21ST. CONGRESS.

House of Representatives, February 21, 1831.

SPEECH OF MR. HAYNES,

OF GEORGIA.

In reply to Mr. EVERETT, *of Massachusetts, on the various points connected with the rights of Georgia to extend her jurisdiction over the Indians within her limits, and their removal west of the Mississippi.*

M. HAYNES said, when this subject was so elaborately discussed at the last session of Congress, and particularly when so large a share of that discussion was borne by the honorable gentleman from Massachusetts, (Mr. EVERETT,) & his friends, he had hoped it would never again be agitated in this House.—When the proposition of the honorable gentleman was offered, he confessed he felt an excitement which would then have rendered him incapable of discussing it with becoming self respect, or what was due from him to this House.

In his calmer reflections, he had determined to bring alone to its consideration the dictates of his understanding and his judgment, whatever of passion might heretofore have been mingled with it.

Imputing no motives to any member of this House where such imputation is wholly inadmissible, he must say, that if, in the former discussions here and elsewhere, he had thought he discovered a political humanity regulating the movements of the opposition, he could see nothing in the present aspect of affairs in the slighest degree to change that opinion—a political humanity, which, to say the most of it, is like that charitable knight errantry, which, overlooking the object at its feet, seeks for it among the antipodes.

If the half that has been said here and elsewhere should be believed, it would be sufficient, in speaking of an individual, to embody all that is infamous in calling him a Georgian. And for what purpose was all this outry against the State of Georgia? It arises from the same principles which would have inflicted a consolidated government on this country in 1787; whose advocates said of Mr. Jefferson, in 1807, that he could not be kicked into a war; which would have driven out Mr. Madison in 1814, for declaring and prosecuting that war; and which would drive out General Jackson now, because he defeated them at New Orleans, and because he refuses to consider a constitution of limited powers a charter of unlimited powers. The party possessing these principles has changed its name, but not its principles. The national republicans of 1831 are the true successors of the ultra federalists of 30 years ago; and those who would drive Gen. Jackson from the administration of the government, do not differ from those who passed the sedition law of 1798. This party, which has, so far as names are concerned, shown the same facility of change as the cameleon, now seeks, as it has sought ever since its hopes were disappointed in the federal convention, to arrive at its object through the instrumentality of the Supreme Court. But more of this subject hereafter.

In rising to address the House on the present occoccasion, illy prepared by indifferent health, and other public duties, to follow the gentleman from Massachusetts over the whole ground he had chosen to occupy, he should content himself with offering a few brief and desultory observations to the consideration of the House. Nor would he have risen, but for the peculiar relation which he bore to this question. Pending the discussion of it at the last session of Congress, under the most urgent importunity of his friends, he had forborne, at a critical period of the debate, from pressing himself into it, believing that its further protraction would probably lead to the defeat of the bill, in the provisions of which Georgia had a particular, as the country at large had a deep and general interest.

Although he had ever since held in his possession a document most distinctly proving the influence of this motive on his conduct at that period, yet such motive could not be generally known to his constituents, as the document alluded to had been made public. But, as the day is at hand when his representative character will cease, he was not willing to stand unjustified before those he had represented to the best of his ability for the last six years. In the discussion of this question, on which so wide a difference of opinion existed between the honorable gentlemen and himself, it is necessary to recur to the history of this country, to ascertain whether the federal government has confined itself to the pale of the constitution, or that Georgia has overleaped the barriers of her rightful sovereignty. In discussing this branch of the subject, he should not inquire whether this continent, at the time of its discovery, was considered as a part of St. Peter's patrimony, nor

how it might then have been regarded by papal bulls in favor of certain discoverers. Nor should he inquire into the quaint phrases which may or may not be found in any of the charters granted to the colonists by which it was settled. It had been said on a former occasion, that the rights of discovery set up by Europeans related solely to the effect of those rights on each other. In part this is true, and in part it is not true. That those rights were relative to the discoverers as regarded the question of boundary, is admitted, but it is asserted without the fear of contradiction, that they were positive, were absolute in their relation to the original inhabitants of this continent. As it regarded those inhabitants, the nations of Europe which planted colonies here considered their occupancy permissive merely. Nor can any other principle of national law be produced on this subject; nor is it necessary to inquire into the justice of such a principle. If it be unjust, and shall be so decided, then the millions who have descended from the original colonists, with all who have been added by later emigration, must take refuge on the eastern shores of the Atlantic.

If this right of discovery does not avail Georgia, it is of as little avail to any other State in this Union. But, to say no more of it, we find ourselves placed under the operation of this principle, and it is too late to talk of changing it. But, it might be asked how he arrived at the conclusion that such a principle had been adopted by the discovering European nations which planted colonies on this continent.— He would answer, in the history of all. Nor would he shelter himself under the enormities practised by Spain on the aborigines of Mexico, South America, and the west India islands. Great Britain acted on the same principle in granting charters to her North American colonies. From the earliest of those charters to that granted to Georgia in 1732, this principle runs throughout, nor had he observed, upon an examination of a number of them, that any peculiarity existed, except that, by charter, the *exclusive* right is secured to Rhode Island, "upon just cause, to invade and destroy the native Indians, or other enemies of the said colony." Nor should he complain that Rhode Island chose still to live under that charter, nor inquire why so poor a remnant of the once powerful tribe of Narragansett had escaped from former wars, and the no less destructive vices of civilized life, operating on an inferior and degraded caste.

The original charters of the king of England granted to the colonies all the lands included within certain points on the Atlantic coast, extended by lines due west to the Pacific. Nor in this particular was the charter of Georgia less extensive than the rest.

