no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication."

The same misfortune has attended the gentleman in his citation from the decision of the Court of Appeals in 3 Gill, from which I will read but a passage:

"It is not necessary at this day to enter into any examination of the Constitution, for the purpose of ascertaining the class of powers surrendered to the General Government, and those retained by the States. It is *established*, that the States still hold all the powers which they *originally possessed*, except such as have been *delegated* to the United States, or *prohibited* to the States. This is the language of the 10th article to the Amendments to the Constitution. And it clearly appears from the papers of the Federalist, that the distinguished men who participated so largely in the formation and adoption of the Constitution, regarded this as its true interpretation, in the absence of the amendments referred to. The author of the 32d number of that work, when discussing the proposed plan of the Constitution, said: 'As the plan of the Constitution aims only at a partial union or consolidation, the State governments would clearly retain *all the rights of sovereignty* which they before had, and which were not by that act exclusively delegated to the United States.'"

I might pile authority upon authority to the same effect, from the decisions of the Supreme Court of the United States, and from the courts of every State in the Union wherever this subject has been considered.

Now what does the instrument itself—what does the Constitution say? On its every page, and in almost every section and line, is written the existence and powers of the State, and the limited nature and extent of the powers conferred on the General Government. Its very first section contains a grant of legislative power. "All legislative powers herein granted," is the language of the section. The Legislative Committee of this Convention would write themselves down fools for posterity if they should undertake to put into our Constitution such a clause as that. They will simply, as they have always done, organize such a department, and declare that it shall consist of such and such branches, and then prohibit it from exercising certain powers, and command it to do certain things, leaving it in its discretion to exercise all the vast unlimited field of legislative power, about which they say nothing.

I need not refer to other clauses of the Constitution, but I will mention simply this. This great central government, as gentlemen call it, could never have had a local habitation, except for the grant or cession from particular States, of a place within which to locate itself. It cannot go into the State of Maryland to erect a fort, or an arsenal, or a dock-yard, or any other needful building, without first going to the Legislature for their assent.

Mr. STIRLING. Does the gentleman deliberately make that statement upon the question of Constitutional law?

Mr. MILLER. I do, sir. Not longer than a few years since, when the General Government wanted to build an aqueduct to take water into the city of Washington to supply the national capital, they came to the Legislature of the State of Maryland, and asked its assent. Without this assent this great Government could not go upon the soil and territory of Maryland, and take from its citizens one foot of land which they held under the State government.

Mr. STIRLING. They asked the right of jurisdiction.

Mr. MILLER. They asked the right of jurisdiction. They asked the right to go there. Whenever a cession is made, it is always made with a reservation of concurrent jurisdiction in the State.

The doctrine that a law of Congress is constitutional only, provided the power to pass it is granted in the Constitution, but that an act of the Legislature is constitutional unless prohibited by the Constitution, is to the same effect. When a law of Congress comes before the Courts for adjudication, and it is assailed upon the ground that it is unconstitutional, the *onus* is upon those who support the law to show that in the Constitution of the United States, the power to pass that law has been specifically granted to Congress, or granted by necessary implication. If the power to pass it is not found to be granted expressly, or by implication, the law is unconstitutional and void. But when an act of the State Legislature comes before the same tribunals, the question is just the reverse: it is presumed to be constitutional unless you first show that the power to pass it was prohibited by the Constitution of the State or the United States. That is the distinction. In the one case you look for *granted* powers; in the other you look for *prohibitions* of power.