AN ENQUIRY

INTO THE

CONSTITUTIONAL AUTHORITY

OF THE

SUPREME FEDERAL COURT,

OVER THE

SEVERAL STATES,

IN THEIR POLITICAL CAPACITY.

BEING

An Anſwer to OBSERVATIONS upon the GOVERNMENT of the UNITED STATES of AMERICA:

By JAMES SULLIVAN, Eſq. Attorney General of the State of Maſſachuſetts.

BY A CITIZEN OF SOUTH-CAROLINA

CHARLESTON:

PRINTED BY W. P. YOUNG, BROAD-STREET.

M.DCC.XCII.

AN ENQUIRY, &c.

A PAMPHLET has lately appeared under the ſignature of JAMES SULLIVAN, Eſq. printed in Boſton, entitled, "Obſervations upon the government of the United States of America;" in which the author has undertaken to diſcuſs a queſtion, whether under the federal government, an individual ſtate can be called to anſwer, as a defendant in the court of the union? While I applaud the ſpirit and freedom, with which this writer diſcuſſes a queſtion of ſo much magnitude, ſtill I am conſtrained to differ from him in the doctrine which he inculcates, and endeavors to ſupport.

The diſcuſſion of conſtitutional queſtions will always be matter of general concern; but it is peculiarly intereſting at this period, when the conſtitution itſelf is new, its various modes of action undefined, its relative powers not fully unfolded, its principles not drawn out into practice, nor its virtues and defects compleatly aſcertained. As every movement under it muſt be conſidered almoſt as an experiment, ſo every thing eſtabliſhed under it will form a precedent, which may ripen into a rule.

Precedents eſtabliſhed in the infancy of government will have their laſting effects. Bad ones may vitiate and even deſtroy the beſt conſtitution; good ones may mollify and almoſt reconcile the worſt.

Mankind have always been found diſpoſed to ſubmit to the authority of precedent; and from whatſoever principle, in human nature, this proneneſs may ariſe, it cannot be denied to be productive of very beneficial effects. It ſtands a barrier againſt *verſatility* in general;

which in every department of life, and particularly in government, is radically dangerous. For ſince human nature is ever ſtruggling to accommodate herſelf to her ſituation, the ſtruggles would be endleſs if the ſituation were always changing. Indeed, a conſtitution cannot be ſaid to be fully eſtabliſhed, until this deſirable conformity is effected—its beſt ſecurity lies in the ſettled habits, the manners, the ſentiments, and the confirmed acquieſcence of the people. The river flowing in its ancient channel, which time has worn into uniformity, glides majeſtically on with an eſtabliſhed momentum; but frequently conducted into new meanders, it becomes a noiſy boiſterous ſtream; or ſplitting into petty rivulets it loſes both its force and beauty. The benefits of uniformity are not leſs obſervable in government, than in the broad expanſe of nature's works, in the ſyſtems of morals, or the regions of ſcience. It operates to harmonize the parts into a correſpondence with each other, to adjuſt and proportion them to the whole, keeping them conſiſtent in their proper ſtation; and on the other hand to make the whole a homogeneous ſyſtem, capable of being analyſed into its parts, and of preſerving equability of action throughout. This principle, co-operating with others, will 'ere long, I hope ſettle our preſent conſtitution firmly upon its baſe; that it ſhall be recognized by the next generation, not as a ſyſtem to be tried by experiments, to be altered or repaired, but as one already ripened into uſe and approved—to be enjoyed by them, and tranſmitted down in ſucceſſive ages. Nor is it a gratification unworthy of being now indulged, to view in anticipation, its future proſperity; when beſides its intrinſic excellence, it ſhall, by the hoary honors of antiquity, collected about it, attract the love, command the veneration, and enſure the obedience of generations long to come.

The benefit of good precedents, and the danger of bad

bad ones, muſt bear an exact proportion to this promptitude in human nature to be thus influenced; and by an obvious conſequence, the importance of examining well all inſtitutions, at the outſet of the government, muſt correſpond in degree with both. Like a young man juſt upon his entrance into life, whoſe character will be fixed by his firſt tranſactions; our inceptive government will carry down into futurity the habits, the tone, and the diſpoſition which it may now receive. It is perhaps not difficult to ſay, which is the moſt arduous taſk, that of the convention who framed the conſtitution, or of the firſt legiſlatures, to whom it will appertain "to mature and perfect ſo compound a ſyſtem, to "liquidate the meaning of all the parts, and adjuſt "them to each other in a harmonious and conſiſtent "whole." One thing, at leaſt, is certain, that the latter will need every aid, which can be derived from a free intercourſe with their conſtituents, and a liberal communication of ſentiment from the thinking part of the people. Happily for America, at the preſent intereſting criſis, no peſtilential ſpirit of faction prevails among her citizens, to infect the ſprings of opinion; they in general mean the welfare of their country, although they may, in ſome inſtances, differ as to the means of ſecuring it.

To the author of the "obſervations, &c." whoſe principles and arguments I ſhall oppoſe, in the enſuing pages, I give the moſt unqualified credit for purity of intentions, & for patriotic virtue. He, no doubt, believed as he wrote— and had it occurred to him, that in placing every ſtate ſuperior to the juriſdiction or controul of the ſupreme court of the union, he had left them without any conſtitutional umpire to decide their differences, but *arms*, or had rendered a civil war almoſt inevitable, whenever thoſe differences ſhould happen; he would have drawn his concluſion with reluctance, and perhaps have been

impelled

impelled to teſt with a ſeverer ſcrutiny, the arguments which induced it.

As I propoſe to hold the affirmative of the queſtion, *whether a ſtate can, in a direct way, be called upon in the ſupreme federal court, in anſwer to a plaint preferred againſt it by another party, plaintiff or complainant*—I will firſt adduce my reaſons in its ſupport; and then take notice of ſuch adverſe objections, in our author, as it may be proper to anſwer.

This being a conſtitutional queſtion, our ideas upon it muſt be drawn from the *principles*, the *ſpirit*, the *tenor*, and the *words* of the charter itſelf. It is obvious, that the enquiry will have nothing to do with examples drawn from other nations, or from the political inſtitutions of other countries. Theſe might have had their weight with the framers of the conſtitution, when the point deliberated was what *it ought to be!* but they cannot ſafely be employed in conducting us to the knowledge of *what it is*. It is equally true, that the diſcuſſion will have no connection with all thoſe theoretic difficulties, which ingenuity can figure and throw in as embarraſſments. Were theſe to prevail, I fear that no part of the judicial ſyſtem would be able to ſtand the teſt. Difficulties there no doubt will be, in the proceſs of a ſyſtem, ſo extenſive, and ſo intricate; but I hope that few of them will turn out to be of the practical kind, and that even thoſe will be tempered by the benign influence of legiſlative wiſdom, and of popular acquieſcence.

I have already obſerved, that this queſtion muſt be anſwered by a referrence, amongſt other things, to the *principles* of the conſtitution. I know, that objections to this mode of reſolving conſtitutional points, have been inſiſted on by many. They alledge, that it is dangerous to travel out of the letter of the charter itſelf. That once you let looſe the exuberant powers of fancy and ingenuity, and ſuffer them to work upon the

indefinite

indefinite ſubjects of principles, ſpirit and implication, no perſon can forſee to what point their wild vagaries will conduct; nor where the boundaries can be drawn, at which they may be compelled to ſtop. That under the management of weak or wicked men, the conſtitution may become a monſter, to devour the liberties of the people. Arguments of this kind have been elucidated by examples drawn from other countries; whoſe latitude of conſtruction, under the guidance of ſubtilty, have made laws and conſtitutions to ſpeak a language never contemplated by the makers—and even repugnant to their obvious intentions.

It cannot be denied that this has been true in a greater or leſs degree; but it is equally true, that the inconvenience reſults rather from the imperfection of human things, than from any innate defect of this mode of reaſoning. That ſame imperfection, which renders the conſtructions of men variant and repugnant, incapacitates the human powers from framing, in the firſt inſtance, a ſet of laws or conſtitutions, ſo perfect, as to ſtand in no need of expoſition and conſtruction. Hence the ſafeſt method in framing a conſtitution, is to lay down the principles, and leave the conſtruction of them to the impartial wiſdom, and the ſound ſenſe of the government which is to adminiſter it. Indeed, the objections' rightly conſidered, conclude rather againſt the *improvident or vicious uſe* of this power, than againſt the exerciſe of the power itſelf. All the arguments adduced, and all the topics employed, bear evidently on this point. They do not deny, that in order to underſtand the true meaning of laws, as well the innate principles of thoſe laws, as the ſpirit and intent of the makers form a key to unlock that meaning; but they inſiſt that men, through indiſcretion or weakneſs are liable to miſapprehend, or through faction, or wickedneſs to pervert thoſe principles and that intention,

The

They conclude, that it is dangerous to truſt to ſo enlarged a ſcope of conſtruction. Theſe ſcruples have their foundation in the exceſs of republican jealouſy, rather than in ſolid reaſoning. While men are to legiſlate without the aid of inſpiration, much muſt be confided to their virtue, their wiſdom, and their patriotiſm. To theſe we muſt truſt in the end, let our conſtitution be framed as it may. If paſſion, prejudice, faction and intereſt protrude themſelves into the ſyſtem, or if perſons of weak minds, or graſping ambition, are entruſted with the adminiſtration, the fault muſt be ſought for elſewhere than in the conſtitution. Againſt theſe no conſtitution can effectually guard. While the people are not wanting to themſelves, the errors or evils ſpringing from theſe ſources cannot be apprehended, or if they caſually occur, may be corrected.