It originally granted to her the sea coast from the mouth of Savannah to the mouth of the Altamaha river, thence up those streams to their headmost branches respectively, and thence due west to the Pacific Ocean. At the close of the war of 1757, which war was terminated by the treaty of Paris in 1763, Great Britain acquired the Canadas and the Floridas. In settling the boundaries of the Floridas in 1763, the British King extended them to the mouth of St. Mary's river, thence up that river to its source, thence by a direct line to the junction of the Chattahoochie and Flint rivers, and up the Chattahoochie to the thirty-first degree of north latitude, and due west to the Mississippi. In the following year by royal commission to Governor Wright, the southern boundary of Georgia was extended so as to correspond with the northern boundary of Florida, as defined by the proc tion of 1763—the Mississippi being made the western boundary of the British colonies, in conformity to the stipulations of the treaty of Paris. But so far as he had been able to inform himself, the principle of sovereignty over the whole country was distinctly to be traced in the commissions to the colonial Governors. Having thus shewn that Great Britain claimed sovereignty over all the country within her colonies, he would inquire how this matter stood at the commencement of the revolution, and how far the powers of the States have been circumsbribed, either by the terms of the articles of confederation, or the constitution which now binds them together. The declaration of independence, the *magna charta* of American liberty, was adopted on the 4th day of July, 1776, and its recognition by Great Britain, in 1783, has relation to that period.

Then, by the acknowle dgment of our independence, and the time to which that acknowledgment related, we arrive at the conclusion, that, so soon as it was declared by Congress, every right and power previously possessed by Great Britain over the colonies devolved immediately upon the respective States, not upon the States as confederated, because the articles of confederation were not adopted until some years afterwards. He would not take the trouble to state the time of their adoption, as it was only necessary for his argument to show that they did not exist until after the declaration of independence. He thought he had now clearly shown, that, on the 4th of July, 1776, the respective states entered into the possession & enjoyment of all the rights which Great Britain had previously exercised within them as colonies, & that those rights included every inch of soil, and all the sovereignty which any State can exercise. Nor should he deem it important to present this view of the subject, if it had not been said that the treaty of 1783 passed the sovereignty previously possessed by Great Britain over the colonies to the confederation, and not to the respective States. In addition to the argument he had presented to show that the sovereignty of the States passed them respectively, it might be sufficient to add, that questions of boundary between them, and such questions have arisen in numerous instances, have been uniformly settled by reference to the letter and spirit of their respective charters But further light might be shed upon this subject, by consulting the various instructions which were issued to the American commissioners under which the treaty of 1783 was negotiated as well as the instructions given at different periods for negotiating with Spain on the subject of boundaries. In the various instructions thus given to the commissioners in 1779 and '80, and reiterated in 1781, it will be found that the confederation proceeded on the principle of regulating the boundaries on the basis of the various colonial charters, in which the southern boundary contended for is the identical one set forth in the commission to Governor Wright in 1764. And here it might not be improper to add, that the definitive treaty of peace with Great Britain, in 1783, pursues the instructions on the question of boundaries without variation. Nor do the instructions to treat with Spain, in 1780, depart from the same principle.

Since the adoption of the federal constitution in 1792, the same rule was adopted by Mr. Jefferson in relation to the southern to boundary, which resulted in the provisions of the treaty of San Lorenzo el Real on that subject. Nor might it be improper for him to add, that the same principle enters into the discussion of the yet unsettled question of our eastern boundary.

But he was aware that a pretence was set up during the revolution, that the unsettled land within the respective States was acquired as the common property of the confederation, and that various attempts were made to induce Congress to act on that principle. He believed that he had sufficiently shewn that directly the contrary was the fact, and that the States respectively acquired it before the articles of confederation were brought into existence. He well knew that the States were earnestly called on for cessions of land, but he was not aware that any of value had ever been made, except by Virginia, North Carolina, and Georgia.

But after much discussion as to the right of the confederation, a clause was inserted in the 9th article, on the 15th of November, 1777, providing that "no State shall be deprived of territory for the benefit of the United States." But this subject is further illustrated by the resolution of the 16th of September, 1776, for providing bounty lands for the soldiers who might enlist in the continental army. That resolution says, "such lands to be provided by the United States, and whatever expense shall be necessary to *procure* such lands, the said expense shall be paid & borne by the States in the same proportion as the other expenses of the war." Now, if these waste lands had been considered the property of the confederation, a direct appropriation of them would have been made particularly as the object of bestowing them in bounty would have derived considerable support from a desirable designation of them. But, for the purpose of further enforcing his view of the subject, he would refer the House to an act passed by the Legislature of Georgia, on the 1st day of February, 1788, proposing a cession of a large portion of her western lands, a cession which he exceedingly rejoiced had not been accepted by the federal gover-

ment, as by it the western limit of the State would have been drawn within the northernmost point of the thirty-third degree of north latitude. But he would refer more particularly to the conditions proposed by Georgia, and the reasons of their rejection by the confederated government of the Union. The proposition of Georgia after describing the country offered for cession, states the following conditions: 1st. "That the United States in Congress assembled shall guaranty to the citizens of the said territory a republican form of government, subject only to such cha*ge as shall take place in the federal constitution of the United States. 2ndly. That the navigation of all the rivers included in the said cession shall be equally free to all the citizens of the United States; nor shall any tonnage on vessels, or any duties whatever be laid on any goods, wares or merchandize, that may pass up and down the said waters, unless for the mere benefit of the United States. 3dly, That the sum of 171,428 45-90 dollars, which has been expended in quieting the minds of the Indians, and resisting their hostilities, shall be allowed as a charge against the United States, and be admitted in the payment of the specie requisition of that State's quotas that have been or may be required by the United States. 4thtly, That in all cases where the State may require defence, the expenses arising thereon shall be allowed as a charge against the United States, agreeably to the articles of confederation: And 5thly, that Congress shall guaranty and secure all the remaining territorial rights of the State, as pointed out and expressed by the definitive treaty of peace between the United States and Great Britain, .the convention between the said State and the State of South Carolina, entered into the 28th day of April, 1787, and the clause of an act of the said State of Georgia, describing the boundaries thereof, passed the 17th day of February, 1783."

