tenor at the rate of forty-five shillings, those of the new tenor at the rate of eleven shillings and three pence, for one Spanish silver dollar; a rate which somewhat exceeded their market value at the time. The bills of credit of New Hampshire, Rhode Island, and Connecticut were excluded by most stringent laws, and Massachusetts, with its quickened industry and established credit, "sat as a queen among the provinces."

To aid in bringing the other New England colonies into the same condition, the parliament of Great Britain in January, 1751, New Style, after the payments due them for their extraordinary services in the war were remitted to each one of them in coin, enacted that "no paper currency, or bills of credit of any kind issued in any of the said colonies or plantations, shall be a legal tender in payment of any private dues whatsoever within any of them." "No law," writes Adam Smith, "could be more equitable."

Roger Sherman, the great statesman of Connecticut, gave his mind to the questions about money and mediums, commerce and exchanges, and having mastered them, in 1752, under the name of Philoeuonomos, "the lover of just laws," he addressed to the men of Connecticut "A caveat against injustice, or an inquiry into the evil consequences of a fluctuating medium of exchange." These are some of his words: "The legislature of Connecticut have at length taken effectual care to prevent a further depreciation of the bills of this colony; the other governments," (meaning New Hampshire and Rhode Island) "not having taken the like prudent care, their bills of credit are still sinking in their value." ... "Money ought to be something of certain value, it being that whereby other things are to be valued."... "And this I would lay down as a principle that can't be denied, that a debtor ought not to pay any debts with less value than was contracted for, without the consent of or against the will of the creditor." . .. "If what is used as a medium of exchange is fluctuating in its value, it is no better than unjust weights and measures, both which are condemned by the laws of God and man; and, therefore, the longest and most universal custom could never make the use of such a medium either lawful or reasonable.

"We, in this colony, are seated on a very fruitful soil; the product whereof, with our labor and industry and the divine blessing thereon, would sufficiently furnish us with and procure us all the necessaries of life and as good a medium of exchange as any people in the world have or can desire. But so long as we part with our most valuable commodities for such bills of credit as are no profit, we shall spend great part of our labor and substance for that which will not profit us; whereas if these things were reformed we might be as independent, flourishing and happy a colony as any in the British dominions."

In May of the same year, the famous traveler, John Ledyard, and twenty-five other merchants of Connecticut caught up the theme, and in a petition to their legislature said: "The medium of trade whereby our dealings are valued and weighed ought to be esteemed as sacred as any weights and measures whatever, and, to maintain justice, must be kept as

stable, for as a false weight and false balance is an abomination to the Lord, a false and unstable medium is equally so, as it occasions as much iniquity and is at least as injurious."

The Connecticut assembly supported the memorialists, excluded the bills of paper money of Rhode Island, and overcoming every embarrassment, at last, like Massachusetts, redeemed every nine shillings of its paper money with one shilling in specie. After the first day of November, 1756, all accounts in Connecticut were kept in lawful money.

PART II.

PAPER MONEY IN AMERICA FROM THE BEGINNING OF THE SEVEN YEARS' WAR TO THE CONSTITUTIONAL CONVENTION OF THE UNITED STATES. FROM 1755-6 TO MAY, 1787.

The establishment of a post by France at the junction of the rivers which form the Ohio, with the design of appropriating the valley of the Mississippi, involved Virginia from May, 1755, in measures of war and immediate and increasing issues of paper bills which from the beginning were made a lawful tender for private debts. For the new "notes" of April, 1757, it was further ordered that any seller who should demand more for his goods in notes than in gold or silver coin, should "forfeit twenty percent of their value."

The treaty of peace between England and France, which was ratified in the early part of 1763, left the middle and southern colonies under extreme embarrassment from their issues of paper. Massachusetts had stood firm by the sole use of coin. Rhode Island, with Stephen Hopkins for its governor and a legislature of which the majority reflected his own uprightness, at once and in spite of the severest opposition, put on its statute book: "Lawful money of this colony is, and shall hereafter be, silver and gold coin; and nothing else;" and it never again resorted to the

emission of paper money, till, in 1775, it took up arms for the defense of its liberties.

New Hampshire fixed 1771 as the limit for its paper, which in that year totally disappeared.

Connecticut went through the great French war without issuing bills of credit; but in 1770, after an intermission of twenty-five years, relapsed into the old abuse.

The legislature of New York in 1770 passed an act for emitting one hundred and twenty thousand pounds in bills of credit, to be put out on loan. The king promptly gave it his negative, but it was successfully reenacted in February of the following year.

The war for independence exhibited a new development of the system of credit, by the reckless disregard of its bounds. Promises of money were scattered over the land alike by the states and by the United States, until "bills," to use the words of John Adams, "became as plenty as oak leaves." North Carolina, having in 1780 directed the emission of more than a million pounds, and such further sums as the exigencies of the state might require, in the next year gave authority at one dash to issue twenty-six and a quarter millions of paper dollars, being six percent interest. Virginia in March, 1781, directed the emission of ten million pounds, and authorized five millions more; and the continental paper currency and its own were made a legal tender in discharge of all debts and contracts, except contracts which expressly promised the contrary.

In 1780 the United States began repudiation by issuing a new paper dollar equal to forty of their previous issues. After their new constitution was established, all that remained of the bills of the continental congress were called in at the rate of one dollar in silver for one hundred dollars "impressed" on paper.

The experience of the war of the revolution completed the instruction of our fathers on the wastefulness and injustice of attempting to conduct affairs on the basis of paper promises, indefinite as to their time of payment; and with peace the nation began the reform of its finances with the same determined purpose and energy which had achieved its independence.

In less than a month after the surrender of Cornwallis, the general assembly of Virginia enacted, that the paper issues of the state shall from the passing of this act cease to be a tender in payment of debt.

On the 6th of February, 1782, South Carolina, after declaring that "laws making bills of credit legal tender are found inconvenient," enacted "that from and after the passage of this act, no bill or bills of credit or paper currency whatever shall be considered, taken, or received as a legal tender, payment, or discharge of any debt due, or demand whatsoever."

Rhode Island, in June and November, 1782, ordered all bills and notes to be brought into the treasury. They were struck out of circulation, and new notes, bearing interest, given in their stead. The increase of paper money in the state was arrested for the coming four years.

Washington, in his circular letter of June, 1783, to the governors of the several United States, wrote that "honesty will be found on every experiment to be the best and only true policy," being convinced that "arguments deduced from this topic could with pertinency and force be made use of against any attempt to procure a paper currency."

In June, 1783, Alexander Hamilton, in resolutions for a new constitution of the United States of America, set forth explicitly: "To emit an unfunded paper as the sign of value ought not to continue a formal part of the constitution, nor ever hereafter to be employed; being, in its nature, pregnant with abuses, and liable to be made the engine of imposition and fraud; holding out temptations equally pernicious to the integrity of government and to the morals of the people."

The overwhelming evils of paper money formed the subject of universal deliberation as affecting domestic, inter-state, and international relations, which could be effectually remedied only by a central government.

On the 21st of March, 1783, Pennsylvania, which hardly knew what it was doing and had not yet gathered up the strength of its will, was the first to renew in peace the evil usage of the times of war, and issued three hundred thousand dollars in what it called treasury notes, the lowest of one quarter of a dollar, the highest of twenty dollars. Two years later, but after great resistance, its legislature issued one hundred and fifty thousand pounds, the lowest note of three pence. But in the decisive hour Pennsylvania proved the implacable foe of paper money.

