

CHAPTER XVIII.

POWER TO ESTABLISH POST-OFFICES AND POST-ROADS.

§ 551. The next power of congress is, "to establish post-offices and post-roads." The nature and extent of this power, both theoretically and practically, are of great importance, and have given rise to much ardent controversy. It deserves, therefore, a deliberate examination. It was passed over by the Federalist with a single remark, as a power not likely to be disputed in its exercise, or to be deemed dangerous by its scope. The "power," says the Federalist, "of establishing post-roads must, in every view, be a harmless power; and may, perhaps, by judicious management, become productive of great public conveniency. Nothing, which tends to facilitate the intercourse between the states, can be deemed unworthy of the public care." One cannot but feel, at the present time, an inclination to smile at the guarded caution of these expressions, and the hesitating avowal of the importance of the power. It affords, perhaps, one of the most striking proofs, how much the growth and prosperity of the country have outstripped the most sanguine anticipations of our most enlightened patriots.

§ 552. The post-office establishment has already become one of the most beneficent, and useful establishments under the national government. It circulates intelligence of a commercial, political, intellectual, and private nature, with incredible speed and regularity. It thus administers, in a very high degree, to the comfort,

the interests, and the necessities of persons, in every rank and station of life. It brings the most distant places and persons, as it were, in contact with each other; and thus softens the anxieties, increases the enjoyments, and cheers the solitude of millions of hearts. It imparts a new influence and impulse to private intercourse; and, by a wider diffusion of knowledge, enables political rights and duties to be performed with more uniformity and sound judgment. It is not less effective, as an instrument of the government in its own operations. In peace, it enables it without ostentation or expense to send its orders, and direct its measures for the public good, and transfer its funds, and apply its powers, with a facility and promptitude, which, compared with the tardy operations, and imbecile expedients of former times, seem like the wonders of magic. In war it is, if possible, still more important and useful, communicating intelligence vital to the movements of armies and navies, and the operations and duties of warfare, with a rapidity, which, if it does not always ensure victory, at least, in many instances, guards against defeat and ruin. Thus, its influences have become, in a public, as well as private view, of incalculable value to the permanent interests of the Union. It is obvious at a moment's glance at the subject, that the establishment in the hands of the states would have been wholly inadequate to these objects; and the impracticability of any uniformity of system would have introduced infinite delays and inconveniences; and burthened the mails with an endless variety of vexatious taxations, and regulations. No one, accustomed to the retardations of the post in passing through independent states on the continent of Europe, can fail to appreciate the benefits of a power, which pervades the

Union. The national government is that alone, which can safely or effectually execute it, with equal promptitude and cheapness, certainty and uniformity. Already the post-office establishment realizes a revenue exceeding two millions of dollars, from which it defrays all its own expenses, and transmits mails in various directions over more than one hundred and twenty thousand miles. It transmits intelligence in one day to distant places, which, when the constitution was first put into operation, was scarcely transmitted through the same distance in the course of a week. The rapidity of its movements has been in a general view doubled within the last twenty years. There are now more than eight thousand five hundred post-offices in the United States; and at every session of the legislature new routes are constantly provided for, and new post-offices established. It may, therefore, well be deemed a most beneficent power, whose operations can scarcely be applied, except for good; accomplishing in an eminent degree some of the high purposes set forth in the preamble of the constitution; forming a more perfect union; providing for the common defence; and promoting the general welfare.

§ 553. Upon the construction of this clause of the constitution, two opposite opinions have been expressed. One maintains, that the power to establish post-offices and post-roads can intend no more, than the power to direct, where post-offices shall be kept, and on what roads the mails shall be carried. Or, as it has been on other occasions expressed, the power to establish post-roads is a power to designate, or point out, what roads shall be mail-roads, and the right of passage or way along them, when so designated. The other maintains, that although these modes of exercising the

power are perfectly constitutional ; yet they are not the whole of the power, and do not exhaust it. On the contrary, the power comprehends the right to make, or construct any roads, which congress may deem proper for the conveyance of the mail, and to keep them in due repair for such purpose.

§ 554. The whole practical course of the government upon this subject, from its first organization down to the present time, under every administration, has repudiated the strict and narrow construction of the words above mentioned. The power to establish post-offices and post-roads has never been understood to be limited to the power to point out and designate post-offices and post-roads. Resort has been constantly had to the more expanded sense of the word "establish;" and no other sense can include the objects, which the post-office laws have constantly included. Nay, it is not only not true, that these laws have stopped short of an exposition of the words sufficiently broad to justify the making of roads ; but they have included exercises of power far more remote from the immediate objects. If the practice of the government is, therefore, of any weight in giving a constitutional interpretation, it is in favour of the liberal interpretation of the clause.

§ 555. But passing by considerations of this nature, why does not the power to establish post-offices and post-roads include the power to make and construct them, when wanted, as well as the power to establish a navy-hospital, or a custom-house, a power to make and construct them ? The latter is not doubted by any persons ; why then is the former ? In each case, the sense of the ruling term "establish" would seem to be the same ; in each, the power may be carried into effect

by means short of constructing, or purchasing the things authorized. A temporary use of a suitable site or building may possibly be obtained with, or without hire. Besides; why may not congress purchase, or erect a post-office building, and buy the necessary land, if it be in their judgment advisable? Can there be a just doubt, that a power to establish post-offices includes this power, just as much, as a power to establish custom-houses would to build the latter? Would it not be a strange construction to say, that the abstract office might be created, but not the officina, or place, where it should be exercised? There are many places peculiarly fit for local post-offices, where no suitable building could be found. And, if a power to construct post-office buildings exists, where is the restraint upon constructing roads?

§ 556. But whatever be the extent of the power, narrow or large, there will still remain another inquiry, whether it is an exclusive power, or concurrent in the states. This is not, perhaps, a very important inquiry, because it is admitted on all sides, that it can be exercised only in subordination to the power of congress, if it be concurrent in the states. A learned commentator deems it concurrent, inasmuch as there seems nothing in the constitution, or in the nature of the thing itself, which may not be exercised by both governments at the same time, without prejudice or interference; but subordinate, because, whenever any power is expressly granted to congress, it is to be taken for granted, that it is not to be contravened by the authority of any particular state. A state might, therefore, establish a post-road, or post-office, on any route, where congress had not established any. On the other hand, another learned commentator is of opinion, that the power is exclu-

sive in congress, so far as relates to the conveyance of letters. Hitherto the question has been purely speculative; and it cannot now be important to discuss it. It is highly improbable, that any state will attempt any exercise of the power, considering the difficulty of carrying it into effect, without the co-operation of congress.