Aſſuming this, therefore, as one ſafe and proper ground in this enquiry; it will be neceſſary, firſt, to form an adequate notion of what the leading principles of the conſtitution are. This will involve a moments conſideration of the antecedent ſituation of the United States.

That was an aſſociation of thirteen diſtinct ſovereignties, under the ſuperintendance of a federal head, chiefly for the purpoſes of defence againſt foreign invaſion. This federal head was Congreſs; and the charter was called a confederation.

I ſay, under the *ſuperintendance* of a federal head, for Congreſs poſſeſſed little or no direct power or controul over the ſtates, or the individuals who compoſe them. Their authority was chiefly *ad deliberandum*; and the reſult of their deliberation was to require aids and quotas, and to recommend the adoption of particular meaſures to the ſeveral ſtates. They did indeed emit money; but the ſtate legiſlatures paſſed laws for the ſupport of it. They controuled and directed the operations of the army; but the ſtate legiſlatures paſ-

ſed

ſed laws for raiſing the men, and they appointed the field officers. Congreſs poſſeſſed, indeed, the excluſive power of making peace and war, of ſending ambaſſadors, and of forming alliances; but the ſtate legiſlatures might, at any time, even within the year, for which they were elected, diſplace the members of Congreſs, and ſend others in their ſtead. And this power almoſt amounted to a negative upon all their meaſures.*

Upon firſt view, an important diſtinction preſents itſelf between a government, properly ſpeaking, and a confederation. A *government* conſiſts in a mutual compact between each individual perſon and the whole body of the people collectively; a *confederation or league*, in a mutual compact, between each individual *ſtate* and the whole body of the *ſtates* collectively. In the former each *perſon* contains within him one integral part of the ſovereignty; in the latter each *ſtate* contains an individual part of the ſovereignty, as far as that ſovereignty extends. In our confederation each ſtate was repreſented in its ſovereign capacity; and the laws acted upon the ſtate in the form of requiſition, for the performance of which its faith was pledged—but in a

 government

---

* This ſtate of federal debility, has been very aptly depicted by the witty and ingenious author of the poem, intitled "M'Fingal."

"For what's your Congreſs or its end?
"A *power* t'adviſe and recommend;
"To call for troops, adjuſt your quotas,
"Yet not a ſoul is *bound* to notice.
"And when for want no more in them lies
"Than begging of your ſtate aſſemblies,
"Can utter oracles of dread
"Like Friar Bacon's brazen head;
"But ſhould a faction e'er diſpute them,
"Hath ne'er an arm to execute them."

government the laws act upon each perſon in his individual capacity, and his obedience is enforced by penalties and puniſhments. In ſhort, each ſtate was a government, and all the ſtates together compoſed a confederation.*

It may be demanded, is the preſent ſyſtem then not a confederation? Is it true what has often been vehemently aſſerted by its oppoſers, that the conſtitution, adopted by the United States, concentrating within itſelf all the efficient power of America, has ſtripped the individual ſtates of all their prerogatives, and reduced them to the contemptible ſtandard of ſubordinate corporations?

The want of proper diſtinctions, has often cauſed the people to be alarmed with language like this. The term *corporations* has artfully, or injudiciouſly, been made uſe of, while in fact it has not the ſmalleſt application; and I ſhall ſhew in another place, that this idea has evidently

---

* This diſtinction will be fully ſupported by a recurrence to the articles of confederation, and by a compariſon of them with the articles of the conſtitution. In the ſecond article of the former, it is declared "that "each ſtate retains its ſovereignty,"—and in article 3d, "The ſaid ſtates hereby ſeverally enter into a firm "league of friendſhip with each other." And in article 5th, "each ſtate ſhall have one vote" in Congreſs. On the other hand the preſent conſtitution begins with theſe peculiar and emphatical words—"WE THE PEOPLE of the United States." It is farther obſervable, that the delegates to the former Congreſs were elected by the *legiſlatures* of the ſeveral ſtates, but under the preſent ſyſtem, one branch only, is ſo elected, while the moſt numerous branch is elected by *the people at large*; and that when aſſembled, they vote not *by ſtates*, but in both branches each individual has one vote.

evidently had a ſhare in leading our author into the doctrine he inculcates. What is a corporation? In the general it no doubt applies to the idea of government in as far as it is compoſed of organized bodies with privileges defined and duties enjoined. All governments may, in this view, be called by that name. But what is underſtood by the term in its ordinary ſenſe; in that which is contemplated by thoſe who employ it to repreſent the individual ſtates, and to excite alarms about the general government? It is an inferior dependant body, veſted with particular immunities for particular purpoſes; deriving its exiſtence from the government, and liable to be diſfranchiſed by that government, whenever its good pleaſure ſhall ſo determine. Now do the ſtate governments derive their exiſtence from the federal? The reverſe is more true—and if the term could ever apply to either, it would be to the federal government itſelf.

If it be a portion of power or authority, granted out from a pre-exiſtent ſovereignty, ſuch is the federal government, which is a common ſtock of power, formed by contributions from the ſtates, in their ſeparate capacities, aſſembled in convention. If a corporation be that which is endowed with particular immunities or powers, leaving the reſiduum in the general fountain from whence they are drawn, ſtill the argument holds; for whatever is not granted to the United States, is reſerved in the ſtates, in their ſeparate and ſovereign capacities*. If the ends and purpoſes of the endowment, form a part of the charter, and the ſame may become vacated by deviating widely from them, or by breaking over the juriſdiction line drawn therein, ſtill the

---

* The conſtitution begins thus "all legiſlative powers *herein granted*, ſhall be veſted in a Congreſs of the United States."

the ſimilitude holds; for the ends and purpoſes of the federal conſtitution, are declared in its preamble, the lines and boundaries of its agency are drawn in the body of it; and when both are deviated from, or groſly infringed, there remains inherent in the people, an ultimate right to correct or to overthrow the whole fabrick. But a part of our definition calls it an *inferior dependant* body. It is true, that this does not apply to the federal government; for it is expreſsly declared, that the laws made by it purſuant to the conſtitution, ſhall be the ſupreme law of the land. But ſtill it is eſſential to the validity of thoſe laws that they be warranted by the conſtitution; the ſame as all corporations are bound to adhere to the limits of their charter, or their acts will be void.

But as the terms *inferior* and *dependant* do not apply to the federal, as little do they apply to the ſtate governments. Becauſe they were pre-exiſtent, not deriving their powers from the federal government; but from the primary fountain of all legitimate power; becauſe they are the ſource from which, in part, the federal government is conſtantly recruited and ſupplied; poſſeſſing the power of giving exiſtence to one of the branches of it. And laſtly, becauſe in all caſes, and with reference to all objects, concerning the unalienated reſiduum of their power, their authority is as full, as energetic, and as independant as it was before the federal government was called into exiſtence. For it muſt readily occur to every one, that this queſtion is not to be eſtimated by a comparative view of the enumerated inſtances in which the power of the one government tranſcends that of the other; but by aſcertaining the fact whether all the powers held by the one, are, or can be conſtitutionally ſubject to the controul or interference of the other. This would, ſtrictly ſpeaking, denominate the ſtate governments *inferior* and *dependant* bodies. But it will appear, upon the

moſt

moſt critical inveſtigation of the powers, that the ſtate and the federal governments are co-ordinate in ſome caſes, and reſpectively ſupreme in others; the ſtate governments are no more ſubject, within their reſpective ſpheres to the general authority, than the general government is ſubject to them in its own ſphere. Like the principle of gravitation in the planetary ſyſtem—each orb has its proportionable agency in fixing the common centre, round which each of them, and the ſun himſelf, conſtantly revolves. And though he acts upon each by his attractive power, he is re-acted upon by each in reciprocal proportion; for ſhould the ſmalleſt member in the ethereal vortex be annihilated, his enormous bulk would feel the ſhock, and ſuddenly fly into a different orbit. Still, however, he is the grand origin and ſupreme diſpenſer of light and heat, upon whom they all are dependent, and which none of them can impart, but by reflecting the rays borrowed from him. But to return—we may exemplify this comparative view of the different powers in the following manner. The ſtate governments, for inſtance, may regulate the modification, the alienation, and the diſtribution of real and perſonal property—here they are paramount and independent, for Congreſs cannot interfere. They may alſo impoſe taxes on lands, on profeſſions and perſonal property; ſo may Congreſs—and here the two governments are co-ordinate or concurrent. The reſult is, that of the ſeveral ingredients which go to make up the idea of a corporation, the moſt apply to the federal government; and that thoſe which do not apply to it have little or no application to either. Theſe reflections, which might be much dilated upon, and abundantly exemplified, muſt be ſufficient to evince the impropriety of applying the term *corporation* to the ſtate governments; and to compoſe the fears and jealouſies which have been excited by the artful, or the imprudent uſe of it in that ſenſe. At any rate, it requires but a moments thought, to be ſenſible how groundleſs

is

is the apprehenſion, that the ſtate governments "may "be made a cypher, or even eventually rooted out," ſeeing that they poſſeſs the reſiduum of rights and powers not delegated to the federal government; among which the moſt precious of all rights, the regulation of property, and the common intercourſe of buſineſs are included—ſeeing, alſo, that on them, like a prop, the federal fabrick depends; which in cruſhing them, muſt itſelf be proſtrated, and mix in the common maſs of ruins.

