# Washington Sentinel.

SPECIAL MESSAGE OF

## PRESIDENT PIERCE,

*On Internal Improvements by the General Government.*

*To the Senate and House of Representatives:*

In returning to the House of Representatives, in which it originated, a bill entitled "An act making appropriations for the repair, preservation, and completion of certain public works, heretofore commenced under authority of law," it became necessary for me, owing to the late day at which the bill was passed, to state my objections to it very briefly, announcing, at the same time, a purpose to resume the subject for more deliberate discussion, at the present session of Congress; for, while by no means insensible of the arduousness of the task thus undertaken by me, I conceived that the two Houses were entitled to an exposition of the considerations, which had induced dissent, on my part, from their conclusions in this instance.

The great constitutional question, of the power of the general government in relation to internal improvements, has been the subject of earnest difference of opinion, at every period of the history of the United States. Annual and special messages of successive Presidents have been occupied with it, sometimes in remarks on the general topic, and frequently in objection to particular bills. The conflicting sentiments of eminent statesmen, expressed in Congress, or in conventions called expressly to devise, if possible, some plan calculated to relieve the subject of the embarrassments with which it is environed, while they have directed public attention strongly to the magnitude of the interests involved, have yet left unsettled the limits, not merely of expediency, but of constitutional power, in relation to works of this class by the general government.

What is intended by the phrase "internal improvements?" What does it embrace, and what exclude? No such language is found in the Constitution. Not only is it not an expression of ascertainable constitutional power, but it has no sufficient exactness of meaning to be of any value as the basis of a safe conclusion, either of constitutional law or of practical statesmanship.

President John Quincy Adams, in claiming, on one occasion, after his retirement from office, the authorship of the idea of introducing into the administration of the affairs of the general government "a permanent and regular system" of internal improvements, speaks of it as a system, by which "the whole Union would have been checkered over with railroads and canals," affording "high wages and constant employment to hundreds of thousands of laborers;" and he places it in express contrast with the construction of such works by the legislation of the States and by private enterprise.

It is quite obvious, that, if there be any constitutional power which authorizes the construction of "railroads and canals" by Congress, the same power must comprehend turnpikes and ordinary carriage roads; nay, it must extend to the construction of bridges, to the draining of marshes, to the erection of levees, to the construction of canals of irrigation, in a word, to all the possible means of the material inprovement of the earth, by developing its natural resources, anywhere and everywhere, even within the proper jurisdiction of the several States. But if there be any constitutional power, thus comprehensive in its nature, must not the same power embrace within its scope other kinds of improvement of equal utility in themselves, and equally important to the welfare of the whole country? President Jefferson, while intimating the expediency of so amending the Constitution, as to comprise objects of physical progress and well-being, does not fail to perceive that "other objects of public improvement," including "public education," by name, belong to the same class of powers. In fact, not only public instruction, but hospitals, establishments of science and art, libraries, and indeed everything appertaining to the internal welfare of the country, are just as much objects of internal improvement, or in other words, of internal utility, as canals and railways.

The admission of the power, in either of its senses, implies its existence in the other; and since, if it exists at all, it involves dangerous augmentation of the political functions and of the patronage of the federal government, we ought to see clearly by what clause or clauses of the Constitution it is conferred.

I have had occasion more than once to express, and deem it proper now to repeat, that it is, in my judgement, to be taken for granted, as a fundamental proposition not requiring elucidation, that the federal government is the creature of the individual States, and of the people of the States severally; that the sovereign power was in them alone; that all the powers of the federal government are derivative ones, the enumeration and limitations of which are contained in the instrument which organized it; and by express terms: "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."

Starting from this foundation of our constitutional faith, and proceeding to inquire in what part of the Constitution the power of making appropriations for internal improvements is found, it is necessary to reject all idea of there being any grant of power in the preamble. When that instrument says: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity,"—it only declares the inducements and the anticipated results of the things ordained and established by it. To assume that anything more can be designed by the language of the preamble, would be to convert all the body of the Constitution, with its carefully weighed enumerations and limitations, into mere surplusage. The same may be said of the phrase in the grant of the power to Congress, "to pay the debts and provide for the common defense and general welfare of the United States; or to construe the words more exactly, they are not significant of grant or concession, but of restriction of the specific grants, having the effect of saying that, in laying and collecting taxes for each of the precise objects of power granted to the general government, Congress must exercise any such definite and undoubted power in strict subordination to the purpose of the common defense and general welfare of all the States.

There being no specific grant in the Constitution of a power to sanction appropriations for internal improvements, and no general provision broad enough to cover any such indefinite object, it becomes necessary to look for particular powers, to which one or another of the things included in the phrase "internal improvements," may be referred.

In the discussions of this question by the advocates of the organization of a "general system of internal improvements" under the auspices of the federal government, reliance is had, for the justification of the measure, on several of the powers expressly granted to Congress: such as to establish post offices and post roads; to declare war; to provide and maintain a navy; to raise and support armies; to regulate commerce; and to dispose of the territory and other public property of the United States.

As to the last of these sources of power, that of disposing of the territory and other public property of the United States, it may be conceded, that it authorizes Congress, in the management of the public property, to make improvements essential to the successful execution of the trust; but this must be the primary object of any such improvement, and it would be an abuse of the trust, to sacrifice the interest of the property to incidental purposes.

As to the other assumed sources of a general power over internal improvements, they being specific powers, of which this is supposed to be the incident, if the framers of the Constitution, wise and thoughtful men as they were, intended to confer on Congress the power over a subject so wide as the whole field of internal improvements, it is remarkable that they did not use language clearly to express it; or, in other words, that they did not give it as a distinct and substantive power, instead of making it the implied incident of some other one. For such is the magnitude of the supposed incidental power and its capacity of expansion, that any system established under it, would exceed each of the others, in the amount of expenditure and number of the persons employed, which would thus be thrown upon the general government.

This position may be illustrated by taking, as a single example, one of the many things comprehended clearly in the idea of "a general system of internal improvements," namely, roads. Let it be supposed that the power to construct roads over the whole Union, according to the suggestion of President J. Q. Adams, in 1807, whilst a member of the Senate of the United States, had been conceded. Congress would have begun, in pursuance of the state of knowledge at the time, by constructing turnpikes. Then, as knowledge advanced, it would have constructed canals; and at the present time, it would have been embarked in an almost limitless scheme of railroads.

