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lative and judicial departments of the government. Where there is a choice of means the selection is with Congress, not the court. If the act to be considered is in any sense essential to the execution of an acknowledged power, the degree of that necessity is for the legislature and not for the court to determine. In the case in *Wheaton*, from which I have already quoted so fully, the court says that "where the law is not prohibited, and is really calculated to effect any of the objects intrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretences to such a power." This sound exposition of the duties of the court in this class of cases, relieves me from any embarrassment or hesitation in the case before me. If I had entertained doubts of the constitutionality of the law, I must have held the law valid until those doubts became convictions. But as I have a very decided opinion that Congress acted within the scope of its authority, I must hold the law to be constitutional, and dissent from the opinion of the court.

NOTE.

At the same time with the decision of the preceding case was decided a case in error to the Supreme Court of California, argued some time before it;—the case, namely, of

BRODERICK'S EXECUTOR v. MAGRAW,

In which the principles of the preceding case of *Hepburn v. Griswold* were affirmed.

The case was this:

Magraw preferred a claim by petition in the Probate Court of the city of San Francisco, upon a note made by Broderick to the petitioner at New York, on the 1st of July, 1858. Broderick dying, his executor defended the suit.

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The defence set up by the executor was a tender of the amount due in United States notes.

To this it was answered that the executor had collected the debts due to the estate in coin, and was bound, as trustee, to pay the coin thus collected to the creditors; and, further, that the debt was contracted prior to the passage of the legal tender act, and could, therefore, be satisfied only in coin, according to the terms of the contract.

Judgment was rendered in favor of the petitioner, and the judgment was affirmed by the Supreme Court of the State. From that court it was brought by the other party here.

Mr. Carlisle, for the plaintiff in error ; Mr. Wills, contra.

The CHIEF JUSTICE now gave the opinion of the court, to the effect that it was not necessary to examine the several questions presented by the record, for that the principles of the decision just rendered required the affirmation of the judgment of the Supreme Court, and that it was

AFFIRMED ACCORDINGLY.

McVEIGH v. UNITED STATES.

A clerical mistake in a writ of error may be amended by the citation.

Mr. Assistant-Attorney Field, for the United States, moved to dismiss this case for imperfection in the writ, an exhibition of which showed that it was dated December 2d, 1868, and was returnable to "the 3d Monday of December *next*." But a production by *Mr. Cushing, contra*, of the citation, showed that it commanded the party to "be and appear at a Supreme Court of the United States on the 3d Monday of December *instant*, pursuant to a writ of error filed in the clerk's office, &c." And he argued that the citation was in fact the effective document, and the issuing of the writ but an antiquated and really useless ceremony, practised still but from deference to ancient form; that accordingly the writ might be amended by the citation. C. A. V.

MOTION DENIED.