THE PEOPLE OF NEW YORK ON THE RELATION OF THE BANK OF COMMERCE *vs.* THE COMMISSIONERS OF TAXES FOR THE CITY AND COUNTY OF NEW YORK.

1. Stock of the United States is not subject to taxation under the laws of a State.
2. A State law for that purpose is unconstitutional, whether it imposes the tax on United States, stock *eo nomine*, or includes it in the aggregate of the tax payer's property, to be valued, like the rest, at its worth.
3. A tax on the nominal capital of a bank, without regard to the nature or value of the property composing it, is annexed to the franchise as a royalty for the grant, and not a burden imposed on the property itself.
4. But the law of New York taxes the capital of banks according to its valuation, and the property which constitutes it is subject to taxation or entitled to exemption therefrom, like similar property held by individuals.
5. That portion of its capital which a New York bank has invested in the stocks, bonds, or other securities of the United States, is not liable to taxation by the State.
6. The taxing power, so far as it is reserved to the States, and used within constitutional limits, cannot be controlled or restrained by this Court, the prudence of its exercise not being a judicial question.
7. But a State tax on the loans of the Federal Government is a restriction upon the constitutional power of the United States to borrow money, and if the States had such a right, being in its nature unlimited, it might be so used as to defeat the Federal power altogether.

Error to the Court of Appeals for the State of New York.

The Bank of Commerce, a corporation in the City of New York, rendered its statement, according to law, to the Tax Commissioners, on which the latter were to fix the sum or valuation of property on which the taxation of the Bank was to be made. By this it appeared that their whole capital was nine millions one hundred and forty-eight thousand four hundred

and eighty dollars, ($9,148,480.00). Of this sum three hundred and ninety-two thousand two hundred and fourteen dollars and eighty-three cents (392,214.83) was invested in real estate, and the balance, eight millions seven hundred and fifty-six thousand two hundred and sixty-five dollars and seventeen cents, was all invested in stocks, bonds and securities of the United States, which the Bank claimed to be exempt from taxation. The Tax Commissioners reported the Bank as subject to assessment and taxation for the value of its stock, (deducting the value of its real estate and $20,000 undisputed exemption), at $8,736,265.00, without regard to its being invested in the public debt of the United States, but adding that this was not an assessment upon such public debt, but upon the bank capital.

Thereupon a *certiorari* was issued to them, according to a statute of New York, and these facts appeared in the Supreme Court, and the questions being debated, the Court was of opinion:

1. As to the public debt held by the Bank, issued to them prior to the Act of Congress of February 25, 1862, or contracted for by the Bank with the Government prior to that date although issued afterwards, the Bank was liable to taxation, and ordered the report of the Tax Commissioners to be confirmed to that extent.

2. As to the public debt issued after that date, (not contracted for before,) the Bank was not liable; and the Court ordered the report in this respect to be annulled and corrected.

The taxable amount of the capital was fixed at $7,341,265.00. according to these principles.

From the judgment the Bank appealed to the Court of Appeals, who, on hearing, affirmed the judgment of the Supreme Court, and a writ of error was thereupon brought to this Court.

Mr. Lord, of New York, for Plaintiff in Error.

The Commissioners of Taxation were bound to look into the components of the capital of the Bank, to ascertain its value and taxable condition.

And as the Bank was taxable not for its capital specifically,

but for its property, real and personal, the character of that property could not be overlooked by the Tax Commissioners.

And if the United States debt be, in fact, free of State taxation, it would be mere evasion to tax it in fact, under the general notion that it was taxed as property merely, and not as United States debt.

And the plaintiffs in error respectfully insist that the questions in this case are completely covered by the decision of this Court in *Wetson* vs. *The City of Charleston*, (2 Peters' Reports, 449).

But, subject to this claim as to the extent and effect of this prior decision, and treating the questions as open to discussion, in deference to the Court of Appeals of New York, the defendants in error submit that, on principle, the public debt of the United States held by the relators was not subject to taxation as was done.

The certificates, bonds, and public debt of the United States, issued under the power of Congress to borrow money, were means and instruments whereby Congress exercised that power under the Constitution. The money lent while yet held by the United States would clearly be free of State taxation in whatever form. This amount, therefore, is clearly out of the State power of taxation. The action of the Tax Commissioners is to bring this back under the State taxation by taxing the creditor's title to its repayment or return. And this title and right is distinctly a means whereby the United States procure the use of the money or property which they obtain.