But what was the answer of the committee to these propositions—an answer in which Congress acquiesced? Not that the territory in question belongs already to us; not that all the vacant land in any of the States was acquired by the common blood and treasure, and is therefore the common property of the Union; but, "The committee, having fully considered the subject referred to them, are of opinion that the cession offered by the state of Georgia cannot be accepted on the terms proposed. 1st, Because it appears highly probable that on running the boundary line between that State & the adjoining State or States, a claim to a large tract of country, extending to the Mississippi, & lying between the tract proposed to be ceded & that lately ceded by S. Carolina, *will be retained by the said State of Georgia*; and, therefore, the land which the State now offers to cede must be too far removed from any other lands hitherto ceded to the Union to be of any immediate advantage to it. 2d. Because there appears to be due from the State of Georgia on specie requisitions, but a small part of the sum mentioned in the third proviso or condition before recited; and it is improper, in this case, to allow a charge against the specie requisitions of Congress, which may hereafter be made, especially as said State stands charged to the United States for very considerable sums of money loaned. And 3d. Because the 5th proviso, or condition before recited, contains a special guarantee of territorial rights, and such a guarantee as has not been made by Congress to any State, and which, considering the spirit and meaning of the confederation, must be unnecessary or improper. But the committee are of the opinion that the first, second, and fourth provisos before recited, and also the third, with some variations, may be admitted; and that should the said State extend the bounds of her cession, and vary the terms thereof, as hereinafter mentioned, Congress may accept the same; whereupon, they submit the following resolution:

"That the cession of claims to western territory, offered by the State of Georgia, cannot be accepted on the terms contained in her act passed the first of February last.

"That, in case the said State shall authorize her Delegates in Congress, to make a cession of all her territorial claims to lands west of the river Appalachicola, or west of a meridian line running through or near the point where that river intersects the 31st degree of north latitude, and shall omit the last proviso in her said act, and shall so far vary the proviso respecting the sum of $171,428 45-90, expended in quieting and resisting the Indians, as that the said State shall have credit in the specie requisitions of Congress to the amount of her specie quota on the past requisitions, and for the residue in her account with the U. States for moneys loaned, Congress will accept the cession."

It appeared strange to his mind, that any one could doubt, after an examination of this report, the absolute right of the States to all the unlocated territories within their limits. It might be asked, why was it unnecessary or improper to require of Congress a guarantee of the remaining territory? To this it was a sufficient answer to say, that the committee must have based the refusal on the clause of the 9th article of confederation, which he had already quoted, namely, "that no State shall be deprived of territory for the benefit of the United States" Nor is it unimportant to state, that the identical land now occupied by the Cherokees within the limits of Georgia is a portion of the territory which the committee of Congress stated would be retained by that State, if the terms of cession proposed by her should be adopted.

But the doctrine contended for is further sustained by the fact, that the cession previously made by Virginia of her northwestern territory, was coupled with a reservation of the land between the Sciota and Miami for satisfying bounty warrants issued and to be issued to the officers and soldiers of her State line in the revolutionary army. Nor was the cession afterwards made by North Carolina, now constituting the State of Tennessee, uncoupled with conditions of a similar character. And the State of Connecticut, relying on her territorial rights as secured by charter, derived, at a much later period, a considerable sum from her reserve west of the Ohio. Having brought these facts and arguments to the consideration of the House, he hoped we should not again hear of the right of the United States to the unlocated land in the respective States, as a common fund for paying the debts and defraying the expenses of the Union, on the ground that they were acquired in the revolutionary war as the common property of the confederation. He knew very well that Maryland, New Jersey, and Rhode Island were the most strenuous advocates of the right of the Union to land thus situated; but, notwithstanding they exerted themselves to procure the incorporation of such a principle into the articles of confederation as a prerequisite to their ratification of them, they finally ratified without it. But it might be proper for him to state, that the two latter States, in the instructions which they gave to their delegates in Congress, distinctly disclaimed for the Union any jurisdiction over such lands. Well, then, might it excite surprise, that, at this late day, they should be among the foremost to insist on such jurisdiction.

He thought he had now fully answered the objection, that the waste lands were acquired as the common fund of the Union, and that the declaration or recognition of American Independence regarded these States solely in their confederative, and not in their individual character.

But, in further illustration of the doctrine which he maintained, he might have adverted to the jurisdiction exercised by nearly all the colonies over the Indian tribes within their respective limits.

He might have spoken of laws enacted by one, giving a premium for Indian scalps, and for the rearing of dogs to hunt them down, which he believed the honorable gentleman from Massachusetts could not deny had been done by his own State within the period of her colonial existence. He might have spoken of their being transported by another colony beyond seas and sold for slaves. How another had restrained their liberty by forbidding their going from home after a certain hour at night, without a pass or permit from a whiteman, under the penalty of corporal punishishment. Of the act passed by Pennsylvania in 1743, adding for criminal jurisdiction all the wild country of that colony, to the county of Philadelphia, and how that act, as he had recently understood, on the highest authority, had been enforced upon an Indian the following year, for manslaughter committed in a remote corner of the country thus annexed to that county. He might have adverted to the jurisdiction exercised within a few years past upon an Indian within the limits of New York; but if the facts and principles presented by him be correct, and he did not doubt it, it could not be necessary to go into such particulars. He should not refer to them in this cursory manner for the purpose of inquiring into their propriety or im-

propriety. He would leave that to be settled by the consciences of those who had presumed to question the conduct of Georgia for the execution of a Cherokee Indian *for the murder of another* Cherokee Indian. He would not be understood as referring to them for the purpose of examining the comparative *cruelty of Georgia and other* States, as among the wise and good, he had too much confidence in the belief that blood will not be considered as sticking *to her skirts for the execution of* a *murderer*.