In the same year, 1783, North Carolina emitted one hundred thousand pounds, declaring "each pound of the emission equal to two and a half Spanish milled dollars, and a tender in all payments whatever." But every former paper currency of the state and the continental paper currency ceased to be a tender in the payment of debts. The state, in 1785, emitted one hundred thousand pounds more, and it took no part in the convention of the United States in 1787.

In October, 1785, the legislature of South Carolina suffered itself to be persuaded to lend among its constituents one hundred thousand pounds in paper bills of the state, which were to pass in payments to the treasury of the state, but were not otherwise made legal tender. The state soon perceived that the paper banished more gold and silver than the amount of the bills which were to take their place.

The policy of New York was an uncertain one. In 1782 it incorporated the bank of North America. In April, 1786, the opening year of the final great movement for a closer union of the states, it placed an emission of two hundred thousand pounds in bills of credit with loan officers, to be loaned on mortgage security; and they were made a legal tender in any suit for debt or damages, and the costs of suit. The bills were further to

be received for duties collected at the port of New York by the state. General McDougall, the brave soldier and patriot, though sick unto death, insisted on being carried to the senate, that, as the last act of his public life, he might give his voice against the proposal to emit paper money.

The ill-considered and happily transient desire of New York to levy duties on the neighboring states whose imports would naturally come through its great and more convenient harbor, combined with the passion for paper money to paralyze her influence in the coming convention for the establishment of union.

From end to end of the whole country its best men were seeking remedies for what Madison called "the epidemic malady" of paper money.

Following the lead of Pennsylvania, New Jersey had been the third state after the peace to issue paper money; in December, 1783, it issued thirty-one and a quarter thousand pounds, and in 1786 it struggled to issue a larger amount. William Paterson, the same who was afterwards a member of our supreme court, resisted the proposal with inflexible courage, and here are some of the words which he employed: "An increase of paper money, especially if it be a tender, will destroy what little credit is left, will bewilder conscience in the mazes of dishonest speculations, will allure some and constrain others into the perpetration of knavish acts, will turn vice into a legal virtue, and sanctify iniquity by law. Men have, in the ordinary transactions of life, temptations enough to lead them from the path of rectitude; why then pass laws for the purpose, or give legislative sanction to positive acts of iniquity? Lead us not into temptation is a part of our Lord's Prayer, worthy of attention at all times, and especially at the present." In the conflict of forces, the two parties were nearly equal. The popular branch of the legislature gave way to its illusions; the council, having at first refused to concur, thought it the part of prudence to succumb; but the desire to escape the

taxation of its commerce by the state of New York clinched the fidelity of New Jersey to the union.

In the summer of 1785 Richard Henry Lee, then president of congress, warned Washington of a plan formed for issuing a large sum of paper money in the next assembly of their state, adding as his opinion: "The greatest foes in the world could not devise a more effectual plan for ruining Virginia. I should suppose every friend to his country, every honest and sober man, would join heartily to reprobate so nefarious a plan of speculation." "I never have heard," answered Washington, in August, "and I hope never shall hear any serious mention of a paper emission in this state. Yet ignorance is the tool of design, and is often set to work suddenly and unexpectedly."

In the same year, George Mason wrote: "They may pass a law to issue paper money, but twenty laws will not make the people receive it. Paper money is rounded upon fraud and knavery."

As the danger drew nearer, Washington, on the 1st of August, 1786, wrote to Jefferson: "Other states are falling into very foolish and wicked plans of emitting paper money."

When later in the year the proposal to issue paper money was brought up in the house of delegates of Virginia, Madison spoke as follows: "Paper money is unjust; to creditors, if a legal tender; to debtors, if not legal tender, by increasing the difficulty of getting specie. It is unconstitutional, for it affects the rights of property as much as taking away equal value in land. It is pernicious, destroying confidence between individuals; discouraging commerce; enriching sharpers; vitiating morals; reversing the end of government; and conspiring with the examples of other states to disgrace republican governments in the eyes of mankind." Moved by his words and the well-known opinions of Washington, Richard Henry Lee, and George Mason, the house of delegates of Virginia, on the first day of November, resolved by a vote of eighty-five against seventeen that an emission of paper money would

be "unjust, impolitic, and destructive of public and private confidence, and of that virtue which is the basis of republican government."

In Maryland the impassioned struggle was renewed within five months of the opening of the constitutional convention. Luther Martin led the partisans of paper emissions in the house of delegates to victory, and a secession was threatened if it should be rejected by the other branch. But the senate was inflexibly resolute; and the patriots of that state were forced to continue their resistance to the fury for paper emissions so long as the result of the federal convention remained in doubt.

To Jabez Bowen, of Rhode Island, Washington wrote on the 9th of January, 1787: "Paper money has had the effect in your state that it will ever have, to ruin commerce, oppress the honest, and open the door to every species of fraud and injustice;" and he restrained his keenest sorrow at the loss of General Greene by the thought that Greene himself might have preferred an early death to the scenes which it seemed probable many of his surviving compatriots might live to bemoan.

In this state of affairs, Stone, a member of the senate of Maryland, appealed to Washington to allow his opinion on the case as it stood in Maryland to be publicly known. Just three months before the opening of the constitutional convention, Washington answered: "As my sentiments thereon have been fully and decidedly expressed long before the assembly either of Maryland or of this state was convened, I do not scruple to declare, that, if I had had a voice in your legislature, it would have been given decidedly against a paper emission upon the general principles of its utility as a representative, and the necessity of it as a medium.

"To assign reasons for this opinion would be as unnecessary as tedious. The ground has been so often trod, that a place hardly remains untouched. In a word, the necessity arising from a want of specie is represented as greater than it really is. I contend, that it is by the substance, not with the shadow of a thing, we are to be benefited. The

wisdom of man, in my humble opinion, cannot at this time devise a plan, by which the credit of paper money would be long supported; consequently depreciation keeps pace with the quantity of the emission, and articles for which it is exchanged rise in a greater ratio than the sinking value of the money. Wherein, then, is the farmer, the planter, the artisan benefited? An evil equally great is, the door it immediately opens for speculation, by which the least designing, and perhaps most valuable, part of the community are preyed upon by the more knowing and crafty speculators."

In New Hampshire a plan for the emission of paper money was printed and sent to the several towns for their judgment. When at the next session in January, 1787, the returns from the towns were received and counted, a majority appeared against paper money. Then the assembly, guided by the counsel of the people, decided that "the legislature cannot, consistently with the constitution, pass an act making paper bills of credit a tender to discharge private contracts, made prior to the passing such act," nor shall "paper money be emitted on any plan which has been proposed." New Hampshire chose to the great federal convention delegates who were in harmony with the resolves of its towns and legislature. Disquieting symptoms having appeared in Virginia, Madison in April enjoined Monroe, a member of its assembly "to battle paper money."

Among the evils for which the new constitution should provide a remedy, Madison enumerated the "familiar violation of contracts in the form of depreciated paper made a legal tender." In his notes for his own guidance in the federal convention he laid down the principle that, "Paper money may be deemed an aggression on the rights of other states." Just five weeks before the time for the meeting of the convention, he wrote from congress in New York to Edmund Randolph: "There has been no moment since the peace, at which the federal assent would have been given to paper money."

