the will of Stephen Girard, were not intended to have any right, title, or claim whatsoever to the property.

In fine, the bill was rightly dismissed, because:

1st. The residue of the estate of Stephen Girard, at the time of his death, was, by his will, vested in the corporation on valid legal trusts, which it was fully competent to execute.

2d. By the supplement to the act incorporating the city (commonly called the "Consolidation Act"), the identity of the corporation is not destroyed; nor can the change in its name, the enlargement of its area, or increase in the number of its corporators, affect its title to property held at the time of such change.

3d. The corporation, under its amended charter, has every capacity to hold, and every power and authority necessary to execute the trusts of the will.

4th. That the difficulties anticipated by the bill, as to the execution of the secondary trusts, are imaginary. They have not arisen, and most probably never will.

5th. And if they should, it is a matter, whether probable or improbable, with which the complainants have no concern, and cannot have on any possible contingency.

DECREE AFFIRMED WITH COSTS.

THE BANKS *v.* THE MAYOR.

1. Where an act of a State legislature authorized the issue of bonds, by way of refunding to banks such portions of a tax as had been assessed on Federal securities made by the Constitution and statutes of the United States exempt from taxation, and the officers who were empowered to issue the obligations refused to sign them, because, as they alleged, a portion of the securities for the tax on which the bank claimed reimbursement, was, in law, not exempt, and the highest court of the State sanctioned this refusal: *Held*, that this was a decision by a State court against a right, privilege, or immunity claimed under the Constitution or a statute of the United States, and so that this court had jurisdiction under the 25th section of the Judiciary Act, and the amendatory act of February 5th, 1867.
2. Certificates of indebtedness issued by the United States to creditors of the

Statement of the case.

government, for supplies furnished to it in carrying on the recent war for the integrity of the Union, and by which the government promised to pay the sums of money specified in them, with interest, at a time named, are beyond the taxing power of the States.

THESE were three cases in error to the Court of Appeals of New York, in which the people of that State, at the relation of different banks there, were plaintiffs in error, and the mayor and controller of the city of New York were defendants. Each presented, under somewhat different forms, the same question, namely: "Are the obligations of the United States, known as certificates of indebtedness, liable to be taxed by State legislation?"

The certificates referred to were issued under authority of Congress, empowering the Secretary of the Treasury to issue them to any public creditor who might be desirous of receiving them. They were payable in one year or earlier, at the option of the government, and bore six per cent. interest. In the present cases, they had been issued to creditors for supplies necessary to carrying on the war for the suppression of the late rebellion.

The three cases were argued and considered together. The more immediate case in each was thus: In 1863 and in 1864, the proper officers of the State, acting under the laws of New York, assessed certain taxes upon the capital stock of the several banking associations in that State. Some of these banking associations resisted the collection of the tax on the ground that, though nominally imposed upon their respective capitals, it was, in fact, imposed upon the bonds and obligations of the United States, in which a large proportion of these capitals was invested, and which, under the Constitution and laws of the United States, were exempt from State taxation.

This question was brought before the Court of Appeals, which sustained the assessments, and disallowed the claim of the banking associations.

From this decision an appeal was taken to this court, upon the hearing of which, at the December Term, 1864, it was adjudged that the taxes imposed upon the capitals of the as-

sociations were a tax upon the national bonds and obligations in which they were invested, and, therefore, so far, contrary to the Constitution of the United States.*

A mandate in conformity with this decision was sent to the Court of Appeals of New York, which court thereupon reversed its judgment, and entered a judgment agreeably to the mandate.

Afterwards, on the 30th of April, 1866, the legislature of New York provided by law for refunding to the banking associations, and other corporations in like condition, the taxes of 1863 and 1864, collected upon that part of their capitals invested in securities of the United States exempt by law from taxation. The board of supervisors of the county of New York was charged with the duty of auditing and allowing, with the approval of the mayor of the city and the corporation counsel, the amount collected from each corporation for taxes on the exempt portion of its capital, together with costs, damages, and interest. Upon such auditing and allowance, the sums awarded were to be paid to the corporations severally entitled, by the issue to each of New York County seven per cent. bonds of equal amounts. These bonds were to be signed by the controller of the city of New York, countersigned by the mayor, and sealed with the seal of the board of supervisors, and attested by the clerk of the board.