But, since it has suited the convenience of politicians of a certain order to rail against Georgia, we have been *stunned by the cry of violations of the* treaty making power. It is therefore necessary to inquire what is that power, and wherein has it been *violated*. And before *proceeding further with* the subject, it is necessary to state that this power was nearly the same under the confederation that it is under the Constitution since adopted; and to ascertain its extent and meaning in relation to Indians, it becomes necessary to inquire in what manner it was *exercised*, if exercised at all, in our intercourse with them. But it would be quite as convenient to state the treaty making power, and the power regulating our intercourse with the Indian tribes under the articles of confederation. In the 9th article, among various other powers, it is provided that "the United States in Congress assembled shall have the sole and exclusive power of entering into treaties and alliances." This is coupled with a proviso protecting the commercial power of the States as it then existed. It is further provided in the same article, that "the United States in Congress assembled shall have *the sole and exclusive right and power of regulating* the trade and managing all the affairs with the Indian tribes, not members of any of the States; *provided the legislative right of any State within its own limits be not infringed or violated*." Let us then consider first, what are the legislative rights of a State. They consist in the power of making and enforcing laws over all and every description of persons within her limits. If this be true, and how it can be denied he could not understand, it necessarily follows that every Indian tribe resident within a State is a member of the State within the meaning of the first clause conferring the power relative to Indians; and in this sense, he believed, it had been acted on in a great majority of the old thirteen States, and should have been so acted on in all.

So much then, for the present, as respects the power of the confederation to "regulate trade and all affairs with the Indians." But to return to the treaty making power, and its reference to Indians, as we find it interpreted by the acts of the confederation. We find in the journal of their proceedings various compacts or agreements with Indians, which are not now, and never have been treaties. He might be asked why he made the *assertion*? To which he would answer, that while all the treaties with foreign nations, even that concluded with the kingdom or empire of Moroco, were solemnly ratified according to the provisions of the articles of confederation, no such solemnity was ever conferred upon a compact or agreement made with an Indian tribe during that whole period. In what light then must we view these compacts? and under what specific power must Congress have considered them to have been made? Surely under the power to regulate trade and manage the affairs with the Indian tribes. But if a correct definition of the legislative rights of States had been laid down by him, it follows, incontestably, that the Treaty of Hopewell, so called, upon which the changes have been rung from one end of the Union to the other, violated the legislative rights of the States of North and South Carolina and Georgia. Congress too seems to have been sensible of this; for in the proclamation issued by them in the year 1788, for enforcing it, they close with the proviso, "that nothing contained in this proclamation shall be considered as affecting the territorial claims of North Carolina." Nor can it be asserted that Georgia stood quietly by while these things were transacting. So early as the eleventh of February, 1786, the House of Representatives having taken into consideration the "pretended treaty," as they called it, and called it justly, entered into at Hopewell with the Cherokees in 1785, and the attempt to enter into a treaty at Galphbington with the Creeks about the same period, determined that in doing so the "commissioners did attempt to exercise powers that are not delegated by the respective States to the United States in Congress assembled." After setting forth the rights and privileges of the States, they resolve "that all and every act and thing done, or intended to be done, within the limits of this State, by the said commissioners, inconsistent with the before mentioned rights and privileges, shall be, and the same are hereby, declared *null and void*"

But before proceeding further, it would be proper for him to state, that the course which Congress pursued relative to the agreements or contracts called Indian treaties, shows most manifestly that they considered such contracts as falling within the power to regulate trade and affairs with the Indian tribes, and not within the treaty making power. And if his definition of the legislative power of a State was correct, and he did not fear contradiction, Congress had, by the terms of such contracts with tribes living within any of the States, violated those "legislative rights" intended to be secured and defended by the articles of confederation. But his opinions might derive additional confirmation by referring to the second article, which provides, "each State retains its sovereignty, freedom and independence, and every power, *jurisdiction, and right which is not by* this confederation *expressly delegated to the United* States in *Congress assembled*."

