

# Exhibit 1

**COMMENTARIES**

ON

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**BY JAMES KENT.**

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fore been concurrent, was by that exercise prohibited, and this was the opinion of the court.

These are sound expositions of the paramount powers of the general government, and the same doctrines had been previously declared in the Court of Errors of this state, in the steam boat case of *Livingston v. Van Ingen*.<sup>a</sup> "Our safe rule of construction and of action," as it was there observed,<sup>b</sup> "was this, that if any given power was originally vested in this state, if it had not been exclusively ceded to congress, or if the exercise of it has not been prohibited to the states, we might then go on in the exercise of power, until it came practically in collision with the exercise of some congressional power. When that happened to be the case, the state authority would so far be controlled, but it would still be good in all those respects in which it did not contravene the provision of the paramount law." A similar exposition of the concurrent jurisdiction of the states, was given by the Supreme Court of Pennsylvania, in *Moore v. Houston*.<sup>c</sup>

When the constitution of the United States was under the consideration of the state conventions, there was much concern expressed on the subject of the general power of taxation over all objects of taxation, vested in the national government; and it was supposed that it would be in the power of congress, in its discretion, to destroy in effect the concurrent power of taxation remaining in the states, and to deprive them of the means of supplying their own wants. All the resources of taxation might, by degrees, become the subjects of federal monopoly. The states must support themselves by direct taxes, duties, and excises, and congress may lay the same burthen, at the same time, on the same subject. Suppose the national tax should be as great as the article, whether it be land, or distilled spirits, or pleasure

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<sup>a</sup> 9 *Johnson's Rep.* 507.

<sup>b</sup> 9 *Johnson's Rep.* p. 576.

<sup>c</sup> 3 *Serg. & Racl.* 179.