Being a means adopted by Congress to carry out one of its sovereign powers, the State power of taxation does not extend to it. *Brown* vs. *State of Maryland*, (12 Wheat. R., 419); *McCulloch* vs. *State of Maryland*, (4 Wheat. R., 316, p. 425); *Osborn* vs. *Bank of United States*, (9 Wheat. R., 738, p. 859); *Dobbins* vs. *Erie County*, (16 Pet. R., 435).

If the State power extended to the means of carrying out the United States power, not only would a conflict of powers be possible; but, if the State power be admitted, that of the United States might be defeated.

It is not a case of concurrent powers, either of borrowing or of taxing. The power exercised by the United States is that of borrowing; there is no conflict with the State power of borrowing.

There is no conflict in the powers respectively of taxing; both the United States and the State may tax all articles of taxation to which their powers extend.

But the conflict is, that the State attempts to apply its power of taxing in restraint and diminution of the United States power of borrowing. Unless it shall be claimed that the State power of taxing may reach all property within its geographical limits, whether owned by the United States or others, so that there can be no property whatever within State limits out of its reach, such power must be deemed a limited one, and excluded from all application to the property of the United States. The State power of taxation is a sovereign power within the scope to which it extends, and within this limit it admits of no supervision or control. See *The People* vs. *City of Brooklyn*, (4 Coms. R., 422, based on 4 Pet. R., 514, p. 553, and 4 Wheat. R., 430). If, therefore, it embrace within its limits the means of carrying out the powers of the United States, it could tax them in any mode it might choose, partially or otherwise, specifically or otherwise. But it must be conceded that a partial or specific taxation would be *extra vires*, and it would then rest with the Courts of the United States to try the matter of the due and proper execution of a sovereign power of a State. This could not be done; for if the State power be a sovereign power, the sovereign body decides for itself both as to the occasion and mode of its exercise. Accordingly, it is the clearly established law of the Federal Constitution, in order to avoid all such conflicts, that the powers of the States are not held to apply to the subjects embraced in the execution of the powers of the United States. The power of borrowing money by the United States being a sovereign power, Congress alone is to determine the occasions on which it is to be executed, and also the modes and means of so doing. The only limit is to be looked for in the Constitution itself; and no such limit is violated in the present

case. Congress may make its securities under seal negotiable; no State law could prevent it. Congress could make its obligations valid without stamps; no State could impose a stamp act on them. Congress can make its obligations bear any rate of interest it might think fit; no State could render them invalid as usurious. In all these and numerous other illustrations, the State power of legislation itself is a sovereign power; and it is only restricted by reason of the subject being without its limits by its being the exercise of a power of the United States. As to the body having a sovereign power being the sole judge of the occasion of using it, see *Martin* vs. *Mott*, (12 Wheat. R., p. 29). The mode of exercising the power to borrow money by Congress or the occasion of its exercise, the necessity or propriety of the means, within the limits of the Constitution, are not open to inquiry in the Courts. Therefore, all the United States securities held or procured or contracted for either before or after the Act of February 25th, 1861, should have been left out of the valuation for assessment of taxes. By a sound exposition of the Tax Laws of New York, securities of the public debt of the United States were not subject to be included in the report of valuation for taxation. The Tax Statutes of New York, whereby real and personal property within the State are subjected to taxation, in terms embrace such property *owned by individuals or corporations;* now the United States were neither an individual nor a corporation within the terms of this law So that the real and personal property of the United States itself were not within the express terms of the act nor taxable under it. The statutes, however, proceed to say, that the liability of property to taxation shall be subject to certain exemptions. In sec. 4, the stating of the exempted property commences with "all property, real or personal, exempted from taxation under the Constitution of the United States," and this is followed by an express exemption "of all lands belonging to the United States." Now there was no other property exempted from taxation under the Constitution of the United States, than the means of carrying out its powers, and there were none of these then in existence or in contemplation, except the certifi-

cates of its public debt. This statute with its present general phrase of exemption, was adopted in 1829. This was the year when the case of *Weston* vs. *City of Charleston* was decided, after the severe and able opposition of Mr. Justice Thompson, the Associate Justice for the circuit in which New York was embraced. Cotemporaneous history thus leaves no doubt, that the exemption of property under the Constitution of the United States had special reference to the United States public debt, the taxation of which by South Carolina had been so decisively annulled. The Act of Congress of February 25th, 1862, sec. 2, providing "That all stocks, bonds, and other securities of the United States, held by individuals, corporations, or associations within the United States, shall be exempt from taxation by or under State authority, was effectual to exempt all existing as well as future issues of public debt." See Acts of 1861, '62, p. 346. The act in its terms is clearly sufficient to embrace existing United States securities without any exception.