He had shown that Congress never considered itself authorized to make treaties with Indians residing within the limits of a State,, for they never treated their contracts with them as such. He thought it was equally clear that they had no power whatsoever over them, in that or any other way, inasmuch as such power not only was not expressly delegated, but was expressly reserved by the clause in the ninth article, which provides that the power to regulate trade and manage affairs with the Indian tribes shall not extend to such as are members of a State; but further, and "that the Legislative right of a State within its own limits be not infringed or violated." Surely it could not be necessary for him to recapitulate his arguments to shew that the charters defined the limits of the respective States, and that their legislative rights extended over all persons within those limits. But he was aware that it might be objected, that, by the provisions of the federal constitution, the powers of this government had been *enlarged*. He was very much mistaken if he could not shew by the most legitimate arguments, that, with respect to Indians, they had not been thus enlarged. The provisions of the constitution resorted to by the adversaries of Georgia, who are alike the opponents of the present administration of the federal government, are the treaty making power, and the commercial power. At least, he was not aware that such rights were claimed for the Indians, except under the operation of these two powers. Perhaps he might say they are claimed singly and alone under the treaty making power. But let us see what are these provisions of the constitution. In the eighth section of the first article, power is conferred on Congress "to regulate commerce with foreign nations and among the several States, and with the Indian tribes." And in the second section of the second article, which defines the power of the President, it is provided, that "he shall have power by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." In the second section of the first article, it is provided, in the clause relating to the ratio of representation, that it shall include "the whole number of free persons including those bound to service for a term of years, and excluding *Indians not taxed*," &c.—applying the treaty making power to Indian tribes within a State in the light in which he had considered them; and it was utterly impossible to consider them as falling within its operation; for in this particular he considered the tenth article of the amendments equally as broad as the second article of confederation which he had quoted. He knew an elaborate argument had been made to shew that the absence of the word "expressly" from that amendment went to enlarge the powers of the federal government. But he did not believe any man, not desirous to gain power by every practicable contrivance, would rely upon such an interpretation. By a fair rule of construction, that *term* in the second article of confederation was as applicable to the second as the first member of the sentence; and its absence from the amendment applies equally to the second as to the first member of that amendment. If he should be asked by what rule of construction he arrived at this conclusion, he would answer, if the

amendment contained the word *expressly* in the first member of it, it would be understood as belonging equally to the second. Thus, "the powers not (expressly) delegated to the United States by the constitution, nor (expressly) prohibited by it to the States, &c. Thus if the absence of the term enlarges the first member of the amendment, it operates an equal enlargement of the second; and this shews, that, so far as the amendment is concerned, it places the constitution precisely on the footing of the second article of confederation as to the power conferred on the government by either. If he had shown, (and he thought he had done so,) that the treaty making power did not apply to Indians within a State, either under the confederation or the present constitution, neither can the power contended for be derived from the clause of the constitution which confers the commercial power. The same clause which relates to the regulation of commerce with foreign nations, also prescribes by whom it shall be regulated among the States and with the Indian tribes. In the view which he had presented, it would be obvious that a provision respecting Indians would not have been necessary, and he had no doubt would not have been adopted, if there had not been such tribes residing beyond the limits of the States. But whether *his opinion* be correct or not, the advocates of Indian rights cannot shelter themselves under this power without subverting the rights of the States, and converting this confederation into a consolidated government. For if the terms of the grant give to the federal government exclusive jurisdiction over the Indians, they give jurisdiction equally exclusive over the States; for they are precisely of the same import in *relation to each. But it may not be* improper to refer to the operation of the power, not only the power but the right of the States, in making up their representative numbers, to include Indians who are taxed; for the exclusion of Indians not taxed, is a clear inclusion of those who are taxed. He did not know that any Indians, in any one of the States, had been taxed previous to the formation of the constitution, or even since; but it conveys an undoubted right so to tax them. If this high sovereign power of taxation may be exercised over them, in what particular then can they be exempted from any and every act of sovereignty which a State may rightfully exercise over her white inhabitants. The gentleman from Massachusetts had laid great stress on the *obligation of treaties* with the Indians. He did not intend to say that they were without obligation in some form upon this government. What he meant to say was, that no treaty with the Indians, or others, can convey away the soil, or trammel the constitutional sovereignty of a State, both which consequences would follow that gentleman's interpretation of them.

Georgia had not acquiesced in what she considered the usurpations of the federal government, as growing out of its contracts with Indian tribes. He had alreay adverted to the protest in 1787 against the treaties of Hopewell and Galphinton, and would now call the attention of the House to a similar, but more elaborate and detailed protest; adopted on the ninth of February, seventeen hundred and ninety-seven, against the treaties before mentioned, and all others since made with the different tribes, including the treaty of Colerain, concluded with the Creek Indians in the summer of 1796.

Although this remonstrance did not prevent the ratification of the treaty of Colerain, it led to the adoption of a proviso, to which he would refer. It provides that the treaty should not "affect any claim of the State of Georgia to the right of pre-emption in the land therein set apart for military or trading posts, or to give to the U. States, *without the consent of the said State, any right to the soil, or to the exclusive legislation over the same*, or any other right than that of establishing trading posts within the Indian territory mentioned in those articles, as long as the frontier of Georgia may require those establishments." From that period until the compact of 1802, there seems to have been no other exercise of power by the United States with the Indians in Georgia, nor protest on her part against it. By that compact, Georgia ceded a large portion of her territory, and the United States ceded to her all "claim to soil and jurisdiction" within the limits which the State then reserved for her own use.

But he did not place the title of Georgia on the terms of that compact. It stood on higher ground. It was derived from the declaration of independence, as he had already demonstrated. He had referred to the compact to meet objections which might arise in the mind of any gentleman who might not agree with him in placing her title on the ground assumed by him.

But the gentleman from Massachusetts accuses Georgia of violating the intercourse law of 1802, and the President of countenancing its infraction by her. By that law it is distinctly provided, that Indian communities surrounded by a white population shall be excluded from its operation. Why was this done, if the States respectively, within which they resided, had not, and did not, exercise jurisdiction over them? It was impossible to arrive at any other conclusion. But it was of some importance to compare the date of that law with the date of the compact of 1802. The law was passed on the thirtieth of March, and the compact was entered into on the twenty-fourth of April following. If, then, in any view of the subject, Congress had the power to except certain Indian communities from the operation of the law, was it not equally fair, by surrendering all claim to soil and sovereignty within certain limits to Georgia, that the Indians, within those limits, should be excluded from the operation of the law? The gentleman has objected to the compact with Georgia, as unconstitutional. Does he forget that new States may be formed out of parts of those already existing, provided they give their consent? And does he not know that such consent is not only given by Georgia but given in the form of a requisition on the Federal Government? But, perhaps the gentleman considers the compact fair enough in whatever the General Government gains by it and only unfair as its provisions may operate favorably to Georgia. The gentleman from Massachusetts has told us that the Cherokee government was adopted on the suggestion made to their chiefs by Mr. Jefferson, in 1808 or 9; but does he not remember that no State can be formed within the limits of another but by its consent? But suppose it be conceded that the Cherokee is a foreign government existing within the limits of Georgia, what consequence would follow? That the Federal Government would be bound to remove it. What is there to restrain such a government to the republican form? And yet every one knows that the constitution guaranties to every State a *republican form of government*. Then can any other exist within the limits of a State? Most certainly not.

