Miscellaneous.

PUBLIC LEGER.

"FRIENDLY TO THE BEST PURSUITS OF MAN,
FRIENDLY TO THOUGHT, TO FREEDOM, AND TO PEACE."—*Cowper.*

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Extracts from the remarks of Mr. Hendricks, on his proposition to cede the Public Lands to the States in which they lie.

[Concluded from last week.]

If we carefully examine the ordinance of 1787, we shall see on the face of it, that it never was intended, in the great mass of its provisions, to be applicable to the States when formed; for some of its provisions are entirely inconsistent with every idea of State Government; and in that view, they are contradictory to one another. Can any man believe, that the ordinance would guaranty, on a particular event the admission of these States into the Union, "on an equal footing with the original States in all respects whatever," if it had been the intention of Congress to retain the full property of the soil, where the soil of the original states belonged to those States?

The resolution of '80 provided for the formation of ceded territory into states, and determined that, when admitted they should have the same rights of sovereignty freedom, and independence, as the other States. The ordinance specified the boundaries of the districts, and recognized them as states, before their admission into the Union. It gave them the right severally, of demanding such admission whenever they should have 60,000 free inhabitants therein, and gave them also the right of forming for themselves permanent constitutions and State governments. Being recognised as States before they have joined the confederacy, the Congress of '87 thought proper to restrain them previous to their joining the Union, from the "primary disposal of the soil." This was perhaps that day, when every patriot was tremblingly solicitous for the stability and perpetuity of the republic, a valuable provision. It held out inducements strong & powerful to the new States, to become members of the confederacy, and whoever will carefully examine the ordinance, will see, that in it, the Legislatures of the new state who had joined the confederacy and these only, were prohibited interfering with the primary disposal of the soil. They had the right to demand admission with a population of 60,000. and to form at that period permanent Constitutions, and state governments. They were, at that period of their history, and not till then, promised admission "on an equal footing with the original States," and Congress had refused them admission, they would still remain States, and the equal footing which was guarantied them, as ascertained by comparison with the original States, would have attached to them in all respects whatever. This opinion is not novel. For this opinion the best statesmen contended, in the question of admitting without restriction the state of Missouri. He would not weary the Senate in giving extracts from the speeches of that day, volumes of which could be instantly produced. The occasion was in the recollection of every one, the good authority mentioned would be viewed by all. It was contended for perhaps all the advocates for the Missouri admission, that she having formed a constitution, convened her legislative body, enacted her own laws, was in very many states; and that the idea of State sovereignty, equality, and independence, and her public domain. It may also be added with much certainty, that difficulties such as these, finally kicked the scale in favor of the admission, more than any constitutional argument.

I will said, said Mr. H. that the objection will be resorted to, for and in the present case. We shall no doubt have quoted upon us, the third section of the fourth, and the whole of the sixth article. We shall be told that Congress has power to dispose of and make all needful rules and regulations, respecting the Territory or other property belonging to the United States. But those who contend for the validity of the ordinance, and its application in the present case, will surely not take the ground that its provisons were changed by the constitution; for, if they do, they have themselves no ground to stand upon.

If you say the ordinance was repealed by the Constitution of the United States, you lose the benefit of its prohibitions against the new States, and if you admit that the ordinance with its guaranties in favor of the new States, is sanctioned by the Constitution, you must admit that the new States, with a population of 60 000, were entitled to admission into the Union, on an equal footing with the original States.

The ordinance, said Mr. H., is in many of its provisions, a compact between the original States, and the people and States in the Territory. It contains engagements of both parties, and the sixth article of the Constitution declares, that all "engagements" entered into before the adoption of this Constitution, shall be valid.—The ordinance contemplated the public lands as belonging to the new States, after their admission into the Union; and there is one authority on this subject, which, if all others were wanting, is, itself conclusive. It is the ninth article of the confederation, which declares "that no state shall be deprived of territory, for the benefit of the U. States." The articles of the confederation were made for the government of the United States, and for the states which should adopt them in future; and the ordinance was framed in accordance with those articles. They were the basis of the ordinance of 1787. They were the constitution of that day, and the ordinance cannot be construed in violation of them. The meaning of the ordinance, compared with this article, becomes perfectly clear.