PART III.

THE FEDERAL CONVENTION SHUTS AND BARS THE DOORS AGAINST PAPER MONEY. FROM 14TH MAY TO 17TH SEPTEMBER, 1787.

The convention of the states for the reform of the confederacy organized itself by electing as its president George Washington, who of all the public men in his day was the most decided in convictions and the most outspoken in his words on the inherent dishonesty of irredeemable paper bills.

Virginia took the lead, and Randolph, its governor, in his opening speech drew attention to paper money by reminding his hearers that the patriotic authors of the confederation did their work "in the infancy of the science of constitutions and of confederacies, when the havoc of paper money had not been foreseen."

Among the delegates of Connecticut were Oliver Ellsworth, who in the federal congress had repeatedly served on committees for the reform of the federal constitution, and Roger Sherman, who in 1752 had published his conviction that good laws and paper money are irreconcilable. They agreed to insist in the convention "that the legislatures of the individual states ought not to possess a right to emit bills of credit for a currency, or in any manner to obstruct the recovery of debts, whereby the interests of foreigners, or the citizens of any other state, may be affected."

The refusal of the convention to confer on the legislature of the United States the power to emit bills of credit or irredeemable paper money in any form is so complete that, according to all rules by which public documents are interpreted, it should not be treated as questionable; but as the truth in this case is of infinite importance, and has been questioned by those in authority, the wrong done to the constitution may justify a simple narrative of the facts, which ample and indisputable records establish, and which no power can alter.

The journal of the convention for framing the constitution was kept under the supervision of its members, and its authority is vouched for by Washington, not only as the presiding officer of the convention, but as president of the United States in a special message to congress.

By a clause in the ninth article of confederation of the United States of America, and only by that clause, the confederated states had authority "to emit bills on the credit of the United States."

Of the legislature of the United States under our present constitution, the court insists that "congress is clearly authorized to emit bills of credit." But is it so?

The eighth clause of the seventh article, in the first draft of the constitution, was as follows: "The legislature of the United States shall have the power to borrow money and emit bills on the credit of the United States." The journal of the convention for August 16th makes this record: "It was moved and seconded to strike out the words 'and emit bills,' "and the motion to strike out these words "passed in the affirmative. Yeas: New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia--9. Nays: New Jersey, Maryland--2." So the convention, by a vote of more than four to one, refused to grant to the legislature of the United States the power "to emit bills on the credit of the United States."

For the interpretation of this record, Madison, the best possible witness, has left this note: "Striking out the words cut off the pretext for a paper currency, and particularly for making the bills a tender either for public or private debts."

Madison was the chief author of the new constitution. Its opponent, Luther Martin, the attorney-general of Maryland, a delegate to the federal convention and present at the debate, read to the Maryland house of delegates a paper, in which he gave his account of the purpose of the

convention; his evidence agrees exactly with that of Madison, and for nearly a hundred years his fidelity as a witness was as little questioned as that of Madison. Here are two witnesses--Madison, who approved the prohibition, and Martin, who condemned it; the court pushes the testimony of Madison aside as if he had "not explained himself" sufficiently, though on the point in question his words are as clear as sunlight. The address of Martin the court rejects as a "philippic," though it contains not a word of invective against any individual, and does contain the clearly-expressed wish of its author "not to wound the feelings of any person."

We have a record of what was spoken and of what was done in the federal convention kept by Madison, who took upon himself the most solemn engagement to preserve the truth for the instruction of coming generations, and whose opportunity, capacity, and integrity no one questions. His report of what was said and done on the 16th of August in the federal convention preserves the testimony of many witnesses, taken down as it were by the most capable notary.

The question before the convention was: Shall power be granted to the legislature of the United States "to emit bills of credit?" The first witness is Gouverneur Morris, a man free from illusions; a delegate from the state which contained Philadelphia, then the most opulent city in the thirteen states; and as by his interests he was nearly connected with the city and state of New York, he thoroughly represented the interests of commerce. He moved to strike out the grant of power to "emit bills on the credit of the United States," saying: "If the United States have credit, such bills will be unnecessary; if they have not, will be unjust and useless." The seconder of Gouverneur Morris was Pierce Butler, a delegate from South Carolina, then the richest commercial state in the South. He remarked in the course of debate that "paper is a legal tender in no country in Europe," and he was urgent to withhold from the government of the United States the power to make it so.

Madison interposed: "Will it not be sufficient to prohibit the making" the bills "a tender?" Gorham, in reply to Madison, held that no accompanying prohibition was sufficient to make it safe to grant to the legislature of the United States the power to emit bills of credit. He spoke absolutely "for striking the words out," saying: "If the words stand, they may suggest and lead to the measure."

The words of Oliver Ellsworth, our third chief justice, were: "This is a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which have been made are now fresh in the public mind, and have excited the disgust of all the respectable part of America."

Randolph expressed "his antipathy to paper money;" but "could not agree to strike out the words, as he could not foresee all the occasions that might arise."

James Wilson, in concurrence with Ellsworth, said: "It will have a most salutary influence on the credit of the United States to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs are remembered; and, as long as it can be resorted to, it will be a bar to other resources."

George Reed spoke for Delaware: "The words, if not struck out, would be as alarming as the mark of the beast in Revelation."

John Langdon, of New Hampshire, conforming to the wise instructions of the towns of his state, said: "I had rather reject the whole plan than retain the three words 'and emit bills.'"

Madison, agreeing with the journal of the convention, records that the grant of power to emit bills of credit was refused by a majority of more than four to one. Eleven men took part in the discussion; and every one of the eleven, whether he spoke for or against the grant of the power, Gouverneur Morris, Pierce Buffer, James Madison, Nathaniel Gorham,

George Mason, John F. Mercer, Oliver Ellsworth, Edmund Randolph, James Wilson, George Reed, and John Langdon, each and all, understood the vote to be a denial to the legislature of the United States of the power to emit paper money. Take the men, one by one, and see how weighty is the witness of each individual; take them together and add the consideration that they, every one of them, unanimously support each other and are contradicted by no one, and who shall dare question their testimony? The evidence is perfect; no power to emit paper money was granted to the legislature of the United States.

By refusing to the United States the power of issuing bills of credit, the victory over paper money was but half complete. The same James Wilson, who twelve days before with Oliver Ellsworth had taken a chief part in refusing to the United States the power to emit paper money, and the same Roger Sherman, who in 1752 had put forth all his energy to break up paper money in Connecticut, jointly took the lead. The first draft of the constitution had forbidden the states to emit bills of credit without the consent of the legislature of the United States; on the 28th of August they jointly offered this notion:

"No state shall coin money, nor emit bills of credit, nor make anything but gold and silver coin a tender in payment of debts," making the prohibition absolute. Roger Sherman, animated by zeal for the welfare of the coming republic of countless millions, exclaims in the debate: "This is the favorable crisis for crushing paper money." His word was the will of the convention, and the states, by a majority of eight and a half against one and a half-that is, by more than five to one--forbade the states, under any circumstances, to emit bills of credit. This is the way in which our constitution "shut and barred the door against paper money" and "crushed" it.