Under this act the board of supervisors audited, and allowed to the several institutions represented in the three cases under consideration, their several claims for taxes collected upon the national securities held by them, including in this allowance the taxes paid on certificates of indebtedness, which the corporations asserted to be securities of the United States exempt from taxation. But the controller, mayor, and clerk refused to sign, countersign, seal, and attest the requisite amount of bonds for payment, insisting that certificates of indebtedness were not exempt from taxation. A writ of mandamus was thereupon sued out of the

* Bank Tax Case, 2 Wallace, 200.

Argument in favor of the tax.

Supreme Court of New York, for the purpose of compelling these officers to perform their alleged duties in this respect. An answer was filed, and the court by its judgment sustained the refusal. An appeal was taken to the Court of Appeals of New York, by which the judgment of the Supreme Court was affirmed. Writs of error, under the 25th section of the Judiciary Act, brought these judgments here for revision; the section* which gives such writ, where is drawn in question the validity of a statute of, or authority exercised under any State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision is in favor of such validity; or where is drawn in question the construction of any clause of the Constitution or statute of the United States, and the decision is against the title, right, privilege, or exemption specially set up, &c.;—a paragraph, this last, re-enacted by act of February 5th, 1867,† with additional words, as "where any title, right, privilege, or immunity is claimed under the Constitution, or any statute of or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up, &c."

Messrs. O'Connor and O'Gorman in support of the judgment below:

1. The judgment below is not subject to review here. The banks having voluntarily paid the tax, had no right to recover it, even in a regular action at law or suit in equity. There was no color of a claim enforceable by mandamus, except such as might have arisen under the State act of April 30th, 1866. The reimbursement contemplated by that act was a favor to a certain class of claimants upon its liberality. By the voluntary payment, the banks waived any exemption that might have existed. When they appeared in the State court they had no title, right, or privilege, save such as may have been conferred by the State act. The construction, import, and effect of the Constitution and laws of

* 1 Stat. at Large, 85.

† 14 Id. 384.

the United States in respect to taxation by States, were only incidentally brought under consideration in the State court; not immediately "drawn in question," within the meaning of the Judiciary Act.

2. The exemption set up on the other side, can rest only upon the power of Congress "to borrow money on the credit of the United States." The organs whereby the Federal government carries on its operations are, we admit, exempt. But a certificate or statement of a *past indebtedness* —a mere *chose*—property in the hands of a citizen—is not a necessary instrumentality of the government. There is no particular virtue in the certificate. It affords ready proof of the debt, but does not alter its character.

Is, then, issuing a certificate acknowledging a *pre-existing* debt, *arising from the purchase of supplies or procuring of service*, "borrowing money?" According to ordinary understanding it certainly is not. The term in use at the time, which would have come nearest to a description of these certificates, is "bills of credit." With these the Convention was familiar, and prohibited their issue by the States. It did not confer upon Congress power to issue them. The modes of raising means to support the government are pointed out by the Constitution. First, taxes, &c. Secondly, borrowing money. Buying on credit is not sanctioned, and was not necessary to be sanctioned. The other means were adequate so long as there was money at home or credit abroad. If the relators cannot stand upon an implication from the principles of the Constitution they must fail.

Messrs. Peckham and Burrill, with whom was Rodman, contra, submitting that the jurisdiction of this court was sufficiently plain, and reiterating, enlarging, and enforcing the arguments made in recent previous cases denying the right of States to tax Federal securities held by banks,* contended that the *credit* of the United States, independently of the form

* Bank of Commerce *v.* New York City, 2 Black, 620; Bank Tax Case, 2 Wallace, 200; Van Allen *v.* The Assessors, 3 Id. 573.

in which it is used, was the matter meant to be protected, and that whatever securities or contracts were issued upon that credit were exempt from State taxation.

The certificates were given to creditors having *debts due;* such as the creditors were entitled to have paid. Suppose them to be paid, and the creditors then immediately to lend the money to the United States on these certificates of indebtedness; that would confessedly be a loan, and not taxable. Now the certificates are issued simply to avoid this roundabout operation, and to creditors desirous of receiving them. They extend the time of payment and bear interest. Without them the debt would be payable immediately and without interest. It is thus, in substance, a *new contract* and a loan.