Sir, the union of the states was the grand object of all parties in the regulation of the territorial lands. The articles of confederation had provided "that no States should be deprived of territory for the benefit of the United States," that Congress should not assume the ownership of the soil in the states. With this, many states were dissatisfied, and hesitated about joining the Union. To remedy this, the cessions provided that no state out of the confederacy, should participate in the proceeds of those lands; and the ordinance further provided, that the new states refusing to join the Union, should not only be excluded from all participation in the proceeds of the territorial lands within their limits but that they should be prohibited from interfering with the primary disposal of the soil within their limits.—As a further inducement to the new states to join the confederacy, the ordinance stipulated that they should be admitted into the Union with a population of 60,000, on an equal footing with the original States, in all respects whatever; and the constitution, in sustenance of the same policy, provides that all engagements entered into before the adoption of the constitution, shall be as valid against the United States under the constitution as under the confederation. So that the articles of confederation, the acts of cession, the ordinance of '87, and the constitution, form a perfect and harmonious chain of policy, the grand object of which was the union and equality of the States.

Then, Mr. President, if at all correct in this view, it will be asked, by what means have the new states been deprived of their equality; of the right of domain? I am well aware, said Mr. H. of the answer to be expected here. Here the compacts made with the new states, are thrown in our front. Here, notwithstanding the guaranty, that the new states shall be received into the Union on an equal footing with the original states, in all respects whatever; that they shall enjoy the same rights of sovereignty and independence with the old states; we are told, that the sovereignty of the States are *sub modo*, conditional; that if one condition may be attacked another may, and that whatever our political rights would have been, if we have never made the compacts, we must now abide by them, and have no reason to complain. And are we to be told, now, that although the idea of State sovereignty and equality, as well as the stipulations of the ordinance, would have given us, without the compact, the soil of our country, we are to be deprived of that first attribute of sovereignty, by the conditions proposed, when we ask permission of Congress to form for ourselves a constitution & state government?

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Indiana was the next state admitted into the Union. She had, before she applied through her delegates for admission a population of more than 60,000. She had a right to demand admission, under the ordinance of '87. Following however, the examples of others, under circumstances less favorable than her own, instead of forming a constitution, and demanding immediate admission into the Union, she procured the passage of a similar law, authorizing her to form a constitution and state government, on the same conditions, giving up the right of soil and taxation to the Federal government. The compacts themselves, admit the rights of the States to the public lands for they stipulate conditions. The compact not to tax, implies the right, of taxing on the part of the new states, unrestricted by the compact. The compact not to interfere with the primary disposal of the soil, implies the right to interfere, unrestricted by the compact.—If the right of general government, in these respects, had been clear on constitutional grounds, or on well established principles we should have had no compacts, no bargain about it. Congress did not ask the States to enter into compacts, not to declare war, not to make treaties, not to grant letters of marque and reprisal, or keep troops and ships of war in time of peace. And why? Because the constitution itself totally prohibits these powers of the states.

Sir, it must be admitted, that the new States are now contending with this Government, on terms very unequal. They are little less than vassals and tributaries to the power of this union, and they have all the force of the compacts against them. But I cannot I will not believe, that this consideration, is to prevent that justice now, which at first should have been done. I believe that, as soon as it shall appear that the condition of the new states, in reference to the public lands, is one of abject and humiliating dependence, inconsistent with their rights of sovereignty and equality; inconsistent with the spirit of the constitution, and their character as states, that the proposition now before the Senate will instantly prevail.

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The public lands should be ceded to the states in which they lie, because their present condition is not warranted by the letter of the Constitution of the federal government. The Government of the Union is one of limited and specific powers. It was framed with a cautious jealousy of its encroachment upon the States and with the view of transferring from them, and to it, no powers which they could exercise; no powers except those which were in their character national, and necessary for national purposes. Its powers are carefully enumerated and specified, and so jealous were its framers, that after every specification contained, it is expressly inhibited the exercise of any powers, except those delegated to itself, or prohibited to the States.

