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courts of the United States to make restitution, when these laws have been disregarded, and impart *to the courts a power to punish those who are concerned in such violations. But in the absence of every act of [*311 congress in relation to this matter, the court would feel no difficulty in pronouncing the conduct here complained of, an abuse of the neutrality of the United States; and although, in such case, the offender could not be punished, the former owner would, nevertheless, be entitled to restitution. Nor is our opinion confined to the single act of an illegal enlistment of men, which is the only fact proved in this case; for we have no hesitation in saying, that for any of the other violations of our neutrality, alleged in the libel, if they had been proved, the Spanish owner would have been equally entitled to restitution.

Sentence affirmed, with costs.

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Error to state court.—Record.

Where a cause is brought to this court, by writ of error, or appeal, from the highest court of law or equity of a state, under the 25th section of the judiciary act of 1789, upon the ground that the validity of a statute of the United States was drawn in question, and that the decision of the state court was against its validity, &c., or that the validity of a statute of the state was drawn in question, as repugnant to the constitution of the United States, and the decision was in favor of its validity; it must appear from the record, that the act of congress, or the constitutionality of the state law, was drawn into question.

But it is not required, that the record should in terms, state a misconstruction * of the act of congress, or that it was drawn into question. It is sufficient, to give this court jurisdiction [*312 of the cause, that the record should show that an act of congress was applicable to the case.

ERROR to the Supreme Court of the State of Pennsylvania. The case agreed in the court below, stated, that William Nicholls, collector, &c., being indebted to the United States of America, on the 9th of June 1798, executed a mortgage to Henry Miller, for the use of the United States, in the sum of \$59,444, conditioned for the payment of \$29,271, payable, \$9757 on or before the 1st of January 1799; \$9757 on or before the 9th of June 1799; and \$9757 on or before the 9th of September 1799. A *scire facias* was issued upon the said mortgage, returnable to September term of the said supreme court of Pennsylvania, in the year 1800, and judgment thereupon entered up, in the said supreme court, on the 6th of March 1802, and thereupon, a *levari facias* issued, and was levied upon the property of the said William Nicholls, and the same being sold to the highest bidder, for the sum of \$14,530, the same was brought into court, and is now deposited in the hands of the prothonotary of said court, subject to the orders of the same court. That, on the 22d of December 1797, the accounts of the said William Nicholls with the commonwealth of Pennsylvania were settled by the comptroller and register-general of the commonwealth. (*Prout account and settlement.*) That an appeal from said settlement was filed in the office of *the prothonotary of the said supreme court, on the 9th day of [*313 March 1798, and judgment thereupon entered in favor of the commonwealth, against the said William Nicholls, in the said supreme court, on the 6th of September 1798, for the sum of \$9987.15.

Upon the preceding statement, the following question is submitted to

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the consideration of the court: Whether the said settlement of the said public accounts of the said William Nicholls, as aforesaid, on the 22d of December 1797, was, and is, a lien, from the date thereof, upon the real estate of the said William Nicholls, and which has since been sold as aforesaid.

A. J. DALLAS, for the United States.

J. B. McKEAN, for the Commonwealth of Pennsylvania.

December 2d, 1803.

The supreme court of Pennsylvania, on the 21st of March 1805, on motion of Mr. McKean, attorney-general of the said commonwealth, made a rule on the plaintiff in error, to show cause why the amount of the debt due to the said commonwealth should not be taken out of court. And on the 22d of March 1805, Alexander James Dallas, the attorney of the United States for the district of Pennsylvania, came into court and suggested, "that the commonwealth of Pennsylvania ought not to be permitted to have and receive the money levied and produced by virtue of the execution in the *314] suit, because the said *attorney, on behalf of the United States, saith, that as well by virtue of the said execution, as of divers acts of congress, and particularly of an act of congress, entitled 'an act to provide more effectually for the settlement of accounts between the United States and receivers of public moneys,' approved the 3d of March, 1797, the said United States are entitled to have and receive the money aforesaid, and not the said commonwealth of Pennsylvania. A. J. DALLAS."