Nothing is wanting to the perfect strength of the truth, that the constitution put an end to paper money in all the United States and in all the several states; and yet a lawyer, who, but for his own refusal, would twelve years ago have become chief justice of the United States, in the

line of succession from Ellsworth, further "finds in the legislative history of the country affirmative authority of the highest kind": "No suggestion of the existence of a power to make paper a legal tender," such are his words, "can be found in the legislative history of the country. Had such a power lurked in the constitution, as construed by those who ordained and administered it, we should find it so recorded. The occasion for referring to it has repeatedly arisen; and had such a power existed, it would have been recognised and acted on. It is hardly too much to say, therefore, that the uniform and universal judgment of statesmen, jurists, and lawyers has denied the constitutional right of congress to make paper a legal tender for debts to any extent whatever."

PART IV.

THE CONSTITUTION IN THE HOUSE OF ITS GUARDIANS.

And yet the court which was set apart to be the keystone of the constitution insists that "the power of congress to emit bills of credit is now clearly established by decisions."

In support of its assertion, it puts forward the statement, that "the power of impressing upon bills or notes of the government for money borrowed the quality of being a legal tender for the payment of private debts was a power universally understood to belong to sovereignty in Europe and America at the time of the framing and adoption of the constitution of the United States." It further insists, that the United States possess "the powers belonging to sovereignty in other civilized nations, and not expressly withheld from congress by the constitution." The court then, with unusual solemnity, sets forth its inference in this wise: "We are irresistibly impelled to the conclusion that the impressing upon the treasury notes of the United States the quality of being a legal tender in payment of private debts is * * * consistent with the letter and spirit of the constitution." In this train of reasoning the court is in error on both

its propositions, the one of fact, the other of constitutional law, and its conclusion falls to the ground.

In the century which elapsed between the establishment of the British constitution in 1688 and the establishment of the constitution of the United States of America in 1788, Great Britain never once "impressed" upon bills of its government the quality of being a legal tender in the payment of private debts; it never claimed the right to do so, and never performed an act which implied such a claim. Nor in all that time did any British writer on political economy, Locke or Adam Smith, teach that it would be otherwise than fraudulent or unjust to do so; nor did Great Britain give authority to any private person or to any corporation to issue bills or notes which should be a legal tender in payment of private debts.

When England, unhappily for herself and for the world, entered upon its long career of ineffectual war to crush the rising efforts of liberty on the continent of Europe, the privy council of England authorized the bank of England to suspend specie payments, thus degrading the bills of the bank and ultimately introducing a long period of paper money. In reply to the reproaches of the friends of European freedom in parliament, Pitt acknowledged the undoubted illegality of the order, declaring that it could be justified only by the most urgent necessity; and the parliament of England, being then mainly in the hands of an aristocracy, hostile to reforms and progress in liberty, accepted the illegal order, in its zeal to crush the invincible strivings for constitutional liberty on the continent of Europe.

So long as we remained dependent colonies, not only was the use of paper money in Great Britain unknown, Great Britain was moreover honorably careful for the purity of its coin. The great revolution in 1688 found that the silver coinage of England, which was then a legal tender, had become debased by wear and by clipping to the amount of twenty percent. In November, 1695, before the wars of that revolution came to an end, thorough provision was made by statute for remedying the ill

state of the silver coin of the kingdom. The re-coinage took place under the auspices of the lord keeper Somers, who was the greatest British statesman of his time, and of Montague. They took counsel of John Locke, the wise expounder of the British revolution, by whose clear and firm advice they were instructed, and by whose writings they were supported in public opinion, when they established as the sole legal tender in payment of debts coin rated as near as possible at its own intrinsic value. John Adams loved to extol these writings of Locke as sufficient to give thorough instruction on the whole "nature of coin, credit and circulation" and to keep in memory that Sir Isaac Newton as an officer of the mint took part in the re-coinage.

"The re-coinage of the gold coin in England on the same principle of justice commenced in the year 1774 and was completed in the year 1777, so writes one, who himself held high office at the time.

The court falls into a stupendous error when it asserts that the power of impressing upon notes the quality of being a legal tender for the payment of private debts was universally understood to belong to sovereignty in Europe and America at the time of the framing and adoption of the constitution of the United States. We have already seen that Pierce Buffer, of South Carolina, one of its framers, asserted in the convention, "Paper money is a legal tender in no country in Europe," and his assertion was at the time of the calling of the convention strictly true.

In Britain from the revolution in 1688 to 1788, no issue of irredeemable currency or debased coin as legal tender was made by the government or suffered to be made under its authority. This was thoroughly well known by the convention which framed our constitution. The assertion of the supreme court of the lawfulness of paper money in Great Britain before the establishment of our constitution finds no authority in statutes or histories. The spirit and the letter of the statute book and the spirit and opinions of all men of business in Great Britain, before the era of the French revolution, did not suffer the rising even of a thought for the

issue of paper money as legal tender by the state or by its authority. A statute of 1750 peremptorily forbade the issue of any such paper in New England, and in the other colonies it was resisted through the royal prerogative.

The history of France is, if possible, still more in conflict with the assertion of the court; for in France one experiment with paper money before, and one which reached its greatest excesses a very few years after, the inauguration of our constitution, were attended by the most appalling consequences. During the infancy of Louis XV., a regent who combined absolute rule with atheism in its corruptest form of a supreme worship of pleasure, forced paper money upon the nation, so that the "gainers of scandalous fortunes out of the public misery triumphed in the common ruin of the state and of commerce." Cardinal Dubois, who took part in the education of the regent and rose to be the ruling minister of the kingdom, defined the French monarchy "a government which turns bankrupt whenever it likes." The unanimous public opinion of France has pronounced the verdict which the world has confirmed: "It was an insanity of insolence thus to overturn the whole economical existence of society from eagerness for gain and the intoxication of gaming. Revolutions have sprung from less grievous wrongs."

In the last years of the eighteenth century, France gradually relapsed into the use of paper money. This second fall was too late to have an influence on the framers of our constitution; and if it could have had any, must have acted as a warning. The evil came to a head when the forces of the revolution were gathered into the hands of a desperate, tyrannical, and merciless faction, and paper money reappeared under the name of assignats. The judgment of the world has been voiced by Thiers: "With the immensity of good which the French revolution has done to France and to the world, two terrible recollections weigh on its memory; they are the scaffold and paper money." And shall the insane acts of a profligate regent, or of accidental passion triumphing in the whirlwind of change, or even the ill considered but well meant impulses of patriots in the extreme perils of their country, furnish ruling

precedents to the highest court of a republic of sixty millions, rather than the calm and wise, the just and patriotic decision of the lovers of their country who fashioned our constitution?

It remains to consider the new interpretation of the constitution which the court has put forth. It assumes that, apart from the grants by the constitution, the United States has powers as a sovereign government; but this is the language of revolution. If the nine men to whom the constitution and the laws intrust the executive power, the president, his seven assistants, and the vice president, were to agree together to exercise powers as inherent in themselves because the United States are a sovereign government, they would be guilty of a conspiracy. The Stuarts claimed powers as inherent in them as sovereigns; their rashness ruined their own dynasty, not the constitution of England; it was the happiness of Great Britain that the usurpations of the Stuarts were resisted by the great English lawyers and by England's highest courts of law.