This clause was evidently produced by the decision of the Court of Appeals of New York in the case of the Bank of the Commonwealth, then just decided, and now under review in this Court. It is in exact affirmance of the decision in the case of *Weston* vs. *City of Charleston.* And Congress in it does not speak merely as contractors, but as legislators, in the assumption of its fullest powers as such.

It was a declaratory act in affirmance of a principle never denied since 1829, for more than thirty years. This act is not to be construed as the assertion of any general power to withdraw any kind whatever of property from State taxation at the election of Congress; but is to be construed according to the circumstances under which it was passed. Congress having reference to a means which had been employed in carrying out its power to borrow, and with the public knowledge that these securities had been held as not under State taxation, it was but protecting and asserting the supremacy of its power to pass this statute. If the issuing of this United States debt be within the scope of the power to borrow, and to determine the means of its exercise, it was a proper act of legislation The subject being

within one of the powers of Congress, they alone were judges of the fitness of its exercise and of its extent.

It was within the principle of the numerous Acts of Congress, withdrawing from State jurisdiction questions arising under the Laws of the United States, and titles taken and acts done under such laws. The act violates no provision of the Constitution of the United States; it does not interfere with any vested right. It is in affirmance of a right universally recognized prior to the decision of the Court of Appeals of New York, then just made.

The judgment of the Court of Appeals in the matter complained of should be reversed, and the proceedings remitted to that Court, there to be proceeded on according to the law as it shall be declared by this Court.

Mr. Develin and *Mr. Brady,* of New York, for Defendants in Error.

The surplus of stock which was taxed in the case now before the Court is supposed to be protected by an Act of Congress of February 25th, 1862, which provides that "*all stocks, bonds and other securities of the United States, held by individuals, corporations or associations within the United States, shall be exempt from taxation by or under State authority.*"

The Act of 1862 introduces no new rule. It is a mere affirmation of what was decided in the cases of the *Bank of McCullough against the State of Maryland and others of a similar nature.* It exempts from specific taxation all stocks, &c., of the United States, but does not provide that no taxation shall be imposed by a State upon the surplus or capital of a bank, to the extent to which such surplus is represented by United States Stocks, &c., composing such capital. If this act could bear the latter construction, it would be unconstitutional and void as a direct attempt by the general government to interfere with the exclusive power of taxation by a State over corporations created by it, and property of individuals residing within the State, sharing the benefits and liability to the burdens of government. If such an exemption could be extended to the United States Stock

by an absolute Act of Congress, there is no reason why it might not also apply to any other property of the United States, though sold by the general government in the ordinary course of trade to a purchaser; and for such exercise of power there is no warrant or pretext under the Federal Constitution. The Federal Government has no powers except such as are delegated to it by the Constitution or necessarily implied in powers granted; in all other respects the States are sovereign. Federalist, Nos. 30 and 33; The Passenger Cases; *The Ohio Life Ins. and Trust Co.* vs. *De Bolt*, (16 How., 428.) The Constitution itself provides in its tenth amendment, that "Powers not delegated by the United States in the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people." The general and State governments have respectively the power to levy taxes for their own appropriate uses without in any way interfering or having the right to interfere with the just powers of each other. (1 Story on the Constitution, Sec. 1034.)

There is nothing in the State Laws repugnant to the power of Congress to borrow money.

The exercise of this power involves three elements, a borrower, a lender, and an agreement as to the terms of the loan. The loan is a matter of contract and Congress may acquire the means of payment by the exercise of its power "to levy and collect taxes, duties, imposts, and excises,"—a power given for the express purpose of paying the debts and other charges of the Federal Government. The power of Congress to borrow money in terms is limited to borrowng "*on the credit of the United States,*" and does not include the right to use the credit of, nor create a charge upon, nor restrict the means of self support of any State. The authority of Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution" to the Federal Govenment cannot effect this question. This is not an independent power to do something not otherwise provided for, but a delegation which includes all the necessary and proper means of carrying it into execution. (Story on the Constitution, Sec. 1237 and 1243.) It cannot be maintained

that in exercising the power to borrow money on the credit of the United States it is necessary to take away from a State a vital power to levy taxes for maintaining its authority and for the support of its government.