Mr. H. said, it was entirely unnecessary for him to go into a detail of the various recommendations of successive Presidents on this subject. It was well known that Mr. Jefferson looked to the ultimate location of the Indians west of the Mississippi. If he was not greatly mistaken, that entered as a motive into the purchase of Louisiana. He believed there might now be found an act in the statute book, passed during the administration of Mr. Jefferson, looking to that object. The recommendation of Mr. Monroe, and the course of Mr. Adams on this subject, must be known to every one. The act of the last session, commonly called the Indian Bill, was but in conformity, so far as it concerned the Cherokees, with a treaty made with the western portion of that tribe by Mr. Adams, in May, 1828. Mr. H. said, he *knew* that treaty looked to the emigration of the Cherokees, and he also knew that appropriations for that object then had the support of the honorable gentleman from Massachusetts, and his friends now acting with him in opposition to a policy which can, in no sense, be considered in any other light but extending and carrying out the policy of Mr. Adams. The gentleman from Massachusetts chooses to find fault with the country to which it is proposed to remove the Cherokee Indians. Mr. H. said for his part he had received the most satisfactory information on that subject. His information was derived from one of the most intelligent red men he had ever seen, a man belonging to the Cherokees of the West. But it could only be necessary to refer gentlemen to the provisions in favor of the intruders on Lovely's purchase, a part of the territory ceded by the treaty of 1828 to the Cherokees, to show that it was any thing but unproductive and undesirable. If he recollected the terms of the law on the subject, it gave to each head of a family of intruders a pre-emption to half a section of land, as an equivalent for the inconvenince of removing from the country on which he had intruded. But the honorable gentleman finds fault with the Governor of Georgia for notifying the Cherokees and others within the territory claimed by them

within the limits of the State, that the laws of Georgia would be or were extended over that territory, on and after the first day of June, 1830.

He would not enter into any inquiries about the proclamations then issued. He would only say, he had no doubt they were issued with the best intentions towards the parties concerned. Nor has he been sparing of his censure upon the President of the United States and the Governor of Georgia, for the manner in which they have treated intruders on the gold lands lying within that State, and claimed by the Cherokee Indians. If he understood the gentleman, he represented the President and Governor as alone solicitous to prevent the Cherokees from digging gold. If he was correct in this understanding, he could tell the honorable gentleman that he was greatly mistaken. The instructions of the Governor to the agent, sent by him to the Cherokee nation last summer, and the manner of their execution, go to shew that it was intended to remove the gold diggers of every character and description whatsoever. More than this, so far as the citizens of Georgia were concerned in that business, it was a well known fact that they in a formal manner expressed their readiness to abandon it, provided the white men from other States, and the Indians, should be restrained from digging gold. Their view of the subject was a rational and correct one. While they, after being warned of the consequences, neither desired to embarrass the government of Georgia nor this government, they said *this precious metal* is the *common* property of Georgia. We are her citizens, and why should not we have part of it, while the citizens of other States and the Indians are dividing it among them? We know that it has been solemnly decided by the Supreme Court of the United States, that Georgia has a freehold right to all the land occupied by *Indians within her limits*. *Nor is it unreasonable*, whatever possessory right may be held by another, that the owner of the freehold should prevent the commission of waste by any other person.

Mr. H. said he could not suppose it necessary to state to the honorable gentleman the principles which govern freehold right. The gentleman has seen fit to arraign with much censure the law of Georgia which extends to a Cherokee the right to absolve himself form an obligation entered into with a white man, while no such option is extended to the white man. And is it possible that the honorable gentleman will not understand the intention of that law? Does he not see in it the same benevolent purpose which dictates a similar principle in relation to infants? It is impossible to give any other construction to the intention of the Legislature of Georgia?

But the honorable gentleman has not permitted the conduct of Georgia to pass without severe reprehension for passing an act at the last session of her Legislature, for the survey of the lands occupied by the Cherokees within her limits. To enforce his pathetic appeal, he had read with much emphasis an extract from a letter published in one of the newspapers of Augusta in Georgia. Mr. H. regretted that the honorable gentleman had not favored us with the name of the writer of that letter. A knowledge of that name might enable him to unravel the motive with which it had been written. Although he had an opinion who did write that letter, yet he would not impute motives to the supposed author upon suspicion only. He, too, could read extracts from letters having responsible names, not printed and anonymous—letters from men well known, and of high respectability in Georgia—letters going to shew that in the proposed survey and occupancy of the wild lands in the Cherokee country, so called, it was not intended to molest the occupants. Indeed, the very section of the law which had been read by the honorable gentleman shews, most conclusively, no other intention. Nor was it designed only to afford a feigned protection to themselves, their families, & such improvements as according to the former opinions of Mr. J. Q. Adams, could give an Indian title. He referred from memory to an anniversary oration delivered by that gentleman, some years ago, in commemoration of the landing of the pilgrims at Plymouth. Then is there one rule for estimating Indian title when it conflicts with the interest of the pilgrims or their decendants, and another rule for Georgia? But, he said he well knew, at least, one prominent motive which governed some of the members of the Legislature of Georgia, who made most strenuous exertions for the immediate survey and occupancy of the wild lands in the Cherokee country. He knew this, because they were of the number of his particular friends.