The constitution of the United States does not create them a sovereign power in an unlimited sense. Our union in its foreign relations presents itself with all its states and territories as one and indivisible; a garment without a seam; but at home we are states in union. Within the limits of the states, the government of the United States of America has no powers but those that have been delegated to it; some powers are distributed, some of them going alone to the United States, some to each several state, and some equally to both.

To prove the immensity of the error into which the court has fallen, no witness shall be summoned but from those to whom it must feel willing to pay respect, if not deference. At the moment when the constitutional convention in Philadelphia sent to the states and through the press to the people the result of its deliberations, when its framers were hopeful and yet anxious, when the first impression that should be made might sway opinion from one end of the land to the other, it was resolved to hold in Philadelphia, as soon as possible, a public meeting of its citizens; and

James Wilson, "one of the delegates of Pennsylvania to the constitutional convention," and one of the most efficient members of that body, was selected to explain to the meeting the principles of the constitution of the United States. Accordingly, he "marked" before the meeting what he called "THE LEADING DISCRIMINATION" of the constitution of the United States from their separate state constitutions, and these are his words: "In delegating federal powers, the congressional authority is to be collected, not from tacit implication, but from the positive grant, expressed in the instrument of union. Everything which is not given is reserved." And Wilson was one of the three with whom Washington constituted the first supreme court of the United States.

Roger Sherman, high in judicial station and in judicial authority in Connecticut, and Oliver Ellsworth, of the same state, the great statesman, who, almost unaided, framed the law for organizing the supreme court, and became by the choice of Washington its chief justice, within ten days of the close of the convention, wrote from New London in their official report to the governor of their commonwealth: "The additional powers vested in congress extend only to matters respecting the common interests of the Union, and are specially defined; the particular states retain their sovereignty in all other matters."

On the fourth of January, 1788, Alexander Hamilton, a representative of New York in the same convention, informed the public through the press, that "as the plan of the convention aims only at a partial union or consolidation, the state governments would dearly retain all the rights of sovereignty which they before had, and which were not, by that act, exclusively delegated to the United States."

Charles Cotesworth Pinckney, coming fresh from the constitutional convention, in which he acted a chief part, on the seventeenth of January, 1788, gave information to his constituents in words of no uncertain meaning: "It is admitted on all hands that the general government has no powers but what are expressly granted by the

constitution; and that all rights not expressed were reserved by the several states."

Massachusetts, by its convention for accepting the constitution, "explicitly' declared, that all powers not expressly delegated to congress are reserved to the several states, to be by them exercised;" and sought to place this declaration in the constitution itself. The congress of the United States, within the first half year of its existence, laid the declaration before the states, and in less than nine months, without an adverse vote of any one state, the constitution received into itself, as the true interpretation of its meaning, 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 present supreme court may suffer themselves to be convinced with the least reluctance, if, in further citations, out of an endless number of authorities, I confine myself to quoting the opinions of the earlier members of their own court, of themselves and of lawyers who had been selected for their places.

James Iredell, of North Carolina, who was seated upon the bench of the supreme court by Washington within the first year after his inauguration, had contributed largely to the establishment of the union, and as a judge and as a man left a name without a blemish. His words of 1791 agree with these which he delivered from the bench in 1798: "It has been the policy of all the American states, which have, individually, framed their state constitutions since the revolution, and of the people of the United States when they framed the federal constitution, to define with precision the objects of the legislative power, and to restrain its exercise within marked and settled boundaries."

In 1819 chief justice Marshall, the successor of Ellsworth, placed on record the opinion of himself and the court: "This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to

have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted." In 1804 Marshall had given a similar opinion.

In the January term of 1837, Roger B. Taney, Marshall's successor, sat on the bench between Joseph Story and Smith Thompson, when the unanimous opinion of the court, which was read by John McLean, of Ohio, contains this sharply drawn description of the legislative powers of congress: "The federal government is one of delegated powers. All powers not delegated to it, or inhibited to the states, are reserved to the states, or to the people."

The next chief justice, Salmon P. Chase, in the December term, 1869, delivered this opinion of the court: "The constitution is the fundamental law of the United States. By it the people have created a government, defined its powers, prescribed their limits, distributed them among the different departments, and directed, in general, the manner of their exercise. No department of the government has any other powers than those thus delegated to it by the people. All the legislative power granted by the constitution belongs to congress; but it has no legislative power which is not thus granted. And the same observation is equally true in its application to the executive and judicial powers, granted respectively to the president and the courts. All these powers differ in kind, but not in source or in limitation. They all arise from the constitution, and are limited by its terms."

Since the death of Chase, the court has had occasion to express once more its opinion on this subject. In the October term of 1882, when it was composed identically, man for man, of the very same nine men that constitute it now, it referred to the opinion of Marshall which I have cited, and adopted it without reserve as its own. For itself it added concisely and excellently well: "The government of the United States is one of delegated, limited, and enumerated powers. Therefore every,

valid act of congress must find in the Constitution some warrant for its passage."

The opinion of the court of March third, 1884, in the case of Juilliard versus Greenman, is therefore in flagrant antagonism to the constitution of the United States and to the repeated, continuous, and unanimously given, and justly respected interpretations of the constitution by the court itself, under a succession of chiefs without a break. The new departure, which puts the constitution out of sight, was announced to the world as the opinion of eight judges against one; but it must be remembered and told for the instruction of the present generation and for posterity, that this approach to unanimity was accidental. On the death of Chase, it is of my knowledge that president Grant desired to place upon the bench as his successor a member of his cabinet, Hamilton Fish, in whom he is known to have reposed the greatest trust. That statesman has the character of fidelity to his convictions of constitutional truth, and his friends know well that on the question which is now under consideration, the words which follow have ever formed his opinion: "The constitution of the United States gives to the general government the powers of a sovereign nation in its condition as one among the 'Family of Nations;' but, then, only in its dealings and relations with foreign governments. In its internal relations and in its dealings with the several states of the union, and with its own citizens, the government of the United States is one of delegated and enumerated powers, forbidden the exercise of very many, and among them of some of the most important and frequently exercised powers of sovereignty. In their internal relations, albeit supreme within its prescribed sphere of action, the government of the United States is far, very far removed from the powers of a sovereign state. The legal tender legislation of congress is of purely internal and domestic force and operation. It ceases to be operative precisely when the sovereign powers of the government begin, and can rightfully invoke no sanction or authority from those powers of sovereignty."

Further: While the seat of the chief justice of the United States remained vacant, Roscoe Conkling, of New York, was requested and urged, though in vain, by president Grant to accept this position, which is for life, and is the highest position in one of the three great coordinate departments of the government of the United States; more recently, on occasion of a vacancy, he has been again entreated by the appointing power to assume the functions of a member of the court, and has again refused. His opinion on the point of constitutional law which is now under discussion, was pronounced in public before he was first designated for the high office of chief justice, and has never changed. It runs thus: "The constitution of the United States is an instrument of delegated and enumerated powers, and congress has no powers except those which the constitution confers. In looking for a power in the constitution of a state, the question usually is: has it been taken away or forbidden? But, in looking at the federal constitution, the question is: has the power been given? If it is not there, there is an end of the matter."

