

In 1816 the Second Bank of the United States was established by an act of Congress. The B.U.S., as it was called, was a private bank but acted as an agent of the federal government for the collection of taxes, the transfer of government funds, and the disbursement of money for the government.

The B.U.S. set up branches in several states. Maryland, like other states, did not like such competition with its state-chartered banks, and decided to tax all out-of-state banks operating in Maryland. The B.U.S. was taxed an annual fee of \$15,000, with a penalty of \$500 for each offense of issuing bank notes without paying the tax. The cashier of the B.U.S. branch bank, James McCulloch, refused to pay the tax in any form and was sued by the state of Maryland. The state courts upheld the state tax law. The B.U.S. carried the case to the Supreme Court in 1819.

In presenting its case, the state of Maryland argued that the federal Constitution was created by sovereign and independent states who chose to join together. Since the powers given to the federal government in the Constitution were "delegated" by the states, the federal government was actually created by the states, and should do as the states said.

Marshall then went on to take up the first of the two significant questions raised by this case: Does Congress have the power to incorporate a bank? Speaking for a unanimous Court, he said that it did:

► A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, . . . could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. . . . In considering this question, then, we must never forget, that it is a constitution we are expounding.

Although, among the enumerated powers of government, we do not find the word "bank" . . . we find the great powers to lay and collect taxes; to borrow money. . . . The power being given, it is the interest of the nation to facilitate its execution. . . . Throughout this vast republic, from the St. Croix to the Gulph of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, armies are to be marched and supported. The exigencies of the nation may require that the treasure raised in the north should be transported to the south, that raised in the east conveyed to the west, or that this order should be reversed. Is that construction [interpretation] of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? . . .

To its [the Constitution's] enumeration of powers is added that of making "all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department thereof."

To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end.

Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

The Court then examined the second important question raised by *McCulloch v. Maryland*: May Maryland constitutionally tax a branch of the B.U.S.? Marshall, speaking for the Court, said no:

► [There is] a principle which so entirely pervades the constitution, is so interwoven with the materials which compose it, so interwoven with its web, so blended with its texture, as to be incapable of being separated from it, without rending it into shreds.

This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries. . . . These are: 1st, that a power to create implies a power to preserve; 2nd, That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with these powers to create and to preserve; 3d, That where this repugnancy exists, that authority which is supreme must control, not yield to that over which it is supreme.

If the States may tax one instrument, employed by the government, in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.

The Court has bestowed on this subject the most deliberate consideration. The result is a conviction that 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 execution the powers vested in the general government.

Thus the Court enforced the "supreme law of the land" provision of Article VI and gave a broad interpretation to the last clause of Article I granting Congress the power to make laws "necessary and proper" to carry out its delegated powers.

Questions:

1. What was Maryland's view of the B.U.S.? What actions did it take against the B.U.S.? What constitutional argument did the state offer in defense of its actions?
2. What two questions did the court take up with regard this case?
3. How did the court answer the questions? What philosophical view of the constitution is expressed here?