Now, there are in the United States, the results of State or private enterprise, upwards of 17,000 miles of railroads, and 5,000 miles of canals, in all 22,000 miles, the total cost of which may be estimated at little short of six hundred millions of dollars; and if the same works had been constructed by the federal government, supposing the thing to have been practicable, the cost would have probably been not less than nine hundred millions of dollars. The number of persons employed in superintending, managing, and keeping up these canals and railroads, may be stated at one hundred and twenty-six thousand, or thereabouts; to which are to be added seventy thousand or eighty thousand employed on the railroads in construction, making a total of at least two hundred thousand persons, representing in families nearly a million of souls, employed on or maintained by this one class of public works in the United States.

In view of all this, it is not easy to estimate the disastrous consequences, which must have resulted from such extended local improvements being undertaken by the general government. State legislation upon this subject would have been suspended, and private enterprise paralized, while applications for appropriations would have perverted the legislation of Congress, exhausted the national treasury, and left the people burdened with a heavy public debt, beyond the capacity of generations to discharge.

Is it conceivable that the framers of the Constitution intended that authority, drawing after it such immense consequences, should be inferred by implication as an incident of enumerated powers? I cannot think this; and the impossibility of supposing it would be still more glaring, if similar calculations were carried out in regard to the numerous objects of material, moral and political usefulness, of which the idea of internal improvement admts. It may be safely inferred, that if the framers of the Constitution had intended to confer the power to make appropriations for the objects indicated, it would have been enumerated among the grants expressly made to Congress. When, therefore, any one of the powers actually enumerated, is adduced or referred to, as the ground of an assumption to warrant the incidental or implied power of "internal improvement," that hypothesis must be rejected, or at least can be no further admitted than as the particular act of internal improvement may happen to be necessary to the exercise of the granted power. Thus, when the object of a given road, the clearing of a particular channel, or the construction of a particular harbor of refuge, is manifestly required by the exigencies of the naval or military service of the country, then it seems to me undeniable, that it may be constitutionally comprehended in the powers to declare war, to provide and maintain a navy, and to raise and support armies. At the same time, it would be a misuse of these powers, and a violation of the Constitution, to undertake to build upon them a great system of internal improvements. And similar reasonings applies to the assumption of any such power as involved in that to establish post-roads and to regulate commerce. If the particular improvement, whether by land or sea, be necessary to the execution of the enumerated powers, then, but not otherwise, it falls within the jurisdiction of Congress. To this extent only can the power be claimed as the incident of any express grant to the federal government.

But there is one clause of the Constitution, in which it has been suggested, that express authority to construct works of internal improvement has been conferred on Congress, namely: that which empowers it "to exercise exclusive legislation, in all cases whatsoever, over such district, (not exceeding ten miles square,) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places, purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and *other needful buildings*." But any such supposition will be seen to be groundless, when this provision is carefully examined, and compared with other parts of the Constitution.

It is undoubtedly true, that "like authority" refers back to "exclusive legislation in all cases whatever," as applied to the District of Columbia; and there is, in the District, no division of powers as between the general and the State governments.

In those places, which the United States has purchased, or retains within any of the States—sites for dock-yards or forts for example—legal process of the given State is still permitted to run for some purposes, and therefore, the jurisdiction of the United States is not absolutely perfect. But let us assume, for argument's sake, that the jurisdiction of the United States in a tract of land, ceded to it for the purpose of a dock-yard or fort, by Virginia or Maryland, is as complete as in that ceded by them for the seat of government, and then proceed to analyze this clause of the Constitution.

It provides that Congress shall have certain legislative authority over all places purchased by the United States for certain purposes. It implies that Congress has otherwise the power to purchase. But where does Congress get the power to purchase? Manifestly, it must be from some other clause of the Constitution, for it is not conferred by this one. Now, as it is a fundamental principle, that the Constitution is one of limited powers, the authority to purchase must be conferred in one of the enumerations of legislative power. So that, the power to purchase is itself not an unlimited one, but is limited by the objects, in regard to which legislative authority is directly conferred.

The other expressions of the clause in question confirm this conclusion; since the jurisdiction is given as to places purchased for certain enumerated objects or purposes. Of these, the first great division, forts, magazines, arsenals and dockyards, are obviously referable to recognized heads of specific constitutional power. There remains only the phrase "and other *needful* buildings." Wherefore needful? Needful for any possible purpose within the whole range of the business of society and of government? Clearly not; but only such "buildings" as are "needful" to the United States, in the exercise of any of the powers conferred on Congress.

Thus, the United States need, in the exercise of admitted powers, not only forts, magazines, arsenals, and dock-yards, but also court-houses, prisons, custom-houses, and post offices, within the respective States. Places for the erection of such buildings, the general government may constitutionally purchase, and having purchased them, the jurisdiction over them belongs to the United States. So, if the general government has the power to build a light-house or a beacon, it may purchase a place for that object; and having purchased it, then this clause of the Constitution gives jurisdiction over it. Still the power to purchase, for the purpose of erecting a light-house or beacon, must depend on the existence of the power to erect; and if that power exists, it must be sought after in some other clause of the Constitution.

From whatever point of view, therefore, the subject is regarded, whether as a question of express or implied power, the conclusion is the same, that Congress has no constitunal authority to carry on a system of internal improvements; and in this conviction the system has been steadily opposed by the soundest expositors of the functions of the government.

It is not to be supposed that, in no conceivable case, shall there be doubt as to whether a given object be or not, a necessary incident of the military, naval, or any other power. As man is imperfect so are his methods of uttering his thoughts. Human language, save in expressions for the exact sciences, must always fail to preclude all possibility of controversy. Hence it is that, in one branch of the subject,—the question of the power of Congress to make appropriations in aid of navigation,—there is less of positive conviction than in regard to the general subject; and it therefore seems proper, in this respect, to revert to the history of the practice of the government.