But to reſume our diſtinction between a confederation and a government. We have ſeen, that anterior to the preſent ſyſtem, the compact between the United States was but little more than a league offenſive and defenſive; and conſequently the delegates, or deputies, who compoſed the Congreſs, partook much of the nature of *ambaſſadors* (and very often with ſpecial inſtructions) from the ſeveral ſovereign ſtates. That Congreſs poſſeſſed but little authority, that little ſubject to innumerable checks, and contraventions from the different ſtates—that their ordinances were without ſanction, until it was conferred by a ratifying law from the ſeveral legiſlatures—that when completed there was no federal executive to inforce them—and that they always had an aſpect to the ſeveral ſtates, in their political capacity, without the power of acting upon the people as individuals.

It is far otherwiſe with a government. It is eſſential to the idea of one, that it poſſeſs legiſlative, executive, judicial, and I will add military powers. Its powers and reſources muſt be adequate to its exigencies, and commenſurate with its ends. It muſt be well aſſured of the permanency of its own exiſtence, capable of enforcing its laws, of diſtributing juſtice, and of providing for the public peace and public defence. It will be found, that in order to attain theſe ends, the laws of the government muſt act upon the people, and upon every individual member whereof the body politic

tic is compoſed. Its courts muſt be conſtituted with powers to enforce the individual obſervance of the laws, to puniſh aggreſſions in each individual, and to adjudge and levy the penalties which ſuch may incur. It would be miſpending time to enter into a demonſtration of theſe truths; truths which have forced themſelves upon the conviction of every one, which have been fully taught by the negative experience of theſe ſtates under our former confederation, and which have been recognized and adopted by the framers of the preſent conſtitution. Such powers, it will therefore be found, the federal government does now poſſeſs.

It reſults from this ſhort compariſon between a confederation and a government, and an application of it to our preſent ſtate, that the conſtitution of the United States is excluſively neither the one nor the other, but a compoſition of both.

Like the old confederation, the *ſtates* are repreſented by delegates choſen by their reſpective legiſlatures; and they form one branch of the federal legiſlature in the ſenate. Like an original and ſimple government, the *people* are repreſented by delegates biennially choſen by them; and they form the other branch of the federal legiſlature in the houſe of repreſentatives. In thoſe two branches thus conſtituted, centre all the legiſlative powers granted in the conſtitution. They are reciprocally independent of each other, but are endowed with the ſame privileges, and have co-ordinate weight in the government, with only a few exceptions. As the houſe of repreſentatives comes purely from the *people*, who are to pay, they only can originate a law impoſing a tax upon the citizens. They alſo have the peculiar privilege, in caſe the ballots returned from the ſeveral ſtates, for preſident, ſhall not determine or properly deſignate the perſon, to chooſe the preſident from among the names returned; but here they ſtep aſide for a moment, for their ſtrong characteriſtic and vote by ſtates—and that for reaſons too obvious to need

mentioning

mentioning. In a ſimilar caſe, the ſenate chooſe the vice-preſident; who is to be preſident of their own body.

The ſenate, on the other hand, has a negative upon the appointment of ambaſſadors, all ſuperior officers of the government, and a voice in the making of all treaties. They form the court for the trial of impeachments, preferred by the houſe of repreſentatives; to whom, as the grand inqueſt on the behalf of the people, the right of impeachment excluſively belongs. But after theſe peculiar exceptions are marked, the whole power reſides jointly in both houſes; and the acts ſeparately deliberated upon, and paſſed by them purſuant to the conſtitution, become the law of the land. Thus conſtituted and thus balanced, we may ſay that the *ſtates*, in their political capacities, deliberate in one houſe, and the *people* in the other. In the ſenate, the rights of the ſtate governments, ſo eſſential to their own exiſtence, and to the peace and harmony of the whole, will be peculiarly conſulted and protected; in the houſe of repreſentatives the rights of the *people*, whom they repreſent, will always be the pole-ſtar of their deliberations.

And here one might pauſe for a moment, to obſerve and to admire this ſkilful combination of principles; as new in its nature as it is wiſe and profound. *A confederation of the ſtates, and a conſolidation of the people.* Thirteen ſovereignties made to blend and harmonize in one ſovereign unity—or in other words, leaving in the ſtates ſeverally, their favourite independence, as to all the objects, about which they ought to cultivate any great ſolicitude; and clothing the general government with complete ſovereignty, as to all the objects which the general weal requires, ſhould be placed under their agency. And all this without engendering the political monſter of *imperium in imperio.* Warned by the fruitful examples of the Grecian confederacies, the

framers

framers of the government have ſteered clear of thoſe ſources of anarchy, which ſubſiſt in a mere confederation of unequal ſtates; while on the other hand, aware of the genius of the people of America, they have cautiouſly avoided intrenching too much upon the cheriſhed doctrine of ſtate independence. By drawing the power from the primary fountain, the people, they have infuſed into the ſyſtem all the vigor which is neceſſary for its ends; while that power happily tempered by defining the objects, and ſkilfully diſtributed between the ſtates, and the people repreſented in their reſpective branches, leaves the one nothing to fear, and the other nothing to complain of.

In this wiſe and judicious adjuſtment, we ſhall find the laws ſtrong enough to embrace their objects; and the conſtitution ſtrong enough to ſecure and protect its members. Had the convention unilluminated with the happy idea of this *compound*, gone on the one hand into the formation of a pure government, as we have already deſcribed it, the ſtates would have been extinguiſhed; and the numerous repreſentatives of the large diſtricts, or territories, or provinces, or by whatever name they might have been called, would have abſorbed the intereſts of the ſmaller. Had they perſiſted in the other extreme of a mere confederation, anarchy amongſt the members muſt ſoon have ſucceeded; and the more powerful ſtates, like Athens and Lacedæmon, would have compelled the ſmaller, or weaker, to ſubſcribe to their laws, under the ſtandard of victory.

But to return to our argument—it reſults from what has already been obſerved, that the ſeveral ſtates, in their political capacities, (or the people for them) in adopting the preſent conſtitution, parted with a conſiderable degree of that pre-exiſtent ſovereignty, with which they were inveſted; and as to all the objects enumerated in that charter, threw it into a common maſs;

which forms the federal ſupremacy; making the ſeveral ſtate governments, as well as the people, ſubject to its legiſlation. It has before been obſerved, that this is not a diviſion and diveſtiture of the ſovereignty itſelf conſidered as ſuch; for that would have been as impoſſible, as that one and the ſame thing might occupy two places at one and the ſame time. Sovereignty, itſelf, is neceſſarily indiviſible. If the attempt ſhould be made to divide it between two bodies, not in concert, it would be fruitleſs; for each muſt be co-equal, or one ſuperior. In the former caſe it is evident, that there could be no ſovereignty at all; and in the latter that it takes its ſtation in one body. But the objects of ſovereignty may be, and are divided. The diſtribution of the powers ſeems to contemplate theſe three variations. 1. With regard to ſome particular objects, the federal power is original, excluſive and ſupreme. 2. The ſame may be ſaid of the ſtate powers as to ſome other objects. 3. The power is co-equal and concurrent between the two, as to ſome other objects. The ſovereignty of the individual ſtates, is as complete in the ſecond claſs, as that of the United States is in the firſt. With regard to the third, it is evident that there is no definite ſupremacy in either, but as they may alternately occupy the objects of it. Thus the United States are ſovereign as to peace and war, alliances, coinage, the making uniform rules of naturalization, and the like, each ſtate is ſovereign as to all the objects of its internal police; and concurrent with the federal government, as to all the forms of direct taxation.

We are brought to this concluſion, that the *ſtates*, being repreſented as well as the people, form an integral part of that mixed ſyſtem which we have adopted. This is the great principle that runs through the conſtitution, and muſt be adhered to for the conducting of our enquiries as to conſtitutional points. It teaches us that the *ſtates*, as well as the *people*, are made the ſubjects

jects of *federal legiſlation.* Now it is a truth, too evident, and too generally recognized to need demonſtration, that in all governments, the judicial department muſt be co-extenſive with the legiſlative. What the one commands, the other muſt decree the obedience of, and the executive muſt enforce it. All conſtitutional acts of power, proceeding from the executive and judicial, have as much legal validity, and import as much obligation, as thoſe proceeding from the legiſlative department. Thus *treaties* made by the one, and no doubt ſolemn deciſions or adjudications by the other, become the ſupreme law of the land. Having now developed, in ſome degree, the principles of our conſtitution, ſo far as they immediately relate to the point in view; and having ſeen thoſe principles diſplay themſelves in a partial conſolidation of the people of America, into a national government, and in a partial aſſociation of the ſtates in a federal compact, diſtributed, defined and balanced in ſuch a way as to effect the *good purpoſes* of *each*, and to exclude the *evil tendencies* of both; preſerving and guaranteeing to the ſeveral ſtates their republican forms, and leaving them in poſſeſſion of their ſovereignty as to all ſtate objects; and having been brought thereby to the unavoidable concluſion, that the ſtates themſelves, (and the people in them as individuals, are ſubjected to the ſupremacy and controul of the federal government, as well its legiſlative as its executive and judicial capacities—let us now attend to the other *ſources* from whence we are to draw materials for our diſcuſſion and deciſion of this important queſtion; and ſee whether *they* will ſupport the inferences which have already been made.