Indeed, it is a motive which would then have operated, and would now operate on his own mind, if he was a member of that Legislature. It was, that the laws of Georgia might operate on the Cherokee Indians. Not with a desire to coerce their removal; but as they were under the rightful jurisdiction of the State, that jurisdiction might be exercised over them. The honorable gentleman asks if a citizen from another State should go to sojourn at Savannah, would a law of Georgia be tolerated which required of him to take an oath of allegiance to her? And yet the gentleman says, it is equally unjust to require such an oath of a citizen who may reside among the Cherokee Indians. Cannot the gentleman see a marked difference in the two cases? Savannah being a community acknowledging the government of Georgia, such a law would be unreasonable in relation to her. But not so in the Cherokee country. There an independent government is pretended to be set up in defiance of the authority of Georgia. And is it wonderful that she should require white men who go there to take an oath of allegiance to her? Most certainly not. But of all the objections taken by the honorable gentleman, it is, perhaps, most unfortunate for him that he should have selected the case of Tassels for the theme of his eloquence—Tassels, who, nobody denies, was guilty of murder on a man of his own tribe. But the high offence of Georgia, in the opinion of the gentleman, consists in her disobedience to the citation of the Chief Justice of the United States. Let us examine into the power of that officer to issue and enforce that precept. But, before doing so, he would take leave to call the attention of the honorable gentleman to the course pursued by Massachusetts in 1793, before the eleventh amendment to the constitution had been adopted, and when the judicial power of the United States was as broad as originally laid down in the second section of the third article of that instrument; and this under circumstances far less strong in her favor. Does the gentleman recollect, that at that period the Supreme Court decided that it had jurisdiction of a cause brought before it by an individual against the State of Massachusetts? And does he not know that it was considered of sufficient importance by Governor Hancock, John Hancock once President of Congress, to require him to convene the Legislature? And does not the gentleman recollect the principles laid down by that distinguished man as it regards the right of a people to examine and to change their form of government? But Mr. Hancock's opinions may be better understood by referring to the language of his message to the Legislature in September, 1793. After adverting to the cause of complaint, he says, "The idea that it is dangerous to examine systems of government and to compare the effects of their administration with the principles on which they are raised, is inadmissible among a free people. If the people are capable of practising on a free government, they are able, without disorders or convulsions, to examine, alter, and amend the systems which they have ordained. And it is of great consequence to the freedom of a nation to review its civil constitution, and to compare the practice under it with the principles upon which it depends. The tendency of every measure, and the effect of every precedent, ought to be scrupulously attended to, and critically examined. This is the business of the Representatives of the people, and can never be by them confided to any other persons.

"The great object presented to us by our political situation is the support of the General Government, the giving force and efficacy to its functions, without destroying the powers which the people intended to vest and to reserve in the State Governments.

"A consolidation of all the States into one government would at once endanger the *nation* as a Republic, and eventually divide the States united, or eradicate the principles which we have contended for.

"It is much less hazardous to prevent the estab-

lishment of a dangerous precedent, than to attempt an abolition of it after it has obtained a place in a civil institution."

How different the opinions and conduct of that high souled patriot from those who, at this day, consider the Union endangered by a proposition to repeal a single section of a law. When it is recollected that Governor Hancock survived but a few weeks after this message was written, it requires no stretch of imagination to consider it his political testament, containing the most solemn warnings to coming generations. He was not so fortunate as to have laid his hand upon the proceedings of the Legislature in consequence of the message to which he had adverted. Within a few weeks after it was written, Governor Hancock ceased to live, and the executive functions devolved on the venerable patriot Samuel Adams, as Lieutenant Governor. Nor had he been able to refer to a communication subsequently made by Governor Adams to the Governors of the other States; but there could be little difficulty in arriving at its import and the character of the legislative proceedings to which it referred by a moment's attention to the proceedings of the House of Representatives of Georgia, under date of the twelfth of December, 1793. That the subject might be the better understood, he would refer to them.

"A communication from His Excellency Governor Adams, of the State of Massachusetts, which was ordered to lie on the table, being taken under consideration, *a motion was made by Mr. Watkins* that the House do come to the following resolution:

Resolved, That this House do highly approve of the measures taken by the Legislature of the State of Massachusetts, in the case of an attempt to compel the Executive of that State, by mandatory process, to answer to a suit instituted by an individual in the Supreme Court of the United States; that the Governer do answer the communication of Governer Adams, on that subject, expressing the great objects which stimulated similar exertions on the part of this State to guard her retained sovereignty and that this State have & will, at all times, maintain and support such sovereignty against every infraction of her most sacred rights." This resolution passed the House. But it might be proper for him to state some facts and references connected with the case referred to in the resolution, in which a similar attempt had been made to enforce the jurisdiction of the Supreme Court, at the suit of an individual, against the State of Georgia.

This was the case of Chisholm, executor of Farquhar, against the State of Georgia. And here he would refer to a section of a bill which passed the House of Representatives of Georgia on the 21st of December, 1793. The section reads.