The general clause of the Constitution just referred to is in fact a *restriction* prohibiting extreme means, and limiting the government to those which are necessary and proper. The Act of 1862 is enacted *uno flatu.* It is incapable of division and must upon its terms and just construction stand or fall in all its provisions. It extends to all stocks, &c., though they might have been issued and acquired by individuals years before the passage of the law, and is equally retro-active and prospective in its operation. The State banks cannot claim an exemption under the law of 1862. The condition of their existence is that they shall bear a share of the public burdens. They were formerly taxed on the nominal amount of their capital stock, however it might be invested, or whatever might become of it, and now are taxable on the value of that stock. The Legislature might have required the banks to pay a specified sum annually for their privileges, though five times as much as their share of the public burdens, and clearly Congress would have no power to interfere. *Providence Bank* vs. ———, (4 Peters, pp. 561 and 562); *State Bank of Ohio* vs. *Knoop,* (16 Peters, p. 387.)

The judgment of the Supreme Court should be affirmed except as to the point that stocks issued after the passage of the Act of 1862 are exempt from taxation.

Mr. Justice NELSON. This is a writ of error to the Court of Appeals of the State of New York.

The question involved in this case is, whether or not the stock of the United States, constituting a part or the whole of the capital stock of a bank organized under the banking laws of New York, is subject to State taxation. The capital of the bank is taxed under existing laws in that State upon valuation like the property of individual citizens, and not as formerly on the amount of the nominal capital, without regard to loss or depreciation.

According to that system of taxation it was immaterial as to the character or description of property which constituted the capital, as the tax imposed was wholly irrespective of it. The tax was like one annexed to the franchise as a royalty for the grant. But since the change of this system, it is agreed the tax is upon the property constituting the capital.

This stock then is held by the bank the same as such stocks are held by individuals, and alike subject to taxation, or exemption by State authority. On the part of the bank it is claimed that the question was decided in the case of *Weston, et als.* vs. *The City Councils of Charleston,* (2 Peters, 449,) in favor of exemption. In that case the stocks were in the hands of individuals which were taxed by the city authorities under a law of the State. The Court held the law imposing the tax unconstitutional. This decision would seem not only to cover the case before us, but to determine the very point involved in it.

It has been argued, however, that the form or mode of levying the tax under the ordinance of the City of Charleston was different from that of the law of New York, and hence may well distinguish the case and its principles from the present one. This difference consists in the circumstance that the tax in the former case was imposed on the stock, *eo nomine,* whereas in the present it is taxed in the aggregate of the tax payer's property, and to be valued at its real worth in the same manner as all other items of his taxable property. The stock is not taxed by name, and no discrimination is made in favor or against it, but is regarded like any other security for money or chose in action.

It is true that the ordinance imposing the tax in the case of *Weston* vs. *The City of Charleston,* did discrininate between the stock of the United States and other property—that is, the ordinance did not purport to impose a tax upon all the property owned by the tax payers of the City, and specially excepted certain property altogether from taxation. The only uniformity in the taxation was, that it was levied equally upon the articles enumerated, and which were taxed. To this extent it might be regarded as a tax on the stock *eo nomine.*

But does this distinction thus put forth between the two cases distinguish them in principle? The argument admits that a tax *eo nomine*, or one that distinguishes unfavorably the stock of the United States from the other property of the tax payer, cannot be upheld. Why? Because, as is said, if this power to discriminate be admitted to belong to the State it might be exercised to the destruction of the value of the stock, and consequently of the power or function of the Federal Government to issue it for any practical uses.