We have alſo ennumerated the *ſpirit* and *tenor* of the charter of our government. Though theſe two may at firſt appear to import ſo nearly the ſame thing, as to render the diſcuſſion of the one ſuperceded by a conſideration of the other; yet upon a nearer view they may be ſometimes found to poſſeſs features, which

occur,

mark a preciſe difference—and ſometimes inſtances occur, where inaccuracy, or omiſſion of expreſſion, has created repugnancy between them. When this happens, a queſtion neceſſarily ariſes, which of the two ought to take the preference, and controul the deciſion. The ſpirit of a law conſiſts in the cauſes, the motives, the views, and the ends of its inſtitution. The firſt and ſecond refer to the antecedent ſtate of things, the two laſt to the mode and extent in which the remedy ſhould operate. With theſe the tenor of the law ought to correſpond; and ſhould it in any inſtance vary, the preſumption ought to be, that this variation was not intended: and it will, of conſequence, receive ſuch a conſtruction, as will ſquare it with the ſpirit, without actually *contradicting* the words. This might perhaps be exemplified in the article of the conſtitution, which gives the power "to eſtabliſh an uniform *rule* of naturalization." Whether this is excluſive, and diveſts the ſtates of all power on this head might be the queſtion; or whether it does not leave in them a reſiduary power to make laws for that purpoſe, correſpondent to the *rule* that Congreſs may adopt—ſo that an alien naturalized under the law would acquire, as completely in that ſtate, the rights of citizenſhip, as though he had received the privilege in the mode that might be eſtabliſhed by Congreſs. The learned and eloquent author of the Federaliſt has concluded, that this power muſt be excluſive, becauſe the words are "an *uniform* rule"—and he argues that the rule might not be uniform if every ſtate had a right to paſs laws on the ſubject. But this is obviated, by ſuppoſing a *rule* to be once fixed by Congreſs, and the ſtates then paſſing laws conformably to it. For it is to be noted that occaſions may exiſt, when the ſtates may be deſirous of having a mode of their own in conferring the privilege; and inſtances when foreigners may be deſirous of drawing it from a particular ſtate. There ſeems to be nothing in the *tenor* of the clauſe, which forbids

it

it under the modifications above. But what ſays the *ſpirit* of the conſtitution? We have already ſeen, that it is the ſpirit of the conſtitution to conſolidate the people of America into one great ſociety of citizens; to make citizenſhip of the United States, the political characteriſtic of each individual, and in it to abſorb ſtate-citizenſhip. Hence citizens of each ſtate are entitled to all the privileges and immunities of citizens in the ſeveral ſtates. Now if one ſtate, by conferring on a foreigner, citizenſhip of that ſtate, in the ſame act would make him alſo a citizen of the United States, and by neceſſary conſequence, a citizen of each ſtate—here the *ſpirit* of the conſtitution unfolds itſelf, and operates to *prohibit* what ſeemed to be *permitted* by the *tenor* of the clauſe. It is clearly repugnant to the ſpirit, that any one ſtate ſhould poſſeſs the power of making citizens in another ſtate; which nevertheleſs would be the caſe indirectly, if it poſſeſſed the power of making them in itſelf. They no doubt may uſe their option in conferring *particular privileges* upon aliens, within their own ſtate—may even enable them to hold lands—but cannot *naturalize* them; becauſe in ſo doing they create not merely a citizen of their own ſtate, but a citizen of the United States and a citizen of every individual ſtate in the union. The cauſes then, or neceſſities, which will lead us alſo to the motives and views, that give birth to the preſent government, conſiſted in a general relaxation of public and private principle throughout the ſtates; impotency in the federal head, and an alarming ſelfiſhneſs among the members, accompanied with a diſregard of public and private rights. The licentiouſneſs of a revolution, and the corrupt effects of a war, had debaſed the morals of men, and weakened the force of public and private virtue. This ſpirit was diſplayed in a variety of interfering acts between debtor and creditor; and it produced the long and ſhameful liſt of paper money laws, tender laws, laws curtailing the intereſt due upon contracts, and laws preventing

or poſtponing the recovery of debts. The conduct of the individual ſtates, with regard to their creditors, was but the counter part of what was authoriſed and practiſed in private life. Their faith had long been extinguiſhed—no contract regarded, no debt paid, no contract complied with. In this decay of public and private juſtice, the ſtates among each other, and the citizens among themſelves, were verging faſt to diſſolution and anarchy—while from without we preſented ourſelves a divided people, ready to fall a prey to the firſt invader. Alarmed at their ſituation, like a perſon ſuddenly awaking from a ſleep, in which he had been walking with heedleſs ſteps upon the brink of a precipice, the people of America came to an awful ſtand. Happily for them, and for poſterity, the juncture was improved by forming a conſtitution, for the purpoſe of a "more perfect union, for *the eſtabliſhment of juſtice*, "for the *inſuring domeſtic tranquillity*, for the providing "for the common defence, for the promoting of the "general welfare, and for the ſecuring of the bleſſings of liberty to themſelves and their poſterity."

The re-eſtabliſhment of *juſtice*, the want of which was one of the principal misfortunes complained of, formed therefore, a part of the *ſpirit* which produced the preſent government. How far did this ſpirit extend? Was it for the purpoſe merely of eſtabliſhing private juſtice between man and man? Or did it extend to the eſtabliſhment alſo of public juſtice from the ſtates and their governments? Was it a ſpirit, which conſented to leave open all the avenues of public fraud and injuſtice, and check the prevalence of private fraud only. Such a ſpirit would have been inconſiſtent and abſurd! But the *tenor* of the whole conſtitution will anſwer: "No ſtate ſhall coin money; emit bills of credit; "make any thing but gold and ſilver a tender in pay-"ment of debts, paſs any bills of attainder, expoſt

"facto

" facto law, or law impairing the obligation of con-
" tracts."

Every one of theſe direct prohibitions, which have no other object than the ſuppreſſion of flagrant injuſtice, lie immediately on the ſtates themſelves in their political capacity; and have no reference to the individuals who compoſe them. Ingenuity itſelf cannot give them ſuch an application. In truth what have we gained by this boaſted conſtitution; in what do its virtues conſiſt, why ſhould we eſteem it, to what end ſupport it, if it is not ſtrong enough to guard one part of the ſociety againſt the fraud and injuſtice of the other part; as well as every individual, in each ſociety, from the injuſtice of every other individual in the ſame or any other ſociety. Juſtice is the end of government; it is the end of civil ſociety. Will injuſtice be the leſs odious or the the leſs deſtructive becauſe it is received from a ſtate inſtead of an individual; becauſe it is dealt out in the abuſed forms of civil adminiſtration, rather than brought upon us by the practices of private chicanery? Can it be believed that the conſtitution ſetting out with that important declaration of its ends meant only to vapour before the imaginations of men, and leave at laſt the moſt formidable ſource of injuſtice where it found it; and the people who were to ſuſtain its effects to the pitiable remedy of *petitioning* to the courteſy of the ſtate governments for one of the moſt ſacred and precious rights which ſociety can confer? But we are told (Obſervations &c. page 37) that each ſtate is ſovereign; and that " a ſovereign ſtate can ne-
" ver *conſent* to become a party before a *foreign* tribunal.*" If they cannot conſent, it is clear they cannot be compelled. But what is implied in this ſovereignty which each ſtate poſſeſſes? Is it a ſovereign power to do as

* I perſume the author cannot intend to apply the word *foreign* to the government of the United States.

as they pleaſe? But the conſtitution contains both poſitive and negative injunctions upon every ſtate.

Surely, as far as thoſe injunctions extend, the States are not *ſovereign*, but are *ſubordinate*. Do theſe injunctions lie on the people only! The conſtitution explicitly declares the contrary. But ſays our author, though the interdictions lie on the ſtates, the laws act upon the people; and if they obey an un-conſtitutional act they will incur the puniſhment of the federal government. Our author has carried this idea ſo far, as to ſuppoſe, that if one ſtate ſhould declare war of its own accord, the general government would have no other prohibitory method, but to hang the citizens, who ſhould acquieſce, for treaſon and murder. Admitting however this direful doctrine, in all its latitude, we ſtill muſt own, that if the *people* of the ſtates, are ſo ſtrongly bound by a federal law, the *government* of the ſtate is bound with them. To deny this would be at once to eſtabliſh *imperium in imperio*; and to contend for the abſurdity of *equal ſovereignty*—an idea that cannot be expreſſed without a ſoleciſm in ſpeech. If then the government be bound, whenever the people are bound, we muſt confeſs, that as well the government, as the people, becomes an object of federal legiſlation. They can, therefore, conſtitutionally commend or interdict the performance of an act by the ſtate; provided the law, which is made, for the purpoſe, be purſuant to, (that is confined to the objects contained in) the conſtitution. It is no objection to aſk how a ſtate ſhall be puniſhed for diſobedience? Once latitude is indulged in framing ſuppoſitions of ſtate delinquency—it may be aſked how they ſhall be compelled to appoint electors for preſident; to elect ſenators, and the like delinquencies; each of which would threaten the diſſolution of the government itſelf: but each of which involves an un-conſtitutional ſuppoſition. As well might the conſtitution have preſcribed a mode for trying a whole ſtate for high treaſon, and

have

have declared the puniſhment—as to have noticed caſes of this kind.