It is well known to the winter residents of Washington, that in the early part of 1882, the executive of that day desired to place on the supreme bench George F. Edmunds, then and now a senator from Vermont; and his wish, supported by the very. strong and very general concurrence of opinion, was defeated only by the refusal of the senator himself. But on the question which we are discussing he has given this opinion, which for terseness and clearness and correctness need not be excelled: "The government of the United States has no power of inherent sovereignty, but only such sovereign powers as were delegated to it by a written constitution, which carefully and expressly declared that all powers not delegated by that instrument were reserved to the states and people. The power to create a legal paper currency, if it exist at all, must exist by force of a delegation, and not by force of inherent sovereignty."

But why do we ransack the scores of volumes of the reports of the courts? The states themselves and the nation are the witnesses to the meaning of the constitution which they formed and ratified and have upheld for nearly a century. Every one of the parties which have ever

been formed in the United States, the debates of every session of congress, every commentator upon the constitution, at home or abroad, has set forth that our government is one of limited powers. And not only so, the voice of the imitative civilized world, watching our career, has followed our example, and kingdom after kingdom has like ourselves established written forms of government, in order to define and establish the lines within which every public authority should move, every branch of the government, every delegated political power should confine its action. And are these sublime evidences of the advance of civilization to be thrown out of sight? The court of the United States has set itself in conflict, not with the constitution and the people of the United States alone, but with the voice of all the nations which have successfully aspired after free institutions and well defined governments throughout the world. Holland, Belgium, France, the several states of Germany by themselves and as united in one German empire, all bear their testimony to what we have achieved, and they have made their own. Like the heralds at the Olympic races, when the swift chariots passed beyond the boundaries marked out for their course, all these states lift up their voices to call the court back within the limits of their path of duty, that the very life of constitutional government may not perish among men.

PART V.

WHAT IS TO BE DONE?

A majority of the members of the supreme court have no right to change and ought never desire to change the constitution; had it been otherwise, we might not now be in union. The constitution contains within itself the enumeration of the methods by which it may be amended; and in the process the votes of the nine justices of the supreme court weigh at the polls no more than those of any nine private citizens. The constitution appoints them to decide the cases that come before them; in deciding those cases, they are led to express opinions about its meaning; and the declaration of the opinions on which the case is decided may influence the subsequent conduct of business in the court in similar cases; but, to

use the golden words of Marshall spoken for the court of his day, "We must never forget that it is a constitution which we are expounding; that is to say, that the constitution is a law of laws, binding every department of the government and every citizen, the president and congress, the states and the union, the court and the people; and unchangeable by any act which either of the three branches of the government or all three together may be called upon to perform. Every opinion that is given upon it is subject to examination and reexamination, and perpetual comparison with the constitution itself. The court in 1860 could not dictate the law to the president of that year; and cannot now dictate the interpretation of the law to the president or to congress; nor exempt from correction a false interpretation of a law. It decides the case; and right or wrong, its decision must prevail; but the constitution has a life and power of its own. Were the court to assert a right to establish new readings of the constitution by its decisions of cases, it would be an attempt to usurp a power to amend the constitution. The law which imposes an oath of office on the court, imposes respect for the constitution and the laws, and knows nothing of decisions of the court that can be superior to the constitution. An interpretation of the constitution by the court, to be permanently valid, must not only be the opinion of the court at the moment, but must be in conformity to the constitution, and every time it is repeated must owe its validity to that conformity. The candle must be lighted every time at the primal light, which must be preserved in vestal purity. Men believe in Sir Isaac Newton's law of gravity, not because it was pronounced by Sir Isaac Newton, though he was the highest judge of his day on the laws of the planetary motions; but because Sir Isaac Newton in laying down the law pronounced that which is true. It is with legal science as with every branch of science; truth alone has the right to endure, and truth alone does endure. Bury it, and it will spring from beneath the earth. The court that tried Galileo gave the decision that the earth does not move; "but it does move" said Galileo, adhering to the truth, while submitting to the judgment in the case.

In this doctrine there lies no antagonism to the present supreme court of the United States. I am but repeating what is known to be the understanding of the court, and as I believe of each one of its members. The opinion in the present case is a reversal of the first opinion given on the subject by its predecessors. Moreover, when one of them on the circuit pronounces what he finds to be an erroneous decision of a case, like a man of honor and an upright judge he corrects it when it comes before the whole court on appeal. Much more is the court bound to depart from a wrong interpretation of the constitution.

The security of the people against changes of the constitution without their own consent must finally rest with the people themselves. The constitution is confided for its preservation to the inmost thought and affection of the people of the United States; they must be its ultimate guardians. But the remedy for the wrong decision of the court now under consideration should be nearer at hand than through a summons of the whole country to meet council and amend the constitution. In our beautiful system of union every contingency is provided for. When the court of last resort decides a case, the executive government accepts the decision on that case as final; but the constitution is the master of the court, which they are bound by their oath of office implicitly to obey; to support, not to alter, nor, so far as they are concerned, to suffer to be altered. They must ever be as learners at the feet of those who made it; reverently searching after its true meaning; and in their sphere setting themselves against every tendency to the claim of an exclusive, absolute, and final power of interpretation.

In this case the court proceeded to its judgment on a case of which both sides were made up by one man, without even hearing or inviting a public argument. The present court itself should impartially reexamine what it has uttered, and cannot fail to perceive that it has somewhere fallen into error, since it has not failed to contradict itself. It is to be hoped that the court will not persist in an erroneous reversal of the just judgment of its predecessors, when better investigation establishes the rightfulness of that first opinion. In the immense amount of business by

which the supreme tribunal is oppressed, mistakes may not always be avoided. An error becomes an immorality only when it is persisted in after it has been found out to be an error. The people should wait; the court from its allegiance to the constitution must correct its own misinterpretation. "Ubisilent leges incipit bellum." "War begins when the laws are silent." The lovers of the constitution have a right to look to the court to establish order by restoring the rule of the highest law. No thought should be admitted of correcting the error of the present members of the court by seeking a change in the constitution; the constitution is already as clear as it can be made.

We are now the citizens of a commonwealth which for opulence, and the number of its people, exceeds any present or former republic, and almost any empire or kingdom of the civilized world of to-day, and it is just to consider our relations to the rest of the world. Obligations as old as the life of the country qualify the legislative power of congress. When the United States made their declaration of independence, they announced to the world "their purpose to assume among the powers of the earth" a "separate and equal station;" and by thus taking their seat among the family of nations, they recognised the existence of international law, and with it the obligation of contracts between citizens of other states and our own. Further, the people of the United States, in forming a constitution, were moved to do so, among other reasons, in order to "establish justice." This requires a fixedness of the standard of value which cannot be preserved with the use of paper money. It is in vain to attempt to enable debtors to discharge their debts by payment of currency of less real value than was intended in their contract; for as debts are discharged from day to day, it would require a daily increase of the amount of currency in order to give an impartial advantage to debtors, and this would soon render the currency worthless. What the great industrial class needs is a stable currency, so there may be as little fluctuation in industry as possible. To quicken business under an artificial expansion of currency is to pull out the linchpins from the wheels of the car of industry before starting it on the race at full speed. The sudden increase of prosperity is followed by still greater decline,

and the weight of sorrow must fall on the laborers, who, with their families, will be made wretched by the loss of employment.