Among the very earliest acts of the first session of Congress, was that for the establishment and support of light-houses, approved by President Washington, on the 7th of August, 1789, which contains the following provisions:

"That all expenses which shall accrue, from and after the fifteenth day of August, one thousand seven hundred and eighty-nine, in the necessary support, maintenance, and repairs of all light-houses, beacons, buoys, and public piers, erected, placed, or sunk before the passing of this act, at the entrance of, or within any bay, inlet, harbor, or port of the United States, for rendering the navigation thereof easy and safe, shall be defrayed out of the treasury of the United States: *Provided, nevertheless,* That none of the said expenses shall continue to be so defrayed, after the expiration of one year from the day aforesaid, unless such light-houses, beacons, buoys, and public piers shall, in the meantime, be ceded to, and vested in the United States, by the State or States, respectively, in which the same may be, together with the lands and tenements thereunto belonging, and together with the jurisdiction of the same." Acts, containing appropriations for this class of public works, were passed in 1791, 1792, 1793, and so on, from year to year, down to the present time; and the tenor of these acts, when examined with reference to other parts of the subject, is worthy of special consideration.

It is a remarkable fact that, for a period of more than thirty years after the adoption of the Constitution, all appropriations of this class were confined, with scarcely an apparent exception, to the construction of light-houses, beacons, buoys, and public piers, and the stakeage of channels; to render navigation "safe and easy," it is true, but only by indicating to the navigator obstacles in his way, not by removing those obstacles, nor in any other respect changing artificially the pre-existing natural condition of the earth and sea. It is obvious, however, that works of art for the removal of natural impediments to navigation, or to prevent their formation, or for supplying harbors where these do not exist, are also means of rendering navigation safe and easy; and may, in supposable cases, be the most efficient, as well as the most economical, of such means. Nevertheless, it is not until the year 1824 that, in an act to improve the navigation of the rivers Ohio and Mississippi, and in another act making appropriations for deepening the channel leading into the harbor of Presque Isle, on Lake Erie, and for repairing Plymouth beach, in Massachusetts Bay, we have any example of an appropriation for the improvement of harbors, in the nature of those provided for in the bill returned by me to the House of Representatives.

It appears not probable, that the abstinence of Congress in this respect, is attributable altogether to considerations of economy, or to any failure to perceive that the removal of an obstacle to navigation, might be not less useful than the indication of it for avoidance; and it may be well assumed that the course of legislation, so long pursued, was induced, in whole or in part, by solicitous considerations in regard to the constitutional power over such matters vested in Congress.

One other peculiarity in this course of legislation is not less remarkable. It is, that when the general government first took charge of light-houses and beacons, it required the works themselves, and the lands on which they were situated, to be ceded to the United States. And, although for a time, this precaution was neglected in the case of new works, in the sequel, it was provided by general laws, that no light-house should be constructed on any site previous to the jurisdiction over the same being ceded to the United States.

Constitutional authority for the construction and support of many of the public works of this nature, it is certain, may be found in the power of Congress to maintain a navy and provide for the general defense; but their number, and, in many instances, their location, preclude the idea of their being fully justified as necessary and proper incidents of that power. And they do not seem susceptible of being referred to any other of the specific powers vested in Congress by the Constitution, unless it be that to raise revenue, in so far as this relates to navigation. The practice under all my predecessors in office, the express admissions of some of them, and absence of denial by any, sufficiently manifest their belief, that the power to erect light-houses, beacons, and piers, is possessed by the general government. In the acts of Congress, as we have already seen, the inducement and object of the appropriations are expressly declared; those appropriations being for "light-houses, beacons, buoys, and public piers" erected or placed "within any bay, inlet, harbor, or port of the United States for rendering the navigation thereof easy and safe."

It it be contended that this review of the history of appropriations of this class leads to the inference, that, beyond the purposes of national defense and maintenance of a navy, there is authority in the Constitution to construct certain works in aid of navigation, it is, at the same time, to be remembered, that the conclusions thus deduced from cotemporaneous construction and long continued acquiescence, are themselves directly suggestive of limitations of constitutionality, as well as expediency, regarding the nature and the description of those aids to navigation, which Congress may provide as incident to the revenue power. For, at this point controversy begins, not so much as to the principle as to its application.

In accordance with long established legislative usage, Congress may construct light-houses and beacons, and provide, as it does, other means to prevent shipwrecks on the coasts of the United States. But the general government cannot go beyond this, and make improvements of rivers and harbors, of the nature, and to the degree, of all the provisions of the bill of the last session of Congress.

To justify such extended power, it has been urged that, if it be Constitutional to appropriate money for the purpose of pointing out, by the construction of light-houses or beacons, where an obstacle to navigation exists, it is equally so to remove such obstacle, or to avoid it by the creation of an artificial channel; that if the object be lawful, then the means adopted solely with reference to the end must be lawful, and that therefore it is not material, Constitutionally speaking, whether a given obstruction to navigation be indicated for avoidance, or be actually avoided by excavating a new channel; that if it be a legitimate object of expenditure to preserve a ship from wreck, by means of a beacon, or of revenue cutters, it must be not less so to provide places of safety by the improvement of harbors, or, where none exist, by their artificial construction; and thence the argument naturally passes to the propriety of improving rivers for the benefit of internal navigation; because all these objects are of more or less importance to the commercial, as well as the naval, interests of the United States.

The answer to all this is, that the question of opening speedy and easy communication to and through all parts of the country is substantially the same, whether done by land or water; that the uses of roads and canals in facilitating commercial intercourse, and uniting by community of interests the most remote quarters of the country by land communication, are the same in their nature as the uses of navigable waters; and that, therefore, the question of the facilities and aids to be provided to navigation, by whatsoever means, is but a subdivision of the great question of the constitutionality and expediency of internal improvements by the general government. In confirmation of this, it is to be remarked, that one of the most important acts of appropriation of this class, that of the year 1833, under the administration of President Jackson, by including together and providing for, in one bill, as well river and harbor works as road works, impliedly recognizes the fact that they are alike branches of the same great subject of internal improvements.

As the population, territory, and wealth of the country increased, and settlements extended into remote regions, the necessity for additional means of communication, impressed itself upon all minds with a force, which had not been experienced at the date of the formation of the Constitution, and more and more embarrassed those who were most anxious to abstain, scrupulously, from any exercise of doubtful power. Hence the recognition, in the messages of Presidents Jefferson, Madison, and Monroe, of the eminent desirableness of such works, with admission that some of them could lawfully and should be conducted by the general government, but with obvious uncertainty of opinion as to the line between such as are constitutional and such as are not; such as ought to receive appropriations from Congress, and such as ought to be consigned to private enterprise, or the legislation of the several States.