But this is in ſome degree digreſſing from the point immediately before us. It muſt be clear, that in eſtabliſhing juſtice, the conſtitution intended *public* as well as *private* juſtice; more eſpecially as we find in the ſame clauſe another declared object, viz. " to enſure domeſ-" tic tranquility " How can domeſtic tranquility be preſerved or enſured, if the conſtitution provides no ſtandard, but *arms*, to decide the differences between two ſtates, or between one ſtate and the citizens of another? I will ſuppoſe for ſake of illuſtration, that a difference has ariſen between two ſtates, concerning a portion of territory; one ſtate demands it of the other, who perſiſting in her claim, refuſes to give it up. Who ſhall decide between them? Not the federal government, ſays our author, becauſe one ſovereign ſtate cannot conſent to be ſubjected to a foreign tribunal. The appeal lies *to arms*, and that under a conſtitution, which profeſſes to enſure domeſtic tranquility! It muſt ſurely be conſidered as a moſt ſingular method of preſerving domeſtic tranquility, by inſtituting the *ſword* as the conſtitutional umpire of diſputes*. I rather ſuſpect, that this method being *dreaded*, and its approach diſcovered, gave the moſt powerful ſtimulus to the people of America to form the preſent government. The ſpirit of diſcord was going forth in its might—it threatened ſoon to produce diſſentions and diſputes—the people ſaw with terror, that there exiſted no common tribunal, but that of *arms*, to which an appeal could be made, and from which a deciſion could be obtained. It is true, the old federal compact contained an illy defined proviſion; but that, with all the reſt of its proviſions, having crumbled into feeble atoms, ſcarcely capable of ſuſtaining the empty pageantry of its tottering forms, made it idle to repoſe

* *vid.* " obſervations, &c." page 37.

any hope in a remedy from its interference. Nevertheleſs, it may be remarked by the way, that even under that confederation, which reſerved to each ſtate, in the moſt unqualified manner, her original ſovereignty, a court was provided, and in one inſtance was actually conſtituted to decide a controverſy between two ſtates, relating to territory. Upon full hearing of both parties they decided the right; and the deciſion was acquieſced in by the high-ſpirited ſtate againſt whom it was given. Surely a common tribunal of juſtice is not more inconſiſtent with our preſent partial conſolidation, than with a mere confederacy. And yet in conſtituting it, even under her former confederacy, America did not act without precedent, both in ancient and modern times. I will mention but one of each. The Amphyctionic and the Germanic confederacy, both included in their ſyſtem a federal judiciary; to which the political members were amenable, and which took cognizance of and decided their differences.—It is true, that the practical proceſs of the inſtitution in both, did not fulfil the plauſibility of the theory; but this aroſe, not from any abſurdity in the thing itſelf, but from the feebleneſs of the ties which bound the compact—an experience of which, in America, has induced her to abrogate, as viſionary, and ineffectual, a mere confederacy, and to introduce to a certain extent, the more effectual principle of conſolidation.

I cite theſe inſtances, and employ this reaſoning, not to evince the expediency of a common judiciary among confederated ſtates; but from the poſſibility, proved by the fact, of its exiſtence among ſuch, to infer (and I think the inference a fair one) that it is not inconſiſtent with the principles of our government, which to a confederation of the ſtates ſuperadds a conſolidation of the people.

I think, that by this time, I am warranted in the

concluſion,

concluſion that as well the principles, as the ſpirit and tenor of our federal government, favor the poſition, that the ſtates, in their collective or political capacity, are and ought to be amenable to the federal judiciary; where they ought to be decreed to do juſtice. At the ſuit of what perſons or bodies, and under what modifications, is altogether a diſtinct enquiry. If the expreſs *words* of the conſtitution favor the ſame thing, I ſhould ſuppoſe the concluſion to be irreſiſtable. We will laſtly proceed therefore to examine *the words*.

The 2d ſection of article 3. is in theſe words—"The "judicial power ſhall extend to all caſes, in law and "equity, ariſing under this conſtitution, the laws of "the United States, and treaties made, or which ſhall "be made, under their authority; to all caſes affecting "ambaſſadors, other public miniſters and conſuls; "to all caſes of admiralty and maritime juriſdiction; "to controverſies to which the United States ſhall be "a party; to controverſies between two or more "ſtates, between a ſtate and citizens of another ſtate, "between citizens of different ſtates, between citizens "of the ſame ſtate, claiming lands under grants of "different ſtates, and between a ſtate, or the citizens "thereof, and foreign ſtates, citizens or ſubjects." It goes on—"In all caſes affecting ambaſſadors, other "public miniſters and conſuls, and thoſe in which a "ſtate ſhall be a party, the ſupreme court ſhall have "original juriſdiction."

Theſe are the clauſes, under which the queſtion agitated ariſes—a queſtion, which I will venture to ſay, never occurred to any man upon their firſt peruſal. Without tautology, or circumlocution, the convention have expreſſed their meaning in the moſt unequivocal manner. A perſon muſt be indebted for his doubts, ſolely to the ſubtil operations of his own mind; excited by a predetermination, if poſſible, not to believe.

The obvious meaning of the words ſeparately, he muſt

muſt ſtrain through cloſe refiners; the import of each bran-h muſt be warped by arbitrary diſtinctions, or forced into narrower limits, by far fetched principles, protracted beyond their natural limits; and the ſpirit of the whole clauſe muſt be ſubverted from the ample and national proviſions it intended, and confined to a paltry operation upon ſpecial caſes. Such a perſon lays himſelf under the neceſſity of arraigning the convention under a direct charge of inaccuracy and obſcurity. He muſt ſay that they have left their meaning at leaſt doubtful to *ordinary* men; and ſo expreſſed that it cannot be attained, but by a painful proceſs of ſubtil diſquiſition. In fact, the meaning can ſcarcely be ſaid to be doubtful to *ordinary readers*; for *they* immediately apprehend, from the words, that a ſtate is as liable to be ſued, in the federal court, as an individual. But our author contends, that a ſtate cannot be made a party *defendant* except by voluntarily entering herſelf as a co-defendant with ſome of her citizens, who have been cited thither, and who claim, or juſtify under her. That where, in obedience to her laws, or in reliance upon her grants, or ſome of her engagements, he becomes obnoxious to the federal judiciary, the ſtate may condeſcend to compaſſionate his caſe, and to preſent herſelf before the ſupreme tribunal, for his countenance and ſupport. If ſhe *may* do this, ſhe *may* alſo neglect it; and abandon the unfortunate litigant to the fate that may await him. If therefore, one ſtate have a cauſe of controverſy againſt another ſtate, ſhe may *arreſt* a ſingle individual of that ſtate—and he muſt be compelled to ſtand the ſhock; unleſs his own ſtate *think proper* to embark in the cauſe, and lend him her ſupport. In ſo unequal a conflict who could ſtand? What citizen, whoſe private fortune would not be ruined? A perſon inhabiting an acre of diſputed territory, might be called to ſupport the right of the ſtate to the whole, or be mulct in an action of treſpaſs, and looſe his free-

hold

hold beſides. He might invoke the juſtice of his own ſtate to lend her aid; but ſhe might chooſe to ſleep, and his ſupplicant hands would be ſpread in vain. If he ſhould object before the tribunal, that the ſtate *ought to be called in* to anſwer for her own territory—no, he is told, your ſtate is above the reach of this court, and you muſt ſtand alone. If this is true, let our author demand of the convention, and it is a queſtion which he cannot refrain from aſking, *why did you in meaning ſo little declare ſo much?* While you only intended, that a ſtate ſhould have the privilege of vouching for her own citizens in the federal court, and that at her own pleaſure, you have expreſſed yourſelves ſo inaccurately, as to almoſt give the impreſſion, that a ſtate may be *impleaded* as a party. Nay, ſo great a bias have you given the words towards this, that their moſt obvious import is that which you never meant; while your real meaning lies ſo deep, that none but a metaphyſician can dive and bring it up.

To this reproach, the convention would probably reply, none but a metaphyſician could poſſibly miſconſtrue our meaning—our meaning is plain; but it is often his part to begin upon that which is plain, and leave it, at laſt, perplexed in doubt and and uncertainty. True philoſophy is always willing to *begin* in doubt; but it is a point at which it ſeldom leaves off.

But let us now take a more minute ſurvey of the words; for they are the ſureſt and ſafeſt ſtandard to reſort to. Any conſtruction, which abſolutely contradicts them muſt be erroneous.