The only class of men who can be benefitted by an uncertain and ever-varying currency is the men who, having too great conceit of their own abilities, and too daring confidence in their own favoring fortune, overvalue the chance of gain and undervalue the chance of loss, and so tempt themselves or are tempted by others to enter into engagements beyond their means to fulfill. They constitute an incalculably small part of our population, and by no means the part that possess the greatest merit, or deserve the greatest sympathy; and when they begin to surmise the delusiveness of their schemes, they are the most ready and the most unscrupulous in their attempts to dictate a policy to the country. Adam Smith, who made the last revision of his work during the year 1783 and the beginning of the year 1784, just in time for the instruction of the framers of our constitution, says: "It is not because they are poor that their payments are irregular or uncertain, but because they are too eager to become excessively rich."

The country now, with sixty millions of inhabitants, moves with an infinitely increased momentum. The changes that take place when an error has been pursued cannot be recovered but through the efforts of many years, it may be of a generation. There is even danger that, instead of growing better, affairs may grow worse. Let us then see who in our republic are the capitalists, and who the debtors of the country.

The greatest debtor of all is the United States itself. Shall it discharge the money borrowed to save the life of the nation by the use of its own paper money?

The next greatest debtor may be the banks of circulation and deposit in the city of New York. The banks embody the wisdom that comes from experience, and they, with one voice, desire to pay their debts as measured by a uniform standard of value. Should it be replied that there are many debtors to the banks themselves, it may likewise be said that

the banks, if they keep within the limits of their proper business, discount and facilitate exchanges rather than lend.

Our merchants engaged in foreign commerce are debtors for such amounts as attend the annual importation of hundreds of millions. Shall they take advantage of their creditors abroad by paying them in a depreciated currency or one of ever varying value? The gain would be dishonest and transient; the impairment of credit would bring inconceivably large losses on all consumers, especially on the poor, for the advance to them of prices increases in proportion to the smallness of their purchases. Our courts would be dishonored and shunned by men of every other nation on earth.

Enormously large debts have been incurred for the construction of canals and railroads. Shall these debtors be encouraged to escape from their obligations under the shelter of this new system of constitutional law? Time was when the holders of the plough in Illinois, in their capacity as a state, became largely indebted for many millions in Europe. They could not pay, for they had little with which to raise money except the harvest of their wheat fields, and these could not avail them, partly from the lack of cheap transportation, partly from foreign corn laws which excluded their wheat from a market in the land of their creditors. Should they have taken advantage of a temporary actual inability to pay to disclaim or compound their debt? They might have done it. But the farmers of Illinois wished others to estimate them by their own self-respect and their own regard for the moral law. With the acquisition of ability, they paid their debt manfully and have been rewarded by a prosperity and increase of wealth which neither unfavorable seasons nor fire have been able to arrest.

Life is short. The whole family of man dies away and renews itself thrice at least in a century, and thrice at least in a century all the property in the country falls into the hands of probate courts, executors, guardians, and trustees. Shall this enormous class of debtors have an

opportunity by a choice of currencies to defraud the widow, the infant, or the orphan of their inheritances?

Our best American industry is frugal; and of the modest returns which it gets for its labor sets aside a part as the solid security for comfort and independence in sickness or old age. These sums, though in no one case more than five hundred dollars, in the aggregate reach millions upon millions; and shall the managers of the savings banks of the country who are the debtors to the industrious poor for these slowly accumulated funds be authorized by congress to pay them back in a debased currency?

The infinitely most numerous class of capitalists in the United States are those who support life by their constant labor; the greatest number of them are the poor who earn slowly and earn but little. Shall they be paid in paper money or debased coin, and so be defrauded of the hope to set apart a pittance for the day of sickness or old age?

Nothing is safe for all classes of laborers who, as capitalists receive the return for their labor in money, but money of a standard that does not swerve. Terrible were the scenes of anguish, when about fifty years ago emigrants with their wives and children about them, on their way to purchase public lands, discovered that they had exchanged the earnings of their constant and frugal industry for bills that proved to be of bankrupt state banks. The speculator alone delights in a fluctuation in the value of money, for it opens to him new chances of gain. A wavering currency or coin is most deadly to the interests of the poor; for they have the least power to protect themselves against it. They are the first to suffer from a decline in the value of the currency and the last to recover their rights when improvement begins.

The wealth of America is all within itself. Our extent, the value of the productions of our soil and the need the world has for them, the ingenuity of our people and the extent of our domain invite us to take the highest place among nations in point of credit. Shall we allow the

opportunity to pass over us? Shall we by errors of financial legislation despoil the farmers of the country of the fair return for their industry? Shall we consent to sink in credit behind the states which are in highest esteem? If we do, the exchange not with England only but with all the solid commercial world will turn against us. We have had every opportunity of making our money equal to that of the best in the world. Shall we throw it away? The moment of choice is less favorable than it was, but the choice is still before us. If we refuse to avail ourselves of our opportunity, it can hardly be recovered except after a series of calamities. How much better it would be to hold prosperity fast, while she asks to make with us her home!

And let us not forget that we are forming opinions and laws that in a less period of time than has elapsed since our declaration of independence are to govern five hundred millions of people. The United States have established a service to watch the fluctuations of the weather and signal when the infant whirlwind starts on its race, and the swifter electric spark, running before it on thousands of wires, announces to millions of men "whence the wind cometh and whither it goeth," and when it may arrive. And with regard to the higher interests of the country, shall not our statesmen keep watch on the signs of the times and warn the people of the storms that are threatening their industry?

I plead for the honor and the welfare of our country, while I defend the men who by their industry fill our land with wealth. A fluctuating currency is bad for all but the speculative, who are but a handful among millions. It troubles the rich; but it strikes a destructive blow at the heart and hope and welfare of the infinitely more numerous class of capitalists in the United States, the owners of their own powers of body and mind, of which the value is multiplied by their industry and their morality.

I speak for the poor who can as little be benefitted by an uncertainty in the value of the authorized legal tender as by the use of varying scales and weights in the market. Nor let my words be unheeded, because after living in many lands and observing the effect of differing customs and

laws I have retired from society and active life. Old age, I well know, has its evils. The senses begin to fail. Memory sometimes seeks in vain to read its old tablets or engrave on new ones. Our thoughts, it has been said, like our children, sometimes die before us. But the man of many years can look before and after; and seated under the tree of life, enjoying "sweet rest with full content," he finds that the leaves which have fallen from its branches have but opened a clearer vision of the eternal stars. The experience of many years may add to early intuitions the large inductions of experience; and so produce a clearer conviction of a superior ordering of human affairs, and the overruling influence of general laws.

I have written because I am persuaded that a firm and right establishment of the true relations of money to labor cannot be secure in a republic except by cultivating the mind of its people, and diffusing a knowledge of the truth through all its members. The honest illusions of many men must be dispelled; and their minds, ransomed from error, will discern the truth. Paper money is a corruption of the blood. Or paper money is the dry rot, which silently and unseen consumes the beams and joists which support the house and its floors.

I am pleading the cause of industry, the cause of labor, the cause of the poor; and yet as I do not believe that the interests of the various classes of society necessarily clash with each other, I may hope that I am pleading for the welfare of society, for the rights and duties of all who in the many diversities of honorable occupation contribute to the completeness of a nation. What I have written is the fruit of many hours, employed in examining the laws of our period of colonial life, as well as in the study of our own constitution and of the corresponding history and affairs of many lands. I may utter these last words of admonition as assurances of that love of country, of liberty, and of truth that has been the rule of my life, and still glows in a heart which must so soon cease to beat.