This uncertainty has not been removed by the practical working of our institutions in later times; for although the acquisition of additional territory, and the application of steam to the propulsion of vessels, have greatly magnified the importance of internal commerce, this fact has, at the same time, complicated the question of the power of the general government over the present subject.

In fine, a careful review of the opinions of all my predecessors, and of the legislative history of the country, does not indicate any fixed rule by which to decide what, of the infinite variety of possible river and harbor improvements, are within the scope of the power delegated by the Constitution; and the question still remains unsettled. President Jackson conceded the constitutionality, under suitable circumstances, of the improvement of rivers and harbors through the agency of Congress; and President Polk admitted the propriety of the establishment and support, by appropriations from the treasury, of light-houses, beacons, buoys, and other improvements, within the bays, inlets, and harbors of the ocean and lake coasts immediately connected with foreign commerce.

But, if the distinction thus made rests upon the differences between foreign and domestic commerce, it cannot be restricted thereby to the bays, inlets, and harbors of the oceans and lakes, because foreign commerce has already penetrated thousands of miles into the interior of the continent by means of our great rivers, and will continue so to extend itself with the progress of settlement, until it reaches the limit of navigability.

At the time of the adoption of the Constitution, the vast valley of the Mississippi, now teeming with population, and supplying almost boundless resources was literally an unexplored wilderness. Our advancement has outstripped even the most sanguine anticipations of the fathers of the republic, and it illustrates the fact, that no rule is admissible, which undertakes to discriminate, so far as regards river and harbor improvements, between the Atlantic or Pacific coasts, and the great lakes and rivers of the interior regions of North America. Indeed, it is quite erroneous to suppose that any such discrimination has ever existed in the practice of the government. To the contrary of which, is the significant fact before stated, that when, after abstaining from all such appropriations for more than thirty years, Congress entered upon the policy of improving the navigation of rivers and harbors, it commenced with the rivers Mississippi and Ohio.

The Congress of the Union, adopting, in this respect, one of the ideas of that of the Confederation, has taken heed to declare, from time to time, as occasion required, either in acts for disposing of the public lands in the Territories, or in acts for admitting new States, that all navigable rivers within the same "shall be deemed to be and remain public highways."

Out of this condition of things arose a question which, at successive periods of our public annals, has occupied the attention of the best minds in the Union. This question is, what waters are public navigable waters, so as not to be of State character and jurisdiction, but of Federal jurisdiction and character, in the intent of the Constitution and of Congress? A proximate, but imperfect, answer to this important question is furnished by the acts of Congress and the decisions of the Supreme Court of the United States, defining the constitutional limits of the maritime jurisdiction of the general government. That jurisdiction is entirely independent of the revenue power. It is not derived from that, nor is it measured thereby.

In that act of Congress which, in the first year of the government, organized our judicial system, and which, whether we look to the subject, the comprehensive wisdom with which it was treated, or the deference with which its provisions have come to be regarded, is only second to the Constitution itself,—there is a section in which the statesmen, who framed the Constitution, have placed on record their construction of it in this matter. It enacts that the district courts of the United States "shall have exclusive cognizance of all civil cases of admiralty and maritime jurisdiction, including all seizures under the law of impost, navigation, or trade of the United States, when the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas." In this cotemporaneous exposition of the Constitution, there is no trace of suggestion, that nationality of jurisdiction is limited to the sea, or even to tide-waters. The law is marked by a sagacious apprehension of the fact that the great Lakes and the Mississippi were navigable waters of the United States even then, before the acquisition of Louisiana had made wholly our own the territorial greatness of the West. It repudiates, unequivocally, the rule of the common law, according to which the question of whether a water is public navigable water or not, depends on whether it is salt or not, and therefore, in a river, confines that quality to tide-water; a rule resulting from the geographical condition of England, and applicable to an island with small and narrow streams, the only navigable portion of which, for ships, is in immediate contact with the ocean, but wholly inapplicable to the great inland fresh water seas of America, and its mighty rivers, with secondary branches exceeding in magnitude the largest rivers of Great Britain.

At a later period, it is true, that, in disregard of the more comprehensive definition of navigability afforded by that act of Congress, it was for a time held by many, that the rule established for England was to be received in the United States; the effect of which was to exclude from the jurisdiction of the general government, not only the waters of the Mississippi, but also those of the great lakes. To this construction it was with truth objected that, in so far as concerns the lakes, they are in fact seas, although of fresh water; that they are the natural marine communications between a series of populous States, and between them and the possessions of a foreign nation; that they are actually navigated by ships of commerce of the largest capacity; that they had once been, and might again be, the scene of foreign war; and that therefore it was doing violence to all reason to undertake, by means of an arbitrary doctrine of technical foreign law, to exclude such waters from the jurisdiction of the general government. In regard to the river Mississippi, it was objected that, to draw a line across that river at the point of ebb and flood of tide, and say that the part below was public navigable water, and the part above not, while in the latter the water was at least equally deep and navigable, and its commerce as rich as in the former, with numerous ports of foreign entry and delivery, was to sanction a distinction articcial and unjust, because regardless of the real fact of navigability.

We may conceive that some such considerations led to the enactment, in the year 1845, of an act, in addition to that of 1789, declaring that "the district courts of the United States shall have, possess, and exercise the same jurisdiction in matters of contract and tort, arising in, upon, or concerning steamboats, and other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in business of commerce and navigation between ports and places in different States and Territories upon the Lakes and navigable waters connecting said Lakes, as is now possessed and exercised by the said courts in cases of the like steamboats and other vessels employed in navigation and commerce upon the high seas or tidewaters, within the admiralty and maritime jurisdiction of the United States."

It is observable that the act of 1789 applies the jurisdiction of the United States to all "waters which are navigable from the sea" for vessels of ten tons burden; and that of 1845 extends the jurisdiction to enrolled vessels of twenty tons burden, on the Lakes and navigable waters connecting said Lakes, though not waters navigable from the sea, provided such vessels be employed between places in different States and Territories.