It will be seen, therefore, that the distincton claimed rests upon a limitation of the exercise of the taxing power of the State; that if the tax is imposed indiscriminately upon all the property of the individual or corporation, the stock may be included in the valuation; if not, it must be excluded or cannot be reached. The argument concedes that the Federal stock is not subject to the general taxing power of the State, a power resting in the discretion of its constituted authorities as to the objects of taxation, and the amount imposed. It is true that in many, if not in all of the Constitutions of the States, provisions will be found confining the power of the Legislature to the passage of uniform laws in the taxation of the real and personal property within her jurisdiction. But this is a restraint upon the power imposed by the State itself. In the absence of any such restriction discrimination in the tax would rest in the discretion of the Legislature. Whether regulated by the Constitution or by the Act of the Legislature is a question of State policy, to be determined by the people in convention or by the Legislature. In either case the power to discriminate or not is in the State. How then can this limitation upon the taxing power of a State, which the argument assumes may be used to discriminate against the Federal stocks be enforced? The power to enforce it must be independent of the State to be effectual. There can be but one answer to this question, and that is: by the supreme judicial tribunal of the Union. But is this Court a fit tribunal to sit in judgment upon the question whether the Legislature of a State has exercised its taxing power wisely or unwisely over objects

of taxation confessedly, as the argument assumes, within its discretion?

And is the question a judicial question? We think not. There is and must always be a considerable latitude of discretion in every wise Government in the exercise of the taxing power, both as to the objects and the amount, and of discrimination in respect to both. Property invested in religious institutions, seminaries of learning, charitable institutions, and the like, are examples. Can any Court say that these are discriminations which, upon the argument that seeks to distinguish the present from the case of *Weston* vs. *The City of Charleston*, would or would not take it out of that case? A Court may appropriately determine whether property taxed was or was not within the taxing power, but if within, not that the power has or has not been discreetly exercised. We cannot, therefore, yield our assent to the soundness of the distinction taken by the counsel between this case and the one referred to.

Upon looking at the case of *Weston* vs. *The City of Charleston*, it will be seen that the decision of a majority of the Court was not at all placed upon the distinction we have been considering, but upon ground much broader and wholly independent of it.

The tax upon the stocks was regarded as a tax upon the exercise of the power of Congress "to borrow money on the credit of the United States." The exercise of this power was interfered with to the extent of the tax imposed by the City authorities, that the liability of the certificates of stock to taxation by a State in the hands of an individual affected their value in the market, and the free and unrestrained exercise of the power. The Chief Justice observes, that "if the right to impose a tax exists, it is a right which, in its nature acknowledges no limits It may be carried to any extent within the jurisdiction of the State or corporation which imposes it, which the will of each State or corporation may prescribe."

He then refers to the taxing power of the State, its importance, and extensive operation, and the delicacy and difficulty of fixing any limit to its exercise; and that in the performance of this duty, which had, in other cases, devolved on the Court it was

considered as a necessary consequence of the supremacy of the Federal Government that its action in the exercise of its legitimate powers should be free and unembarrassed by any conflicting powers of the States, and that the powers of a State cannot rightfully be so exercised as to impede and obstruct the free course of those measures which this Government may rightfully adopt.

He further observed, that "the sovereignty of a State extends to every thing which exists by its own authority or is introduced by its permission, but not to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States. The attempt to use the power of taxation on the means employed by the Government of the Union in pursuance of the Constitution, is itself an abuse, because it is the usurpation of a power which the people of a single State cannot give," and the Chief Justice then adds, "a contract made by the Government in the exercise of its powers to borrow money on the credit of the United States is undoubtedly independent of the will of any State in which the individual who lends may reside, and is undoubtedly an operation essential to the important objects for which the Government was created."

It is apparent in studying this opinion in connection with the opinions of the Court in the cases of *McCullough* vs. *The State of Maryland*, (4 Wh., 116), and of *Osborne* vs. *The United States*, (9 Wh., 732), that it is but a corollary from the doctrines so ably expounded by the Chief Justice in the two previous cases in the interpretation of an analogous power in the Constitution.

The doctrine maintained in those cases is, that the powers granted by the people of the States to the General Government, and embodied in the Constitution, are supreme within their scope and operation, and that this Government may exercise these powers in its appropriate departments, free and unobstructed by any State legislation or authority. That within this limit this Government is sovereign and independent, and any interference by the State governments, tending to the interruption of the full legitimate exercise of the powers thus granted, is in conflict with that clause of the Constitution which makes the

Constitution and the Laws of the United States passed in pursuance thereof "the supreme law of the land."