The government does not want money itself, but commodities and the services of men. It borrows only because it is easier to use the medium of exchange in its transactions than it is directly to secure commodities, services, &c., in kind. In essence, a borrowing of money and a purchase of commodities on credit are the same thing. Now, cases decide that the government's contract for the loan of money, or for the services of men, is exempt. Can any reason be shown why a contract for the purchase of commodities with an issue of a certificate of debt for them, should not be in the same position? The object in each case is the same, and the obstacles to the completion of the transaction desired by the government would be as detrimental to the public interest in one case as in the other.

In all registered loans of the government, the certificates of stock are in the form of certificates of indebtedness; that is to say, they import that the United States are indebted to the persons therein named in a sum therein expressed, which is to be paid at a specified time and place, with a specified rate of interest.

Some, indeed, are called by one name and some by another; but the different securities are so styled for convenience only, and not because of any difference in the essence of the obligation. They are all "securities" of the

United States; or, as Mr. Justice Bouvier defines that term,* "instruments which render certain the performance of a contract."

The CHIEF JUSTICE delivered the opinion of the court in all the cases.

The first question to be considered is one of jurisdiction. It is insisted, in behalf of the defendants in error, that the judgment of the New York Court of Appeals is not subject to review in this court.

But is it not plain, that under the act of the legislature of New York the banking associations were entitled to reimbursement by bonds of the taxes illegally collected from them in 1863 and 1864?

No objection was made in the State court to the process by which the associations sought to enforce the issue of the bonds to which they asserted their right. Mandamus to the officers charged with the execution of the State law seems to have been regarded on all hands as the appropriate remedy.

But it was objected on the part of those officers, that the particular description of obligations, of the tax on which the associations claimed reimbursement, were not exempt from taxation. The associations, on the other hand, insisted that these obligations were exempt under the Constitution and laws of the United States. If they were so exempt, the associations were entitled to the relief which they sought. The judgment of the Court of Appeals denied the relief upon the ground that certificates of indebtedness were not entitled to exemption. Is it not clear that, in the case before the State court, a right, privilege, or immunity was claimed under the Constitution or a statute of the United States, and that the decision was against the right, privilege, or immunity claimed? And, therefore, that the jurisdiction of this court to review that decision is within the express words of the amendatory act of February 5th, 1867? There

* Law Dictionary, title "Security."

can be but one answer to this question. We can find no ground for doubt on the point of jurisdiction.

The general question upon the merits is this:

Were the obligations of the United States, known as certificates of indebtedness, liable to State taxation?

If this question can be affirmatively answered, the judgments of the Court of Appeals must be affirmed; if not, they must be reversed.

Evidences of the indebtedness of the United States, held by individuals or corporations, and sometimes called stock or stocks, but recently better known as bonds or obligations, have uniformly been held by this court not to be liable to taxation under State legislation.

The authority to borrow money on the credit of the United States is, in the enumeration of the powers expressly granted by the Constitution, second in place, and only second in importance to the authority to lay and collect taxes. Both are given as means to the exercise of the functions of government under the Constitution; and both, if neither had been expressly conferred, would be necessarily implied from other powers. For no one will assert that without them the great powers—mentioning no others—to raise and support armies, to provide and maintain a navy, and to carry on war, could be exercised at all; or, if at all, with adequate efficiency.

And no one affirms that the power of the government to borrow, or the action of the government in borrowing, is subject to taxation by the States.

There are those, however, who assert that, although the States cannot tax the exercise of the powers of the government, as for example in the conveyance of the mails, the transportation of troops, or the borrowing of money, they may tax the indebtedness of the government when it assumes the form of obligations held by individuals, and so becomes in a certain sense private property.

This court, however, has constantly held otherwise.

Forty years ago, in the case of *Weston* v. *The City of Charles-*

ton, this court, speaking through Chief Justice Marshall, said:*

"The American people have conferred the power of borrowing money upon their government, and by making that government supreme have shielded its action in the exercise of that power from the action of the local governments. The grant of the power is incompatible with a restraining or controlling power, and the declaration of supremacy is a declaration that no such restraining or controlling power shall be exercised."

And applying these principles the court proceeded to say:

"The right to tax the contract to any extent, when made, must operate on the power to borrow before it is exercised, and have a sensible influence on the contract. The extent of this influence depends on the will of a distinct government. To any extent, however inconsiderable, it is a burden upon the operations of the government. It may be carried to an extent which shall arrest them entirely."