Thus it appears that these provisions of law, in effect, prescribe conditions by which to determine whether any waters are public navigable waters, subject to the authority of the federal government. The conditions include all waters, whether salt or fresh, and whether of sea, lake, or river, provided they be capable of navigation by vessels of a certain tonnage, and for commerce, either between the United States and foreign countries, or between any two or more of the States or Territories of the Union. This excludes water wholly within any particular State, and not used as the means of commercial communication with any other State, and subject to be improved or obstructed, at will, by the State within which it may happen to be.

The constitutionality of these provisions of statute has been called in question. Their constitutionality has been maintained, however, by repeated decisions of the Supreme Court of the United States, and they are, therefore, the law of the land by the concurrent act of the legislative, the executive, and the judicial departments of the government. Regarded as affording a criterion of what is navigable water, and as such subject to the maritime jurisdiction of the Supreme Court and of Congress, these acts are objectionable in this, that the rule for navigability is an arbitrary one; that Congress may repeal the present rule, and adopt a new one; and that thus a legislative definition will be able to restrict or enlarge the limits of constitutional power. Yet this variableness of standard seems inherent in the nature of things. At any rate, neither the first Congress, composed of the statesmen of the era when the Constitution was adopted, nor any subsequent Congress, has afforded us the means of attaining greater precision of construction as to this part of the Constitution.

This reflection may serve to relieve from undeserved reproach an idea of one of the greatest men of the Republic, President Jackson. He, seeking amid all the difficulties of the subject for some practical rule of action in regard to appropriations for the improvement of rivers and harbors, prescribed for his own official conduct the rule of confining such appropriations to "places below the ports of entry or delivery established by law." He saw clearly, as the authors of the above mentioned acts of 1789 and 1845 did, that there is no inflexible natural line of discrimination between what is national and what local, by means of which to determine absolutely and unerringly at what point on a river the jurisdiction of the United States shall end. He perceived, and of course admitted, that the Constitution, while conferring on the general government some power of action to render navigation safe and easy, had of necessity left to Congress much of discretion in this matter. He confided in the patriotism of Congress to exercise that discretion wisely, not permitting himself to suppose it possible that a port of entry or delivery would ever be established by law for the express and only purpose of evading the Constitution.

It remains, therefore, to consider the question of the measure of discretion in the exercise by Congress of the power to provide for the improvement of rivers and harbors, and also that of the legitimate responsibility of the Executive in the same relation.

In matters of legislation of the most unquestionable constitutionality, it is always material to consider what amount of public money shall be appropriated for any particular object. The same consideration applies with augmented force to a class of appropriations, which are in their nature peculiarly prone to run to excess, and which, being made in the exercise of incidental powers, have intrinsic tendency to overstep the bounds of constitutionality.

If an appropriation for improving the navigability of a river, or deepening or protecting a harbor, have reference to military or naval purposes, then its rightfulness, whether in amount, or in the objects to which it is applied, depends, manifestly, on the military or naval exigency; and the subject matter affords its own measure of legislative discretion. But if the appropriation for such an object have no distinct relation to the military or naval wants of the country, and is wholly, or even mainly, intended to promote the revenue from commerce, then the very vagueness of the proposed purpose of the expenditure constitutes a perpetual admonition of reserve and caution. Through disregard of this, it is undeniable that, in many cases, appropriations of this nature have been made unwisely, without accomplishing beneficial results commensurate with the cost, and sometimes for evil, rather than good, independently of their dubious relation to the Constitution.

Among the radical changes of the course of legislation in these matters, which, in my judgment, the public interest demands, one is a return to the primitive idea of Congress, which required in this class of the public works, as in all others, a conveyance of the soil, and a cession of the jurisdiction to the United States. I think this condition ought never to have been waived in the case of any harbor improvement of a permanent nature, as where piers, jetties, sea-walls, and other like works are to be constructed and maintained. It would powerfully tend to counteract endeavors to obtain appropriations of a local character, and chiefly calculated to promote individual interests. The want of such a provision is the occasion of abuses in regard to existing works, exposing them to private encroachment without sufficient means of redress by law. Indeed, the absence, in such cases, of a cession of jurisdiction, has constituted one of the constitutional objections to appropriations of this class. It is not easy to perceive any sufficient reason for requiring it in the case of arsenals or forts, which does not equally apply to all other public works; if to be constructed and maintained by Congress in the exercise of a constitutional power of appropriation, they should be brought within the jurisdiction of the United States.

There is another measure of precaution, in regard to such appropriations, which seems to me to be worthy of the consideration of Congress. It is, to make appropriation for every work in a separate bill, so that each one shall stand on its own independent merits, and, if it pass, shall do so under circumstances of legislative scrutiny, entitling it to be regarded as of general interest, and a proper subject of charge on the treasury of the Union.

During that period of time in which the country had not come to look to Congress for appropriations of this nature, several of the States, whose productions or geographical position invited foreign commerce, had entered upon plans for the improvement of their harbors by themselves, and through means of support drawn directly from that commerce, in virtue of an express constitutional power, needing for its exercise only the permission of Congress. Harbor improvements thus constructed and maintained, the expenditures upon them being defrayed by the very facilities they afford, are a voluntary charge on those only who see fit to avail themselves of such facilities, and can be justly complained of by none. On the other hand, so long as these improvements are carried on by appropriations from the treasury, the benefits will continue to inure to those alone who enjoy the facilities afforded, while the expenditure will be a burden upon the whole country, and the discrimination a double injury to places equally requiring improvement, but not equally favored by appropriations.

These considerations, added to the embarrassments of the whole question, amply suffice to suggest the policy of confining appropriations by the general government to works necessary to the execution of its undoubted powers, and of leaving all others to individual enterprise, or to the separate States, to be provided for out of their own resources, or by recurrence to the provision of the Constitution, which authorises the States to lay duties of tonnage with the consent of Congress.

FRANKLIN PIERCE.

WASHINGTON, December 30, 1854.


**ON the 8th day of February, 1855, will be** commenced, in the halls of the *Smithsonian Institution*, in the city of Washington, a Grand Exhibition of the Products of the Taste, Skill, Enterprise, and Industry of the American People.

This Exhibition will be gotten up by the *Metropolitan Mechanics' Institute*, but the design is not to limit the sphere of its operations and influence to any narrower bounds than the entire Union.

A minute programme of the plan adopted has been issued, and copies of it will be promptly transmitted to all persons making application to the undersigned for them. He will also cheerfully respond to the inquires of all persons interested in matters connected with this enterprise.