"*And be it further enacted*, That any federal Marshal or any other person, levying or attempting to levy on the territory of this State, or any part thereof, or on the treasury or any other property belonging to the said State, or on the property of the Governor or Attorney General, or any of the people thereof, under & by virtue of any execution, or other compulsory process, issuing out of, or by authority of the Supreme Court of the United States, or any other court, having jurisdiction under their authority, or which may at any period hereafter, under the constitution of the United States as it now stands, be constituted, for or in behalf of the said beforementioned Alexander Chisholm, executor of Robert Farquhar, or for, or in behalf of any other person or persons whatever, for the payment or recovery of any debt or pretended debt, or claim against the said State of Georgia, shall be, and he or they attempting to levy as aforesaid, are hereby, declared to be guilty of felony, and shall suffer death, without benefit of clergy, by being hanged."

This bill also passed the House. Upon any fair interpretation, no one can deny that Massachusetts and Georgia made common cause in resisting the power thus assumed over them by the Supreme Court. It might be an interesting subject of inquiry why they differ so widely in the case of Tassels *But comment was unnecessary.*

If, he said, there was so much excitement produced then by the attempt of the Supreme Court to exercise this power over the States, (for the eleventh article of the amendments was not adopted by Congress until he following winter, and doubtless adopted in consequence of that excitement,) why should it be wondered at that *Georgia* should resist the attempt to exercise the same power when the jurisdiction of the Supreme Court has been since so much narrowed by the ratification of that amendment? But Gen. Washington was then at the head of the Federal Government, a man not likely to be moved from the discharge of his duty, *and yet history does not record, or, if it does,* he is ignorant of it, any evidence of his having considered the proceedings of Massachusetts rebellious or traitorous, or treated them accordingly. Nor has the same history dared to cast a shade upon the pure patriotism of John Hancock and Samuel Adams, or branded the name of either with rebel or *traitor, in consequence of this transaction. But*, it has been admitted that there was no power to enforce the citation in the case of Tassels; that citation not operating as a supersedeas of the judgment against him. How idle then to accuse Georgia of resisting the authority of the Supreme Court, when the respiting power of her Governor, exercised in favor of the condemned *murderer*, could alone have given efficacy to the summons of the chief justice.

But a sense of self respect would not permit him whatever might be his feelings, to make any further comment on the citation, as it regarded the propriety or impropriety of the proceeding on the *part of the high functionary by whom it was issued.* As it respected the powers now possessed by the Supreme Court, and on other subjects connected with that tribunal, he had well settled opinions, which time and other circumstances might afford him a more proper opportunity to express. He thought that he had shewn, that, in no particular, had the *State of Georgia gone farther in resisting* the citation in the case of Tassels, than both her and Massachusetts had done in 1793.

But he had a further reply to offer to some of the remarks of the honorable gentleman on the subject of the Cherokee murderer.

It was well known, that, in a case involving the criminal jurisdiction over the country occupied by the Cherokees, as early as the Spring 1830, upon the arraignment at Hall Superior Court of certain Cherokees for the violation of the laws of Georgia, a plea to the jurisdiction of the court was filed, solemnly argued, and the plea as solemnly overruled by the court.

In the month of September of the same year, Tassels was arraigned for trial. But what was the course pursued by the court on that occasion? Was the accused denied the benefit of the plea to the jurisdiction of the court, which had been solemnly overruled at the preceding term? No. The plea was permitted to be filed; and instead of proceeding to immediate argument, overruling the the plea again, and trial of the accused, the Judge adjourned the court for several weeks to allow counsel to be heard before the convention of Judges at Milledgeville. The plea was there elaborately reargued by the counsel for the Indian, & overruled by the unanimous decision of the Judges. Does *this look like bloodthirstiness, on the part of Georgia* towards the Cherokee Indians? Most certain it shews the contrary.

The decision pronounced by the convention of Judges had been published in a number of newspapers, how many he could not say, but this he could say, that he had not yet met with any attempt to overturn it in any of the papers which had fallen under his observation. Nor did he believe it could be overturned. That opinion preceeded upon the ground that the Cherokees were not an independent people; and among the arguments presented by it, the court had properly adverted to the course pursued by the Federal Government towards the Indians in support of their position. They shewed most conclusively that the commercial power had never been exercised towards them in the most usual manner of exercising it towards "foreign, sovereign, independent nations." Nor was the difference less striking in all the wars which this Government had carried on against them.

Every one knows that Congress alone has the power to declare war. But can a single declaration of war against an Indian tribe be found upon the statute book?

What does this prove, if it does not prove most incontestibly that however, in its intercourse with the Indians, the Federal Government has occasionally interfered with the rightful powers of the States, it has never considered the Indian tribes as sovereign and independent States?

He said he might have adverted to various opinions of distinguished men in support of the doctrines he had presented to the consideration of the House, but he preferred relying on constitutional principles to the opinion of any man or set of men whatsoever. There were many points embraced by the remarks of the honorable gentleman from Massachusetts, to which he has not adverted. But, for his part, he did not consider it necessary.

He thought he had sufficiently shewn that the jurisdiction claimed by Georgia over the Cherokee Indians was her unalienated and unalienable right; and having that right, as he thought he had sufficiently shewn, if, in its exercise, it had been or should be necessary, it was within her constitutional competency to settle her white population on the wild lands in the country inhabited by them.

But let it not be understood, that, in any thing he had uttered, he had admitted the right of this government to interfere with the constitutional right of Georgia to govern the people, and to dispose of the lands, within her limits. In the exercise of those rights, he trusted she always would exercise, as she had heretofore exercised them, with a just regard to what was due to her own character.

In presenting these observations, he hoped he had not overstepped the pledge he had given at the outset. As he had refrained from going into a detailed defence of Georgia against the various accusations of the gentleman from Massachusetts, so he had abstained from an elaborate attempt to defend the present *administration* of the Federal Government. But it must not be considered that he had declined doing so from any apprehended difficulty of such a task. But he was aware that he should be followed by friends who would more than supply any thing and every thing which he had omitted.