They do not pretend to organize the court, much leſs to preſcribe its proceedings. They ſet out with defining the judicial *power*—their object is to mark its extent. Without commenting upon every branch of this comprehenſive ſentence, I ſhall only ſelect thoſe which appear to have a reference to the argument under diſcuſſion.

1. "It

2. "It ſhall extend to all caſes ariſing under this "conſtitution, and the laws of the United States." I muſt be under a great miſtake if it has not already been evinced, that *by this conſtitution* every ſtate in the union, *as a ſtate*, is ſubject to the *laws of the United States*.

They may, therefore, paſs laws, directly obligatory upon each ſtate. If under one of thoſe laws, ſo paſſed, a caſe ſhould ariſe; that caſe, and neceſſarily the *ſtate*, relative to which it ſhould ariſe, would, from the very terms of this clauſe, be ſubject to the judicial power. It would be abſurd to ſay, that a law made expreſsly to bind a ſtate, in its collective capacity, muſt take its operation only upon the individuals. It no doubt would bind the individuals alſo—by the ſame rule, that as a thing is to the whole, ſo it is to all the parts. So alſo a law made, with a direct view to the people, would bind the whole ſtate—by the ſame rule, that as a thing is to all the parts, ſo it is to the whole. The reſult is, that in the former caſe, the law would have an obligatory effect upon all the people, becauſe it directly bound the whole ſtate; in the latter it would have the ſame effect upon the ſtate, becauſe it directly bound all the people. But it is not to be inferred from hence, that the caſes are exactly ſimilar—becauſe the poſitive operation of the law may be upon the one, with only a prohibitory negative upon the other. Thus if the ſtate is commanded to do a particular act, the people are prohibited from counteracting the injunction of the law; and vice verſa, where the people are commanded, the ſtate is prohibited from doing any thing that may render the command abortive. Theſe principles are ſo plain, that it would be unneceſſarily tedious to illuſtrate them by examples. However, were there nothing elſe in the conſtitution, but the words we have cited, ſupported as they are by the above principles and reaſoning, I ſhould aſſert the affirmative of the queſtion,

tion, under diſcuſſion, with leſs confidence. They are well employed, as auxiliary arguments, but perhaps, could not ſtand firmly alone. After deſcribing what *caſes* the judicial power ſhall take cognizance of; it proceeds to determine what *controverſies* ſhall appertain to its juriſdiction—thus,

2. "To *controverſies*, to which the United States "ſhall be a party; to controverſies *between* two or more "ſtates." Here the variation of the phraſeology leads directly to an important diſtinction, which governs and elucidates the ſenſe of the clauſe. Why are *different words* uſed in ſpeaking of the United States, from thoſe uſed, when ſpeaking of the individual ſtates? I ſhall aſk in another place, why are the *ſame words* uſed in ſpeaking of the ſtates, with thoſe, which ſpeak of citizens of different ſtates? But to anſwer the firſt queſtion. The convention knew that the United States could never be ſued in their own court. The principles built upon, by our author, had their full operation—that a ſovereign ſtate could never be called to anſwer in its own tribunals. But the United States may *ſue*; may call others to anſwer, and therefore might, in that way be a party. They may proſecute criminally or civilly. In either caſe they are a party. And the cognizance of cauſes, in which they proſecute, as well as thoſe in which they may, though not as a party, yet incidentally be concerned, appertains with obvious fitneſs to the federal courts. Why did not the clauſe go on, and ſay, "to which *a ſtate* ſhall be a party?" Becauſe, it would by uſing the ſame words, have ſeemed to put each ſtate upon the ſame footing with the United States; and to have given birth to the doctrine, that a ſtate can be no otherwiſe a party than as the United States—that is a party plaintiff. As this was not intended, they *varied the phraſeology* from that which ſpoke of the United States, to that which ſpeaks of the ſtates themſelves, and (what is very important in this enquiry)

of

of individuals. It accordingly adds "to controverſies between two or more ſtates." Now let me aſk, how a controverſy, in a tribunal can ſubſiſt *between two ſtates*, unleſs one may be plaintiff or complainant, and the other defendant? Will it be ſatisfactory, or even plauſible, to ſay that a citizen of one ſtate, may implead the citizen of another ſtate in that court, and the ſtates may be reciprocally intereſted in the ſubject of litigation, and therefore ſtep forth to the ſupport of it, and thus become a party? I alledge, that this would not technically make either of them a party. At moſt they would come under the denomination of *privies.* And could this be called, in the ſenſe of the conſtitution, a controverſy between two ſtates? No it would be a controverſy between two individuals, ſupported and encouraged by two ſtates. It would have been a misfortune, indeed, if the conſtitution had authoriſed every individual in each ſtate, to bring forward into litigation, the intereſts of that ſtate, when and how he pleaſed—or to have authoriſed any two, and of courſe every two colluding individuals, in two neighbouring ſtates, to harraſs the repoſe of either, whenever they pleaſed, by perhaps a fictitious litigation touching its territory or its intereſts, in the federal court. Who can tell how far a licence of this kind might be extended; and what conſequences it might produce? What ſhield or guard would the ſtates have againſt the combinations of individuals? Each ſtate muſt have an agent conſtantly watching in the federal courts, to give notice of thoſe diſcuſſions—to prevent her intereſts from paſſing without her knowledge *in rem judicatam.* Or each ſtate muſt interdict her citizens from bringing ſuits in the federal court, until licenced by ſome ſtate tribunal, who muſt previouſly have examined the grounds. But ſuch an inſtitution, would be putting it in the power of the ſtate to negative the cognizance of the federal court; and to ſtrip her citizens of a right conferred upon them

by

by the federal conſtitution, to ſue there. Or ſhall the federal court, whenever the rights of any ſtate come into litigation, ſuſpend proceedings, and call the ſtate to come in and defend? This would be at once making the ſtate a party; the very thing diſputed. For what is to be done if the ſtate diſobey the admonition? The court proceeds to judgment. That is a judgment *by default*—the uſual and ordinary proceeding where a party refuſes to appear; and the threatened penalty which inforces the appearance. Thus we find, that even by indulging the conſtruction contended for, we either involve the ſyſtem into inextricable difficulties, or bring it by the natural courſe of things into the very ſame ſituation which the conſtitution evidently intends. What occaſion was there then for the framers to take the circuitous way? If ſeveral balls lie in a range, a blow given to the firſt, in the ſeries, will as neceſſarily impinge on the laſt, as though that laſt had received the blow in the firſt inſtance. To make a ſtate a party in the firſt inſtance, in a direct way, is far more ſimple and in every view more eligible than by circumvention, or indirectly drawing into diſcuſſion their eſſential intereſts, and that at the inſtance of every party, who gives colour to his pretences, to keep them always in a painful ſtate of vigilance, or always acting on the defenſive. But I reſort to the words; and until it is ſhewn how a controverſy can ſubſiſt between *two ſtates*, without the one being plaintiff and the other defendant, ſhall think myſelf well warranted in concluding, that by virtue of thoſe words, the one may ſue and implead the other. Should this need any confirmation, I will obſerve

3. That the judicial power extends to "controverſies between a *ſtate* and *citizens* of another ſtate." Our author would contend that a ſtate can no otherwiſe be made a party, than by the indirect means of ſome of her citizens being impleaded, relative to mat-

ters concerning her intereſts at large. But why are the two caſes ſeparated in the conſtitution—do both mean the ſame thing? If ſo, it was a piece of idle tautology. In the clauſe immediately preceding, we have the caſe of a controverſy between *two ſtates*—here between a ſtate and *citizens of another ſtate*. But ſays our author, this only intends that a ſtate may *ſue* the citizens of another ſtate, but cannot be ſued by them. To this it is a ſufficient anſwer to ſay, that rights and remedies are always reciprocal. It is an odious doctrine, that a ſtate can compel juſtice from the citizens of a neighbouring ſtate; but may withhold it from them during her pleaſure. This abſurdity muſt ſurely have ſprung from the exceſs of theoretic ſcruple, or a blindly devoted homage to the idol of ſtate ſovereignty. It wages war with that divine principle, which lies at the foundation of the conſtitution, of eſtabliſhing juſtice and enſuring domeſtic tranquility.

4. It extends to "controverſies between citizens "of different ſtates, and beween citizens of the "ſame ſtate, claiming lands, under grants from "different ſtates." Here, in this laſt clauſe, the very caſe is expreſsly provided for *by itſelf*, which our author contends to be a general principle running through the whole—that is where ſtate rights may be involved in private litigations. Why need this have been expreſſed, if it were ſo violently implied in all the reſt. The very expreſſing of it is a palpable evidence that it was neither implied nor intended, in the antecedent caſes.

5. It cannot be remarked, without adding conſiderable weight in the ſcale of this argument, that the ſame phraſeology is uſed in deſcribing the juriſdiction when it ſpeaks of a ſtate, as when private perſons are the ſubject; from whence I infer, that private perſons and ſtates ſtand on the ſame footing in the federal courts. The United States being a party, is firſt ſpoken of by itſelf—all the reſt of the caſes then follow each other,

con-

connected by a conſtant copulative, underſtood and referring to one common contecedent, "*controuerſies*" ſtanding at the head of them all.