Publishers of newspapers and other periodicals are particularly requested to direct to the "Exhibition of the Metropolitan Mechanics' Institute, Washington, D. C.," one or more sets of their publications, for a suitable period prior to the opening of the Exhibition. The numbers thus forwarded shall be carefully arranged and displayed, and shall thereafter be preserved in the Library of the Institute. Evidence of such deposit will entitle any person sustaining to a publication the relation of editor, reporter, or correspondent, to the privileges of the Exhibition.

An appeal is respectfully made to the courtesy and public spirit of the Press throughout the country, to give place to this brief communication; and an assurance is given that the Institute will, by every means in its power, reciprocate the favor thus conferred.

THOMAS C. CONNOLLY, Superintendent.

WASHINGTON, Nov. 27, 1854. Nov 28.

**NOTICE TO CONTRACTORS.**

OFFICE OF THE METROPOLITAN RAILROAD Co.,
GEORGETOWN, DIST. OF COL., Dec. 26, 1854.

SEALED PROPOSALS FOR THE Grading, Masonry, and Bridging of forty three and a half (43½) miles of this road, will be received at the Office of the Company until three o'clock, p. m. on the 15th day of February next.

The maps, profiles, plans, and specifications, will be ready for inspection on and after the 5th day of February.

THE METROPOLITAN RAILROAD is designed to extend from the cities of Washington and Georgetown to the Baltimore and Ohio Railroad, by an easy and direct route, connecting with the latter road east of the "Point of Rocks" on the Potomac river, and making a saving of distance on the first ninety miles of the present traveled route from the Capitol to the Western and Northwestern States of forty-five miles.

Proceeding from the point of intersection with the Baltimore and Ohio Railroad, the route extends to the City of Frederick, and, passing through the richest agricultural districts of Maryland, terminates in the City of Hagerstown, where it connects with lines of railroads, now in operation, extending to Harrisburg, the Pennsylvania Central Railroad, etc.

The portion of the road for which proposals are now invited, extends from the westerly line of the District of Columbia (3½ miles from Georgetown) to the City of Frederick. Proposals will be received for the work in sections of one mile each, or for the entire distance of forty-three and a half miles.

The work is generally of a medium character for this part of the country, with some heavy cutting (in earth and rock) and bridging; and every facility exists for prosecuting it vigorously and with economy at all seasons of the year. The country is elevated and rolling, well watered, and emarkably healthy.

The time conditioned for the completion of the contracts will be from one to two years.

Any further information desired by persons proposing for the work, will be furnished at the office, or may be had by addressing the President of the Company by letter, prior to the day of letting.

By order of the Board of Directors:

FRANCIS DODGE, President.
EDMUND FRENCH, Chief Engineer.

Dec 29—2awt5thFeb

**OUT-DOORS at Idlewild; or, the Shaping of a Home on the banks of the Hudson,** by N. P. Willis.

Maxims of Washington; political, social, moral, and religious, collected by Dr. Shroeder.

This, That, and the Other, by Ellen L. Chandler.

The Rural Wreath; or, Life among the Flowers, by Laura Greenwood.

Beautiful Bertha, a new story, by Mrs. Tuthill.

Only a Dandelion, and other Stories, by the author of Flower of the Family.

Pray and Work, then God will help, a series of Story Books for Children, by Sarah A. Myers.

The Wanderers by Sea and Land, with other Tales, by Peter Parley.

Faggots for the Fireside, or Fact and Fancy, by Peter Parley.

A Winter Wreath of Summer Flowers, by S. G. Goodrich.

We are now receiving our stock of Family and Pocket Bibles, Prayer Books, superbly bound copies of the Poets, and other standard and illustrated works for the holydays.

GRAY & BALLANTYNE,
Dec 3—3t Booksellers, 498 7th st.

**CONSERVE and Preserved Ginger and** Chow-Chow, Attea and Choong Loong, Canton, fresh importation. For sale by

SHEKELL BROTHERS,
No. 40, opposite the Centre Market.

Dec. 23—3tif

**HEARTSEASE, or the Brother's Wife,** by the author of the Heir of Redclife.

In Doors and Out, or Views from the Chimney Corner, by Oliver Optic.

Southward Ho, a Spell of Sunshine, by W. Gilmore Simms, esq.

Sketches of Places and People Abroad, by William Wells Brown, with a memoir of the author.

R. FARNHAM.

Dec 9


## Congressional.

### THIRTY-THIRD CONGRESS.

SECOND SESSION.

**Senate—Wednesday, January 3, 1855.**

The PRESIDENT laid before the Senate a message from the President of the United States, transmitting, in compliance with a resolution of the Senate, copies of the instructions and correspondence between the different Departments of the Government and Major General Wool, commanding the Pacific division of the Army, in regard to his operations on that coast.

Mr. WELLER said, that by the call which he originated for this correspondence, he did not mean to propose legislative action on the subject. His main object was to vindicate the reputation of an officer of the Army, who, in his judgment, had been somewhat abused. He believed that General Wool was not only one of the ablest, but one of the most gallant officers in the Army of the United States. That distinguished soldier was sent to the Pacific coast, not alone for the purpose of commanding the military department there, but for the purpose of arresting the spirit of filibusterism which had been rife on that coast. Very full and specific instructions were given to him by the Department of War, and a literal compliance with those instructions placed him above the civil authorities, and required him really to take the initiative, and he has been subject to some censure in some public places in consequence of a strict compliance with the letter of his instructions. When these documents shall have been printed—and a motion for that purpose was agreed to—Mr. WELLER said he would take occasion to present his views of the course pursued by General Wool and by the department.

The message of the President of the United States, which was yesterday presented to the House of Representatives and ordered to be printed, on the subject of internal improvements, was, this morning, received by the Senate. It gives, in detail, the views of the President, on which he based his veto of the bill of the last session to make appropriations for the improvement of rivers and harbors. After the message had been read, it was ordered to be printed, and twenty thousand extra copies were ordered.

The bill to reorganize the army of the United States was recommitted to the Committee on Military Affairs, on the motion of Mr. SHIELDS, who stated, as the reason for his motion, that the military committee of the House of Representatives and of the Senate, were to meet together for consultation to-morrow, at which they would have the advantage of the counsel of the Commander-in-Chief, Major General Scott.