The result of this doctrine is, that the exercise of any authority by a State Government trenching upon any of the powers granted to the General Government is, to the extent of the interference, an attempt to resume the grant in defiance of constitutional obligation; and more than this, if the encroachment or usurpation to any extent is admitted, the principle involved would carry the exercise of the authority of the State to an indefinite limit, even to the destruction of the power. For, as truly said by the Chief Justice in the case of *Weston* vs. *The City of Charleston*, in respect to the taxing power of the State, "if the right to impose the tax exists, it is a right which, in its nature, acknowledges no limit, it may be carried to any extent within the jurisdiction of the State or corporation which imposes it, which the will of each State and corporation may prescribe."

An illustration of this principle in respect to the powers of the judicial department of this Government, is found in the case of the *United States* vs. *Peters*, (5 Cranch, 115). There the Legislature of the State of Pennsylvania attempted to annul the judgment of a Court of the United States, and destroy all rights acquired under it. It was quite apparent, if the exercise of that power could be admitted, the principle involved might annihilate the whole power of the Federal Judiciary within the State. The Act of the Legislature did not profess to exercise this power generally, but only in the particular case, on the ground that the Court had no jurisdiction. But the Chief Justice, in giving the opinion of the Court, very naturally observes, that the right to determine the jurisdiction of the Courts was not placed by the Constitution in the State Legislatures, but in the supreme judicial tribunal of the nation. If time allowed, many other cases might be referred to, illustrating the principle in respect to other departments of this Government.

The conclusive answer to the attempted exercise of State authority in all these cases is, that the exercise is in derogation of the powers granted to the General Government, within which it is admitted, it is supreme. That Government whose powers

executive, legislative or judicial, whether it is a Government of enumerated powers like this one, or not, are subject to the control of another distinct Government, cannot be sovereign or supreme, but subordinate and inferior to the other. This is so palpable a truth that argument would be superfluous. Its functions and means essential to the administration of the Government, and the employment of them, are liable to constant interruption and possible annihilation. The case in hand is an illustration. The power to borrow money on the credit of the United States is admitted. It is one of the most important and even vital functions of the General Government, and its exercise a means of supplying the necessary resources to meet exigencies in times of peace or war. But of what avail is the function or the means if another Government may tax it at discretion. It is apparent that the power, function, or means, however important and vital, are at the mercy of that Government. And it must be always remembered, if the right to impose a tax at all exists on the part of the other Government, "it is a right which in its nature acknowledges no limits." And the principle is equally true in respect to every other power or function of a Government subject to the control of another.

In our complex system of government it is oftentimes difficult to fix the true boundary between the two systems, State and Federal. The Chief Justice, in *McCullough* vs. *the State of Maryland,* endeavored to fix this boundary upon the subject of taxation. He observed, "if we measure the power of taxation residing in a State by the extent of sovereignty which the people of a single State possess, and can confer on its government, we have an intelligible standard applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property unimpaired, which leaves to a State the command of all its resources, and which places beyond its reach all those powers which are conferred by the people of the United States on the Government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the States and safe for the Union."

All will agree that this is the enunciation of a true principle, and it is only by a wise and forbearing application of it that the operation of the powers and functions of the two Governments can be harmonized. Their powers are so intimately blended and connected that it is impossible to define or fix the limit of the one without at the same time that of the other in respect to any one of the great departments of Government. When the limit is ascertained and fixed, all perplexity and confusion disappear. Each is sovereign and independent in its sphere of action, and exempt from the interference or control of the other, either in the means employed or functions exercised, and influenced by a public and patriotic spirit on both sides, a conflict of authority need not occur or be feared.

Judgment of the Court below is reversed.*

THE BRIG AMY WARWICK.

THE SCHOONER CRENSHAW.

THE BARQUE HIAWATHA.

THE SCHOONER BRILLIANTE.

1 Neutrals may question the existence of a blockade, and challenge the legal authority of the party which has undertaken to establish it.

2 One belligerent, engaged in actual war, has a right to blockade the ports of the other, and neutrals are bound to respect that right.

3 To justify the exercise of this right, and legalize the capture of a neutral vessel for violating it, a state of actual war must exist, and the neutral must have knowledge or notice that it is the intention of one belligerent to blockade the ports of the other.

* The case of *The Bank of the Commonwealth* vs. *The Commissioner of Taxes*, was also heard at this term. The record raised precisely the same questions as that in the *Bank of Commerce* vs. *New York City*, and the cases were decided in the same way for the same reasons. It was argued by Mr. Bradford of New York, for the Bank, and by Mr. Brady and Mr. Develin, of New York, *contra*.