States and individuals promiſcuouſly ſpoken of, and evidently acquiring reciprocal remedies againſt each other. Now to ſay after all this, that the one is intended only to poſſeſs the privilege of *ſuing*, without being *ſubjected to ſuits*, is ſurely reſorting to an arbitrary or capricious conſtruction in violation of the arrangement, the ſpirit, the words, and plain import of the clauſe.

The ſum and ſubſtance then of all the foregoing arguments (which I flatter myſelf have been ſatisfactorily elucidated) is ſhortly this—that under our preſent conſtitution, the ſtates have parted with that complete local ſovereignty, which they antecedently poſſeſſed, and as to all national objects, have veſted it in the federal government; the principles of which ſubject each ſtate, and conſolidate the individuals of all, into a national government of a mixed form; which government poſſeſſes legiſlative, executive, and judicial powers commenſurate with the whole, and in their ſpheres ſupreme and independent. That each ſtate, as ſuch, and each individual in every ſtate, is ſubject to be acted upon by theſe powers in their conſtitutional forms; the power of the former to uncontrolable legiſlation, and of the latter to unqualified obedience, being confined to thoſe objects, which fall under that reſiduary ſovereignty, not parted with to the general government. That the *ſpirit* and *tenor* of the conſtitution, both conſpire to repreſent the ſtates as amenable to the fountain of *juſtice*, which it was a primary object to eſtabliſh; and *that* for the ſake of enſuring that *domeſtic tranquility promoting that general welfare, and ſecuring thoſe bleſſings of liberty* of which it gives ſuch flattering proſpects. And laſtly, that the *words* of the particular clauſe, which conſtitutes the judicial power, with obvious fitneſs to the principles, the ſpirit and tenor, expreſsly declare, that the judicial ſhall have cognizance, not only of caſes,

ſea, where the United States may be a party, but of all *controverſies between* two or more ſtates, a ſtate and citizens of another ſtate, citizens of different ſtates, and of the ſame ſtate, claiming lands under different ſtates. The import, ſpirit and neceſſary conſtruction of which words are, that as on the one hand; every ſtate may apply to this tribunal for juſtice againſt any ſtate, any individual, or any corporate body, in the nation; ſo they in their turns poſſeſſing reciprocal rights, may appeal to this great and paramount ſource, and obtain *juſtice* when it is unconſtitutionally withheld by any ſtate; on every of which its obligations are equally binding.

According to the method propoſed, I am now to anſwer ſuch objections of our author, as appear to militate againſt the doctrine I have contended for. This diſcuſſion however, has run into ſuch a length already, that the fear of prolixity, with the circumſtances of ſeveral of the moſt weighty objections having neceſſarily fallen into the argument already, will induce me to circumſcribe this part of the plan. Writing for the ſake of truth, and not of controverſy, I ſhould diſdain the artifices of the mere critic, or party writer, who plumes himſelf upon collating the different parts of a work, and ſifting out trivial inaccuracies of thought or expreſſion, or magnifying apparent contradictions, or beſtowing odious epithets upon the work or the author. I will endeavor to ſtate candidly, and as preciſely as poſſible, the ſubſtance of the arguments uſed by our author, with my reaſons for differing from him in his principles or his application of them; and the reader muſt then decide between us.

1. He cites the letter addreſſed by the convention to Congreſs, and ſuppoſing them to be "open and undiſguiſed in their addreſs and unequivocal in their "language" proceeds to argue upon what is there expreſſed; and from thence to draw his conſtruction of

the

the conſtitution which it accompanied. This letter is no part of the inſtrument by which this government was erected—it poſſeſſes no force and forms no authority. Had the language of it been utterly repugnant to the conſtitution, it would not have invalidated, and if perfectly conſiſtent, would have added no weight to one ſingle article or proviſion of it. I object to this mode of argument, not becauſe the tenor of that letter, rightly conſidered, militates in the ſmalleſt degree, with the conſtruction I contend for; but becauſe it is taking a latitude, which in ſuch momentous queſtions it would be dangerous to indulge.

2. Our author (in page 27) aſſerts, "that there is "no mean between a corporation and a ſovereign go-"vernment. Every body politic, muſt in its nature "be a ſovereign power, or a mere corporation; as "every man, in a civil ſociety, muſt be a ſovereign "or a ſubject."

He then proceeds to ſhew, that the ſeveral ſtates muſt be ſovereign; becauſe they contain local citizenſhip, becauſe treaſon againſt the ſeveral ſtates is mentioned, (which he alledges involves the idea of a *ſovereign power* againſt whom it may be committed) and becauſe Congreſs are expreſsly inveſted with the excluſive legiſlation over the ten miles ſquare; which would be unneceſſary, if they poſſeſſed, and the ſtate were diveſted of, the general ſovereignty.

By the ſentence above cited, "that every body-politic muſt be a ſovereign power or a mere corporation", he cannot avoid the inference that every ſtate in the union is a mere corporation—inaſmuch as the conſtitution of the United States, and the laws and treaties which may be made under it are *the ſupreme law of the land*. This neceſſarily implies ſovereignty; and yet I flatter myſelf that I have already ſufficiently ſhewn the inapplicability of the term *corporation* to the individual ſtates, by a compariſon of the ingredients which

enter

enter into the formation of ſuch a body. We there ſaw that of thoſe ingredients, the greater part applied rather to the national than to the ſtate governments; and that ſuch as did not apply to it had no relation to either. It could not, indeed, be pretended that the *federal government* comes under that denomination; but by ſhewing that it comes *neareſt to it*, the impropriety of applying it to the ſtates becomes manifeſt. If this reaſoning be juſt, we ſhall find in each of the ſtates, that very *mean* between a corporation and a ſovereign government, which our author denies potentially to exiſt. It is clear they are not corporations; equally ſo that they are not the *ſovereign government*; and yet they are bodies politic. If the diſtinction of *citizenſhip* conſtitute a ſovereign government—the United States poſſeſs that character—each repreſentative for ſeven years, and each ſenator for nine years, muſt have been "a citizen of the *United States*." If the being capable of having *treaſon* committed againſt it be fixed upon as a criterion of ſovereignty—ſtill the United States poſſeſs it.—Art. 3. Sect. 3. "Treaſon againſt the United States ſhall "conſiſt only in levying war againſt them, or in ad-"hering to their enemies, giving them aid and com-"fort." As to excluſive legiſlation, it proves nothing either way. Now we find that the *criteria* of ſovereignty fixed on by our author, apply both to the United States, and to each individual ſtate; and this would make them reciprocally the depoſit of the ſovereignty; which he very juſtly declares (in page 22) to be a contradiction in terms. The difficulties ariſing on this queſtion, I truſt, I have already reconciled by employing the diſtinction as to the *objects* of ſovereignty. The ſtates are ſovereign within their ſphere; the United States within theirs, with this difference, that where the latter are ſovereign, the former are ſubordinate.

It is manifeſt, from what has been already obſerved, that the uſe of the term *corporation*, with reference to the

the State governments, is altogether arbitrary and unwarranted, the anxiety or alarm which it has created, void of foundation, and the analogical inferences drawn by our author, unjuſt and inconcluſive. Hence it will be immaterial to this argument, whether a corporation can be ſued, in what caſes, by what proceſs, to what end, and with what effect.

3. In page 32. He infers, that becauſe Congreſs, in their laws eſtabliſhing a judiciary ſyſtem, have provided no method for ſervice of proceſs upon the ſtates, they conceived ſuch ſervice to be inconſiſtent with the government they were adminiſtering. It is not uſual, and I apprehend not correct, to infer the *non-exiſtence* of a power from the temporary *non-uſer* of it. Have Congreſs already organized, or uſed all the powers delegated in the conſtitution? Take one ſingle inſtance as a ſpecimen of hundreds. Have they availed themſelves of all the modes of taxation, which the conſtitution gives them? and ſuppoſe they ſhould not find it neceſſary for a century to come—would this be a ground to queſtion the power or the right? This argument wants plauſibility even on the firſt bluſh. The next, however, deſerves a little more diſcuſſion.

4. He proceeds—"In order to *compel* a body, or an "individual, to anſwer for a debt upon a legal proceſs, "there muſt be a party to complain; a tribunal to com- "plain to, inveſted with power to decide; authority to "compel the appearance of the party complained a- "gainſt, and ſtrength to enforce a compliance with the "decree which ſhall be made." Theſe poſitions, in the abſtract, are all true; the error lies in the application of them. Abſtract propoſitions, incautiouſly or ſubtilely applied, are generally the moſt fruitful ſources of error, and the moſt dangerous engines of ſophiſtry. They gain upon the mind imperceptibly, under the ſeductive impreſſion of their original plauſibility; and ſurprize it into concluſions to which it never expected to aſſent.

This

This propoſition ſets out with placing the ſtreſs upon the *compulſory* power of the tribunal. "In order to compel a body, &c." The queſtion is embarraſſed in the firſt inſtance, with introducing the laſt ſuppoſition, which ought ever to be made—the contumacy of the ſtates againſt this branch, or any branch of the federal government.