The Senate passed a bill to incorporate a Mutual Fire Insurance Company in the District of Columbia. The bill to incorporate the St. Joseph's Male Orphan Asylum in the District of Columbia was considered, but final action was postponed.

The Senate resumed the consideration of the bill to extend the bounty land law to old soldiers, when

Mr. STUART called attention to the fact, that in the shape in which this bill was now found, it would dispose of three hundred millions of acres of the public lands. At the rate at which the public lands have been hitherto disposed of, the throwing of so large a quantity of land scrip into the market would render it valueless, and the friends of the soldiers would not accomplish their object by passing this bill; for the scrip would not purchase any of them a hat. But, in addition, while they would be frustrated in their benevolent designs to the soldiers, they would injure the land States by shingling them all over with land scrip, and do injustice to the old States; for the revenue received by the General Government from that source would be lost for thirty years, at least.

Mr. TOOMBS replied to the argument of Mr. STUART, which resolved itself into an objection to the giving of so much land. He extolled the patriotism and disinterested sacrifices of the soldiers that succeeded in the Revolution, and won our liberties, and he demanded for them as much as was claimed for those of more recent wars.

The extension of the provisions of the bill to all the children, and not to the minor children alone, was advocated by Mr. CLAYTON, who, however, said that he should, at the proper time, submit an amendment to restrict the power of those who buy the scrip, in locating land warrants, so that not more than six hundred and forty acres shall be located in any one tract, nor more than one thousand two hundred and eighty acres in any one township.

Mr. CASS advocated the restriction to minor children.

Mr. EVANS entered into some statistical statements to show that the amount which would be disposed of by this bill had been greatly exaggerated, and then the vote was taken on the motion to reconsider the vote by which the word "minor" had been stricken out. The vote was not considered.

Mr. CLAYTON submitted the amendment of which he had given notice, to prevent the location of land warrants by purchasers, in contiguous tracts.

Mr. BADGER opposed and Mr. CLAYTON defended the amendment.

Mr. DODGE, of Iowa, while approving the principle, suggested that the quantity of land to be fixed by it was too large.

He reminded the Senate of the fact that a British nobleman—Lord Murray—went to Wisconsin, and in the time of bank expansion, and before the issuing of the specie circular, purchased large tracts, which lay now in a manner which afforded evidence of the necessity of some restriction. He thought a tract of three hundred and twenty acres would be sufficiently extensive.

A conversation ensued on the necessity of guarding against an evasion of such a provision by land speculators, but, before any vote was taken,

The Senate adjourned.

**House of Representatives.**

Mr. LATHAM, from the Committee on Public Lands, reported back the bill extending, for one year from the 3d of March, 1855, the authority of the Board of Commissioners in California to adjudicate land claims in that State.

He earnestly pressed the immediate passage of the bill. The board, he said, has been in existence two years and a half. The number of cases brought before it is eight hundred and thirteen. Of these, three hundred and ninety-seven have been acted upon, and two hundred and ninety-four confirmed. Four hundred and sixteen cases have yet to be acted on, involving millions of acres of land, and the titles to cities and counties, including the best lands of the State.

The bill was passed.

Mr. COBB, from the Committee on Public Lands, to which the subject was referred yesterday, reported a bill, as a substitute, amendatory of the act passed at the last session, reducing and graduating the price of public lands to actual settlers and cultivators; the object being to give to it the construction originally designed.

Mr. JONES, of Tennessee, suggested an amendment; which was opposed by

Mr. COBB, who explained the provisions of the bill; and, in conclusion, moved the previous question; but the motion was not agreed to.

Mr. DAWSON submitted an amendment, which the Chair ruled out of order at present, as others were pending.

Mr. JONES, of Tennessee, withdrew his amendment, and substituted therefor that of Mr. DAWSON, proposing to sell the public lands at fourteen and a half cents an acre, after five years' cultivation—limiting the quantity to one hundred and sixty acres.

Mr. LETCHER raised a question that the amendment was not in order, for the reasons which he stated; but

The SPEAKER overruled the point presented by the gentleman.

The amendment having been read,

Mr. DAWSON moved that the bill be recommitted to the Committee on Public Lands.

Mr. HOUSTON raised a point that the amendment was not germane to the bill.

Mr. LETCHER gave notice that, if this amendment be voted down, he should offer the bill introduced in the Senate by Mr. HUNTER.

Pending the consideration of the subject,

The House resolved itself into the Committee of the Whole on the state of the Union, (Mr. ORR in the chair,) and took up the bill for the relief of purchasers and locators of swamp and overflowed lands.

Mr. KEITT addressed the committee on the subject of the new order which has recently sprung into existence—namely, the Know-nothings. It is fusion—an amalgamation of all isms. Its deep philosophy is deep discontent. Whatever it does is wrong, and it would strike at the party in power, whatever the party was.

He said that "Know-nothings" is a name fitly chosen. If they succeed, they will be mutes in the funeral procession of the republic. Evasion is a principal feature of the organization and a condition of entering into its councils. It cleaves down the rights of others with a rude hand.

He spoke of the organization as socialism, as a combination of white slavery, to operate against the South, which he eloquently appealed to both the Democrats and Whigs of that section to resist. In conclusion, he said he had endeavored to show the rise and progress of this new party, the fallacy of its principles, and that its organization is dangerous and deadly.

Mr. CLINGMAN alluded to the resolution which he endeavored to introduce a few days since, requesting the President of the United States to tender to the European Powers now engaged in hostilities the mediation of the United States, but, as the privilege was denied to him of introducing it, he rose to meet some of the objections which were then urged.

It was said this would be intervention. If so, it was precisely such as this Government has pursued ever since its organization. Every Minister sent abroad influences, to some extent, the Government to which he is accredited, either to benefit us or prevent us from being injured. We have had several instances of mediation submitted to us; and this shows that mediation would not be intervention, such as some gentlemen would exclude.

He proceeded to show that all our interests are suffering by this war. A large amount of the wealth of the world, and a large number of consumers are swept out of existence. The tendency of this is to injure every commercial nation under the sun, and especially the United States.