We shall search in vain for any clause in the constitution, which prohibits to the States the exercise of any power connected with the public lands, and in all the original States, this power has always been exercised by the states. We shall search in vain for any clause in the constitution which authorizes a control over the principal object of sovereignty in the states, their public lands. This power is not delegated to the Federal government. It cannot be appended to the word territory, in the 4th article of the Constitution, for territory in our Constitution, our laws, and our history, signifies a region of country without the limits of the State, in and over which a territorial government is established. We say the territory north west of the Ohio river, the territory of Indiana; the territory of Michigan; but when we speak of the public lands, we say the public lands in these territories.—The public lands in the States. The one term signifies a political division of the country. The other is a term by which we designate property.

But the exercise of this power by Congress, is contrary to the spirit of the Constitution, which aspires to national objects, unlike that under consideration; national concerns, such as the states are incompetent to legislate upon.—The interests submitted to the federal government, are those of peace and of war, of the army, the navy, the commerce, and the foreign relations of the country, and of such system of finance as may be found necessary to give active energy to these great interests.—One of the principal difficulties in the formation of this government, was, to designate the boundary betwixt it and the states; and it seems to have been the care of its framers, to avoid as much as possible, municipal legislation; the regulation of local and domestic concerns. It seems to have been intended that the federal government should not be engaged in that which the states were competent to do.—Now, sir test the present case, by any of these rules, and we must come to the conclusion, that with this matter the federal Government has nothing to do.—The public lands create a field of municipal legislation, inconsistent with its general purposes, and the evident intention of its framers. And if in any degree correct in this view, the compacts are unwarranted by the constitution; and if so, are not binding on the States.

The federal government had, in his opinion no constitutional power to hold lands within the limits of the states, except for the purpose designated by the constitution; such as forts, arsenals, dock yards, and other needful buildings; and to enable Congress to hold lands, even for these purposes, the consent of the legislatures of the states was declared to be necessary, by the express language of the Constitution. In a question of such vital importance to the new states, it would surely not be thought unreasonable that they should scrutinize the power which takes from them the public lands within their limits, impairs their sovereignty, and deprives them of equality with the original states. It would be at least some consolation to know that the power which prostrated them at the feet of the Union—which assigned them a level lower than that of the original States, was based upon the Constitution.

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It is perhaps, by all writers on such subjects taken as an axiom, that the public domain is the first grand object of sovereignty in every independent state. In proof of this proposition, I shall refer the Senate to some authorities. Vettel, page 165, says that "the general domain of the nation over the lands it inhabits, is naturally connected with the empire; for establishing itself in a vacant country, the nation certainly did not pretend to have the least dependence there on any other power; and how should an independent nation avoid having authority at home? How should it govern itself at its pleasure, in the country it inhabits, if it cannot truly and absolutely dispose of it? And how should it have the full and absolute domain of the place in which it has no command? Another's sovereignty and the right it comprehends, must take away its freedom of disposal."

I will said Mr. H. trouble the Senate with but one other quotation from this author. It is to be found in page 165 and is as follows:

"What is called the high domain, which is nothing but the domain of the body of the nation, or of the sovereign who represents it, is every where considered as *inseparable from the sovereignty.*"

The authority of Vetal is very positive. He lays it down as a proposition incontrovertible, that the right of disposing of the soil, the right of high domain, is inseparable from the sovereignty. Look too, at the decisions of the Supreme court; and surely this authority will be considered in point. In the case of Fletcher against Peck, 6, Cranch, 128. Judge Marshall, in delivering the opinion of the court, says, "That the Legislature of Georgia, unless restrained by its own constitution, possesses the power of disposing of the unappropriated lands within its limits, in such manner as its own judgment shall dictate, is a proposition not to be controverted?

And in the case of Martin against Hunter, 1 Wheaton, 324 "The sovereign powers vested in the State governments, by their respective constitutions, remain unaltered and unimpaired, except so far as they are granted to the government of the U. States."