The record then proceeds as follows: "And now, to wit, this 13th day of September 1805, the motion of the attorney-general, to take the money out of court, was granted by the unanimous opinion of the court." (See 4 Yeates 251.) The proceedings were afterwards brought before this court by writ of error.

March 9th, 1819. *Sergeant*, for the defendant in error, moved to dismiss the writ of error, in this cause, for want of jurisdiction, under the judiciary act of the 24th of September 1789, § 25; it nowhere appearing, upon the face of the record, that any question arose respecting the validity of any treaty or statute of the United States, or of any statute of the state, upon the ground of its repugnancy to the constitution or laws of the United States. *Martin v. Hunter's Lessee*, 1 Wheat. 304; *Inglee v. Coolidge*, 2 Ibid. 363.

The *Attorney-General*, contra.

*315] *MARSHALL, Ch. J., delivered the opinion of the court. The question decided in the supreme court for the state of Pennsylvania respected only the construction of a law of that state. It does not appear, from the record, that either the constitutionality of the law of Pennsylvania, or any act of congress was drawn into question.

It would not be required, that the record should, in terms, state a misconstruction of an act of congress or that an act of congress was drawn into question. It would have been sufficient, to give this court jurisdiction of the cause, that the record should show that an act of congress was applicable to the case. That is not shown by this record. The act of congress which is supposed to have been disregarded, and which, probably, was disregarded by the state court, is that which gives the United States priority in cases of

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insolvency. Had the fact of insolvency appeared upon the record, that would have enabled this court to revise the judgment of the supreme court of Pennsylvania. But that fact does not appear. No other question is presented than the correctness of the decision of the state court, according to the laws of Pennsylvania, and that is a question over which this court can take no jurisdiction. The writ of error must be dismissed.

Writ of error dismissed.

*McCULLOCH v. STATE OF MARYLAND *et al.*

[*316]

United States Bank.—Implied power.—Taxing power.

Congress has power to incorporate a bank.

The government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit.

The government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in pursuance of the constitution, form the supreme law of the land.

There is nothing in the constitution of the United States, similar to the articles of confederation, which excludes incidental or implied powers.

If the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted that end, and which are not prohibited, may constitutionally be employed to carry it into effect.¹

The power of establishing a corporation is not a distinct sovereign power or end of government, but only the means of carrying into effect other powers which are sovereign. Whenever it becomes an appropriate means of exercising any of the powers given by the constitution to the government of the Union, it may be exercised by that government.

If a certain means to carry into effect any of the powers, expressly given by the constitution to the government of the Union, be an appropriate measure, not prohibited by the constitution, the degree of its necessity is a question of legislative discretion, not of judicial cognisance.

The act of the 10th April 1816, c. 44, to "incorporate the subscribers to the Bank of the United States," is a law made in pursuance of the constitution.

The bank of the United States has, constitutionally, a right to establish its branches or offices of discount and deposit within any state.

The state, within which such branch may be established, cannot, without violating the constitution, tax that branch.

The state governments have no right to tax any of the constitutional means employed by the government of the Union to execute its constitutional powers.²

*The states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by congress to carry into effect the powers vested in the national government. [*317]

This principle does not extend to a tax paid by the real property of the Bank of the United States, in common with the other real property in a particular state, nor to a tax imposed on the proprietary interest which the citizens of that state may hold in this institution, in common with other property of the same description throughout the state.

ERROR to the Court of Appeals of the State of Maryland. This was an action of debt, brought by the defendant in error, John James, who sued as

¹ See *Hepburn v. Griswold*, 8 Wall. 603; *Knox v. Lee*, 12 Id. 533.

² But it is competent for congress to confer on the state governments the power to tax the shares of the national banks, within certain limitations; the power of taxation under the constitution, is a concurrent one. *Van Allen v. The Assessors*, 3 Wall. 585, *NELSON, J.* But, says the learned judge, congress may, by

reason of its paramount authority, exclude the states from the exercise of such power. *Ibid.* It is difficult, however, to perceive in what part of the constitution, the power is conferred on congress to erect a multitude of moneyed corporations, in the several states, absorbing \$400,000,000 of the capital of the country, and to exempt it from state taxation.