Successful mediation would benefit us politically. It was not for us to interfere with the balance of power, but the balance of power could not be disturbed without affecting us, no matter which way the contest may terminate. Was there any thing to show that our mediation may terminate the war? This is a question of delicacy. It was not for the interest of these Powers to have a long war, nor did he believe that the respective Governments desire it. They went into the war without foreseeing what was before them. Neither will make a movement towards a settlement.

If the war shall not be terminated now, it will become general throughout Europe, and will prove more destructive than the wars of Napoleon, because the means of aggression and destruction are greater now than at that time.

He presented his arguments at length in support of his proposition.

Mr. BAYLY, of Virginia, believed, and could say with entire confidence, that, from feelings of humanity, there was no member of this House, or any person connected with this government, who would not be glad to see an end put to this war. It was, however, a delicate thing, with either nations or individuals, to offer mediation in such cases.

He had reason to believe, and could say with entire confidence, from his sources of information, that overtures were made on the part of this Government with respect to this matter; but, on the whole, it was not thought advisable for us to interfere with it.

This being the case, he was not prepared to sustain the proposition of the gentleman from North Carolina to mediate on this question.

Mr. HARRIS, of Mississippi, obtained the floor. He gave way for a motion that the committee rise, which prevailed,

And the House adjourned.

**Supreme Court of the United States.**

WEDNESDAY, *January* 3, 1855.

George W. Lawson, esq., of Oregon, was admitted an attorney and counsellor of this court.

No. 7. Robert Wickliffe *vs.* Thomas D. Owings. Appeal from the Circuit Court of the United States for the District of Kentucky.

Mr. Justice Campbell delivered the opinion of this court, reversing and annulling the decree of the said Circuit Court with costs, and rendering a decree in favor of the complainant, Robert Wickliffe.

No. 8. Israel W. Raymond, &c. *vs.* William Tyson. Appeal from the Circuit Court of the United States for the Northern District of California.

Mr. Justice Wayne delivered the opinion of this court, reversing the decree of the said Circuit Court with costs, and remanding the cause with directions to dismiss the libel.

No. 56. James N. Olney *vs.* The Steamship Falcon, &c., George Law et al., claimants. Appeal from the Circuit Court of the United States for the Southern District of New York.

Mr. Justice McLean delivered the opinion of this court, dismissing the appeal for the want of jurisdiction.

No. 57. James Udall *vs.* The Steamship Ohio, &c., George Law et al., claimants. Appeal from the Circuit Court of the United States for the Southern District of New York.

Mr. Justice McLean delivered the opinion of this court, dismissing this appeal for the want of jurisdiction.

No. 5. *Original.* Ex parte Josiah S. Stafford and wife *vs.* The Union Bank of Louisiana. On motion of Messrs. Hale and Coxe, for a rule on the District Judge of the United States, for Texas.

Mr. Justice McLean delivered the opinion of this court, ordering the rule to be made absolute, and awarding a peremptory mandamus as prayed for.

No. 6. *Original.* Ex parte Josiah S. Stafford and wife *vs.* The New Orleans Canal and Banking company. On motion of Messrs. Hale and Coxe, for a rule on the District Judge of the United States for Texas.

Mr. Justice McLean delivered the opinion of this court, ordering the rule to be made absolute, and awarding a peremptory mandamus as prayed for.

Nos. 38 & 39. James Williams's adm'r, app't, *vs.* Robert Oliver's exc'rs, and John Gooding's adm's, app't, *vs.* Robert Oliver's exc'rs.

The argument of these cases was commenced by Mr. H. Winter Davis for the appellants.

Adjourned until to-morrow at 11 o'clock.


**CLOTHING.**

**A Complimentary Card and Invitation to the Public.**

"WHEN I HAVE EARNED ONE HUNDRED DOLLARS OF MY OWN MONEY, I will trade on one hundred dollars, and when I have earned one thousand dollars, I will trade upon one thousand dollars, and so increase my business and capital in proportion." I will never take credit or give my own promise to pay notes, but will pay cash for all my goods when purchased. I will keep down my expenses, and will not pay high, enormously high rents, nor live above my income, and will deal fairly with all men. Maxims like these and former experience in the wholesale and retail manufacturing, as well as the import and export trades during these last five and twenty years, have enabled GEORGE P. FOX, U. S. A., U. S. N., Tailor, and l'Inventeur des Modes, to progressively rise from the humble rank of selling one vest pattern in Wall street a few years ago, to be the present sole proprietor of the store (25 feet front by 105 feet deep) opposite Pearl street, NO. 321 BROADWAY.

It is also equally true that with money, cash in hand, FOX—GEORGE P. FOX—has, during the past few months, made extensive purchases, at ruinously low prices, of fine

**CLOTHS, FASHIONABLE VESTINGS, CASSIMERES,**

and other articles connected with the Tailoring Business, on importation, and from respectable city merchants, who are in want of discounted money at any price or loss, owing to an overstocked market and the circhmstances of hard times, (A. D. 1854.)

FOX—GEORGE P. FOX—while most thankful to the public for the liberal patronage received, still maintains his reputation for at all times selling the most fashionable of Custom, Pattern, and Correct Fitting,

**READY MADE GARMENTS,**

Dress, Frock Coats, Overcoats, Vests, Pantaloons, Cloths, Cassimeres, Velvet Vestings, &c.,&c., and is determined not to be outdone in liberality of dealing, nor undersold by the least nor the biggest house in the trade. He is also equally determined, to the best of his ability, to employ a meritorious laboring class of Journeymen Tailors; and others who are suffering dreadful privations for want of employment, and therefore offers, on and after this date, until the beginning of the year 1855, the resources of his magnificent Tailoring Establishment, free of profit on the cost of all his goods, combined with his own gratuitous services, to his friends and the public, to be considered as a sort of present

HOLIDAY OR NEW YEAR'S GIFT!

exampleizing wealthy gentlemen, United States Departments, the Executive, Officers of the Army and Navy, Bankers, Foreigners, Citizens, the present imperative duty of solvent tradesmen and merchants to employ their fellow-men, aid and assist the inauguration of a better state of trade all over the world from the commencement of the New Year, one thousand eight hundred and fifty-five. I am, fellow-citizens, (representing one of the links of Commerce,) yours truly, ever grateful and obliged,

GEORGE P. FOX,
*United States Leader of Fashions,*
*Headquarters, No. 321 Broadway,*
Sans Faire dire. L. S. GEORGE P. FOX.

Dec 19—