APPENDIX.

I.

Opinion on paper money, as expressed in 1786 by THOMAS PAINE, the author of "Common Sense."

"The laws of a country ought to be the standard of equity and calculated to impress on the minds of the people the moral as well as the legal obligations of political justice. But tender laws, of any kind, operate to destroy morality, and to dissolve by the pretense of law what ought to be the principle of law to support, reciprocal justice between man and man; and the punishment of a member who should move for such a law ought to be DEATH."

II.

The money of the constitution.

In the interpretation of words a cardinal rule is, to conform to usage. In 1787 every English dictionary defined "money" as metallic coin; and therefore as metallic coin, it must be interpreted in the clause which authorizes the legislature of the United States to borrow money. A second cardinal rule of interpretation is, where a word is used in the same document more than once, it is to be interpreted in every instance as bearing the same meaning, unless there is an obvious and incontrovertible reason to the contrary. The constitution of the United States authorizes their legislature to coin money; and of the meaning of the word in that clause, no doubt can exist.

III.

From a speech of CHARLES PINCKNEY, 20 May, 1788, in the convention of South Carolina.

"I apprehend these general reasonings will be found true with respect to paper money:--That experience has shewn, that in every state where it has been practiced since the revolution, it always carries the gold and silver out of the country, and impoverishes it: that while it remains, all the foreign merchants, trading in America, must suffer and lose by it; therefore, that it must ever be a discouragement to commerce: that every medium of trade should have an intrinsic value, which paper money has not; gold and silver are therefore the fittest for this medium, as they are an equivalent, which paper can never be: that debtors in the assemblies will, whenever they can, make paper money with fraudulent views. That in those states where the credit of the paper money has been best supported, the bills have never kept to their nominal value in circulation; but have constantly depreciated to a certain degree."--Elliot's Debates, IV. 334.

IV.

Conduct of the great Frederick of Prussia.

During the Seven Years War, in which Prussia under its patriot king had to fight for existence, Frederick struck off and circulated silver thalers of less intrinsic value than the established coin. For this he did not pretend a right as a sovereign prince; but pleaded necessity; and, after peace came, he exchanged the debased coin for others of purity and full weight.

V.

The instruction on paper money, taught in Russia to its Grand Dukes.

I have not fallen upon any Russian opinion on paper money given so early as 1788; but Henry Storch, Master of political economy, who was selected by the imperial house to be the tutor and instructor of the two brothers Nicholas and Michael, of whom Nicholas became the Czar,

taught them sound lessons in political economy. These he afterwards published, dedicating his work to them.

On paper money his instructions were: "This deadly invention may be looked upon as the greatest chastisement of nations; and nothing but the most commanding necessity can justify its use in the eyes of reason." "Abuse is almost inseparable from the use of it." "When necessity orders to put an end to it, the order comes always too late."

VI.

Opinion of JOHN ADAMS on paper money. JEFFERSON and DESTUTE DE TRACY.

I have always thought that Sir Isaac Newton and Mr. Locke, a hundred years ago, at least, had scientifically and demonstratively settled all questions of this kind. Silver and gold are but commodities, as much as wheat and lumber; the merchants who study the necessity, and feel out the wants of the community, can always import enough to supply the necessary circulating currency, as they can broadcloth or sugar, the trinkets of Birmingham and Manchester, or the hemp of Siberia. I am old enough to have seen a paper currency annihilated at a blow in Massachusetts, in 1750, and a silver currency taking its place immediately, and supplying every necessity and every convenience. I cannot enlarge upon this subject; it has always been incomprehensible to me, that a people so jealous of their liberty and property as the Americans, should so long have borne impositions with patience and submission, which would have been trampled under foot in the meanest village in Holland, or undergone the fate of Wood's halfpence in Ireland. I beg leave to refer you to a work which Mr. Jefferson has sent me, translated by himself from a French manuscript of the Count Destutt de Tracy. His chapter "of money" contains the sentiments that I have entertained all my lifetime. I will quote only a few lines from the analytical table, page 21.

"It is to be desired, that coins had never borne other names than those of their weight, and that the arbitrary denominations, called moneys of account, as L, s., d., etc., had never been used. But when these denominations are admitted and employed in transactions, to diminish the quantity of metal to which they answer, by an alteration of the real coins, it is to steal; and it is a theft which even injures him who commits it. A theft of greater magnitude and still more ruinous, is the making of paper money; it is greater, because in this money there is absolutely no real value; it is more ruinous, because, by its gradual depreciation during all the time of its existence, it produces the effect which would be produced by an infinity of successive deteriorations of the coins. All these iniquities are rounded on the false idea, that money is but a sign."

Permit me to recommend this volume to your attentive perusal.

VII.

Extract from a speech delivered by DANIEL WEBSTER in the Senate of the United States, on the 21st of December, 1836, on the subject of the Specie Circular.

"Most unquestionably there is no legal tender, and there can be no legal tender, in this country, under the authority of this government or any other, but gold and silver, either the coinage of our own mints, or foreign coins, at rates regulated by congress. This is a constitutional principle, perfectly plain, and of the very highest importance. The states are expressly prohibited from making anything but gold and silver a tender in payment of debts; and although no such express prohibition is applied to congress, yet as congress has no power granted to it, in this respect, but to coin money and to regulate the value of foreign coins, it clearly has no power to substitute paper, or anything else, for coin, as a tender in payment of debts and in discharge of contracts. Congress has exercised this power, fully, in both its branches. It has coined money, and still coins it; it has regulated the value of foreign coins, and still regulates their value. The legal tender, therefore, the constitutional standard of

value, is established and cannot be overthrown. To overthrow it, would shake the whole system. The constitutional tender is the thing to be preserved, and it ought to be preserved sacredly, under all circumstances."

VIII.
Opinions of John Marshall.

The inflexible adversary of paper money, detesting it with a hatred almost amounting to a passion, was the chief justice of the United States, John Marshall. While he was on the bench, no case could come before him, in which power was claimed for the United States to issue bills of credit; because at that day he and everybody else well understood and willingly acknowledged that the power to emit bills of credit was withheld from the United States, was forbidden by not being granted. But his opinion of the illegality of the issue of bills of credit by the states gave him the opportunity to declare in terms of universal application that the greatest violation of justice was committed when paper money was made a legal tender in payment of debts. But the opportunity to express his opinion, which was never offered to him as a judge, he found as a historian in his life of Washington. He claimed for himself and those with whom he acted, an "unabated zeal for the exact observance of public and private engagements." He rightly insisted that the only ways of relief for pecuniary "distresses" were "industry and frugality;" he condemned "all the wild projects of the moment;" he rejected as a delusion every attempt at relief from pecuniary distresses "by the emission of paper money;" or by "a depreciated medium of commerce." These were his opinions through life. He gave them to the public in 1807, and twenty-four years later in a revised edition of his Life of Washington he confirmed his early convictions by the authority of his maturest life.

IX.

Opinion of Thomas Jefferson.

"The federal government--I deny their power to make paper money a legal tender."