And finally:

"A tax on government stock is thought by this court to be a tax on the contract, a tax on the power to borrow money on the credit of the United States, and consequently repugnant to the Constitution."

Nothing need be added to this, except that in no case decided since have these propositions been retracted or qualified. The last cases in which the power of the States to tax the obligations of the government came directly in question were those of the *Bank of Commerce* v. *The City of New York*,† in 1862, and the *Bank Tax Case*,‡ in 1865, in both of which the power was denied.

An attempt was made at the bar to establish a distinction between the bonds of the government expressed for loans of money and the certificates of indebtedness for which the exemption was claimed. The argument was ingenious, but failed to convince us that such a distinction can be main-

* 2 Peters, 467. † 2 Black, 628. ‡ 2 Wallace, 200.

tained. It may be admitted that these certificates were issued in payment of supplies and in satisfaction of demands of public creditors. But we fail to perceive either that there is a solid distinction between certificates of indebtedness issued for money borrowed and given to creditors, and certificates of indebtedness issued directly to creditors in payment of their demands; or that such certificates, issued as a means of executing constitutional powers of the government other than of borrowing money, are not as much beyond control and limitation by the States through taxation, as bonds or other obligations issued for loans of money.

The principle of exemption is, that the States cannot control the national government within the sphere of its constitutional powers—for there it is supreme—and cannot tax its obligations for payment of money issued for purposes within that range of powers, because such taxation necessarily implies the assertion of the right to exercise such control.

The certificates of indebtedness, in the case before us, are completely within the protection of this principle. For the public history of the country and the acts of Congress show that they were issued to creditors for supplies necessary to the government in carrying on the recent war for the integrity of the Union and the preservation of our republican institutions. They were received instead of money at a time when full money payment for supplies was impossible, and according to the principles of the cases to which we have referred, are as much beyond the taxing power of the States as the operations themselves in furtherance of which they were issued.

It results that the several judgments of the Court of Appeals must be

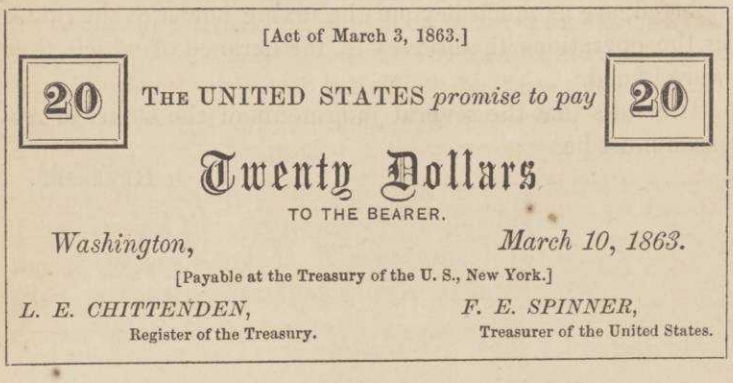
REVERSED.

NOTE.—At the same time with the cases just disposed of was decided another, from the same court, involving the same question of the right to tax as they did, but differing from them in certain respects. It is here reported:

BANK *v.* SUPERVISORS.

1. United States notes issued under the Loan and Currency Acts of 1862 and 1863, intended to circulate as money, and actually constituting, with the National bank notes, the ordinary circulating medium of the country, are, moreover, obligations of the National government, and exempt from State taxation.
2. United States notes are engagements to pay dollars; and the dollars intended are coined dollars of the United States.

THIS case—brought here by the Bank of New York—differed from the preceding in two particulars: (1) That the board of supervisors, which in the other cases allowed and audited the claims of the banking associations, refused to allow the claim made in this case; and (2) That the exemption from State taxation claimed in this case, was of United States notes, declared by act of Congress to be a legal tender for all debts, public and private, except duties on imports and interest on the public debt, while in the other cases it was of certificates of indebtedness. These United States notes, as is sufficiently known at the present, had become part of the currency of the country. Their form (with certain necessary variations for different denominations, place of payment, &c.) was thus:



[Act of March 3, 1863.]

20 THE UNITED STATES *promise to pay* 20

Twenty Dollars

TO THE BEARER.

Washington, *March 10, 1863.*

[Payable at the Treasury of the U. S., New York.]

L. E. CHITTENDEN,
Register of the Treasury.

F. E. SPINNER,
Treasurer of the United States.