

Sec. 8—Powers of Congress

Cls. 5 and 6—Money

ate the monetary policies of Congress.¹³⁶⁴ In a concurring opinion, Justice Stone declined to join with the majority in suggesting that “the exercise of the sovereign power to borrow money on credit, which does not override the sovereign immunity from suit, may nevertheless preclude or impede the exercise of another sovereign power, to regulate the value of money; or to suggest that although there is and can be no present cause of action upon the repudiated gold clause, its obligation is nevertheless, in some manner and to some extent, not stated, superior to the power to regulate the currency which we now hold to be superior to the obligation of the bonds.”¹³⁶⁵ However, with a view to inducing purchase of savings bonds, the sale of which is essential to successful management of the national debt, Congress is competent to authorize issuance of regulations creating a right of survivorship in such bonds registered in co-ownership form, and such regulations preempt provisions of state law prohibiting married couples from using the survivorship privilege whenever bonds are paid out of community property.¹³⁶⁶

Clause 7. The Congress shall have Power * * * To establish Post Offices and post roads.

POSTAL POWER

“Establish”

The great question raised in the early days with reference to the postal clause concerned the meaning to be given to the word “establish”—did it confer upon Congress the power to construct post offices and post roads, or only the power to designate from existing places and routes those that should serve as post offices and post roads? As late as 1855, Justice McLean stated that this power “has generally been considered as exhausted in the designation of roads on which the mails are to be transported,” and concluded that neither under the commerce power nor the power to establish post roads could Congress construct a bridge over a navigable water.¹³⁶⁷ A decade earlier, however, the Court, without passing upon the validity of the original construction of the Cumberland Road, held that being “charged . . . with the transportation of the mails,” Congress could enter a valid compact with the State of Pennsylvania regard-

¹³⁶⁴ *Perry v. United States*, 294 U.S. 330, 353 (1935).

¹³⁶⁵ 294 U.S. at 361.

¹³⁶⁶ *Free v. Bland*, 369 U.S. 663 (1962).

¹³⁶⁷ *United States v. Railroad Bridge Co.*, 27 Fed. Cas. 686 (No. 16,114) (C.C.N.D. Ill. 1855).