Are we to reſort to this ſtandard, in other caſes, and on other queſtions, in order to determine the power and the rights of the federal government? Does it poſſeſs no powers, and on the ſtates are no duties impoſed, but what the conſtitution has provided a compulſory method to guard and to enforce? This would be laying the foundation of it in force, and not in contract. The conſtitution ſuppoſes compliance, and not reſiſtance. He ought to have begun his ſentence in this way "In order to conſtitute a *legitimate ſyſtem of judicature*; for ſuppoſing the ſyſtem legitimate or conſtitutional, all queſtions as to the mode of action are purely legiſlative. Let us then ſuppoſe for a moment, that all the particulars enumerated by our author are neceſſary—we will examine them apart with reference to the conſtitutional powers of the general government, and ſee if they preſent any obſtacles to the conſtruction I contend for.

1. *There muſt be a party to complain.* This is an elementary propoſition—an axiom in juriſprudence; and there is another equally obvious and ſelf evident, viz. *that there muſt be a party to be complained againſt.* I draw one plain inference from both; which is, that whoever complains, and whoſoever is complained againſt, are, ſtrictly ſpeaking, *parties in the ſuit*; and of them it may be ſaid, in the words of the conſtitution, that there is a "controverſy between" them. Now the inſtrument ſays, that the judicial power ſhall extend "to *controverſies between* two ſtates, a ſtate and the citizens of another ſtate, &c." And it follows, that as well a ſtate, as its citizens, may be a party *to complain*, and any other ſtate a party to be *complained againſt*.

2. *There must be a tribunal to complain to, invested with power to decide.* That tribunal is the supreme federal court, which is, by the constitution, invested with what? Not with the privilege of being chosen by a state "to be arbitrators to whom the dispute may be referred--not with the liberty of acquiring a transient delegated jurisdiction over a particular case from the occasional grant of one or more states *pro hac vice*--but with the *power* (the strongest word that could be used) over the cases which are therein enumerated. Surely this must mean a *power to decide.*

3. *Authority to compel the appearance of the party complained against; and strength to enforce a compliance with the decree that shall be made.*

Here we must distinguish as to the different kinds of appearance, and the modes of compelling it in a court of justice. In America we derive our jurisprudence from the common law, and from the civil law. In England, by the common law, the first proceeding is by an original writ, which is a motion to do justice, or appear at court, and shew cause wherefore he refuses. If this be not complied with, the next is in some measure compulsory, and is called an *attachment or posse* by which the sheriff takes certain goods of the defendant, which are forfeited if he do not appear. Next follows a *distringas* or distress infinite, by which his goods are taken, from time to time, until he is gradually stripped of all his possessions, unless he complies with the mandate. It is unnecessary to go into the tedious detail of innovations, to deduce the means by which a *capias ad respondendum* became at last the ordinary mode of commencing a suit, since no application of it could be made to a state, which upon the same principles could not be subjected to the process of out-lawry. Peers of the realm, members of parliament, and *corporations*, are privileged from both--the process against them being summons and distress infinite, instead of a capias; and by the same

rule that they cannot be arreſted, they cannot be held to bail. Latterly, however, a mode has been adopted in England, which, as far as my obſervation has extended, has been generally imitated in America, more ſimple and equally efficient with the rigid mode of diſtreſs; which is, upon ſerving the defendant with proceſs, if he refuſes, or neglects to appear and controvert the plaintiffs claim, to preſume therefrom, that he admits the claim to be juſt; and to grant what is called a judgment by default. In England the plaintiff files common bail (which is nothing but a mode of entering the appearance) for the plaintiff; and then proceeds with his ſuit In America that formality is not obſerved, being, in fact, preſerved in England for the only purpoſe of ſecuring to the different officers, thoſe fees which they would be entitled to, in caſe the defendant had appeared. It may be objected, that this is not a mode of *enforcing* the appearance. True—but if all the ends of an appearance are obtained by it, what ſubſtantial imperfection does it include?

The civil law correſponds in ſubſtance with the common law—if the party do not obey the citation *mittitur adverſarius in poſſeſſionem bonorum ejus.* In the chancery proceedings, the bill, after obſtinate default, is taken *pro confeſſo.* Now therefore, whether the ſuit proceed to a judgment by default at law; or the bill be taken, *pro confeſſo*, in equity, the reſult is the ſame—the right is fully and ultimately determined. Let us now apply theſe principles. Although I will not deny, that Congreſs, in adjuſting the judicial ſyſtem to controverſies, to which a ſtate may be called to be a party, have the conſtitutional power of enforcing an appearance by diſtreſs, ſuch as ſeizing or ſequeſtering the property or intereſts of the obſtinate ſtate; yet I ſhould ſtrenuouſly controvert the expediency and the prudence of the meaſure; eſpecially when ſo obvious, and at the ſame time ſo effectual a mode might be adopted, in making

a *judg-*

a *judgment by default*, the penalty for contumacy. The ſtate legiſlature would illy anſwer to their conſtituents for the prejudice their intereſts might ſuſtain from being ſuffered, through deliberate *laches* to paſs, undiſcuſſed and unattended to, through the judicial deciſion of the ſupreme court. They would be accuſed before the tribunal of the people, of arrogance, in riſing up in oppoſition to the conſtitutional authority of the federal government; of perjury in thwarting, inſtead of ſupporting and obeying that government, which they were ſworn to do when they took their ſeats—and of a breach of fidelity to their conſtituents, in abandoning their rights and intereſts. Or if the executive of the ſtate, ſhould be conſidered the proper repreſentative of that ſtate in the federal court, he would be far leſs competent to encounter that ſtorm of popular reſentment, to which ſuch negligence would properly and neceſſarily expoſe him. It would be in vain to oppoſe his private notions of conſtitutional rights, as a ſhield to protect him. The good ſenſe of *the people* would ſee, that however it might once have been a queſtion, whether a ſtate may be called to anſwer, if the point had once been decided by that body, or tribunal, to whom the prerogative of deciding may appertain, all reſiſtance afterwards is unconſtitutional, and tends to open the doors of civil war; which is, at all times, an equal enemy to their repoſe, and to their liberties. The people of America are, at this day, too much enlightened to be gulled by their rulers into a belief, that in thwarting conſtitutional powers, their intereſts are to be advanced. While on the one hand, they will rally round their ſtate ſtandard to check the progreſs of lawleſs rule in the federal government; they will, on the other, frown into inſignificance every demagogue, and abandon to diſgrace every local officer, who ſhall preſume to excite their jealouſies, alarm their fears, or embroil the government under falſe pretences.

I infer,

I infer, that the appearance of a ſtate in the federal court will be ſufficiently ſecured, and enforced by making a judgment by default, the penalty of refuſal. The federal court poſſeſſing a power to grant ſuch a judgment, are in poſſeſſion of power, ſufficient to anſwer that requiſite laid down by our author, and that by the rule laid down by himſelf, which is good one, that "where a power is given to act, all neceſſary correſpon-"dent powers are implied in the grant."

But our author adds, *there muſt be ſtrength to enforce a compliance with the decree when made.* I preſume he does not mean that the requiſite ſtrength muſt reſide in the court which makes the decree; but in the government, under which the court is conſtituted. In this view I admit the poſition; but nevertheleſs, muſt be permitted to indulge a ſentiment, which I truſt, is not peculiar to myſelf—it is this; that if the tribunal have a conſtitutional right to make the decree, the ſtate concerning whom it is made, will need no external agency to carry it into effect. It will appertain to the legiſlature as the depoſitory of the will of the people to make proviſion for a compliance. I preſume that no federal laws will be paſſed to provide for the caſe of a refuſal, unleſs thoſe caſes actually happen. That they will happen, it is un-conſtitutional and irreverent to ſuppoſe beforehand—and I add, highly improbable, alſo.

1. The people in ratifying the federal government, ſurely did not expect, or intend to reſerve to the ſtate-legiſlatures, the power of controverting or oppoſing any part of its legitimate authority. If the exiſtence of ſuch caſes, under the old confederation, was the very evil complained of, and intended to be remedied in the new government; it is very abſurd to imagine that in adopting the remedy they meant to continue the evil.

2. To ſuppoſe then the exiſtence of ſuch a caſe (which muſt neceſſarily be done in providing a remedy) is at once to impute to the legiſlatures a deſign to contradict

the

the will of the people, whose will they are constituted to represent, and to advance. It contains a charge of treachery, in the first instance, accompanied with weakness. Moreover the supposition must be accompanied with another, either that the people of the state will countenance the legislature, or that they will disavow their obstinancy. To suppose the former, involves the irreverent supposition, that a state will revolt from the union. A person capable of harbouring this supposition must be equally capable of imagining, that one state will make war, form alliances, divide itself into two states, coin money—in short, where is the end of suppositions of this kind? The fact is, they are all equally wild and un-constitutional. On the other hand, to suppose that the people will disavow the obstinacy of their legislature, is giving up the point.

3. That the state legislatures will provide for a compliance, is further to be inferred from the obligations of their oaths, and the dictates of wisdom and sound policy. If the federal judiciary have the power to make a decree to bind a state; the legislature of that state cannot infringe the decree, without directly violating the constitution, which they are sworn to support. They must not only stand convicted of perjury, as men; but of weakness as politicians. If the federal government is instituted for the purpose of securing justice, domestic tranquility, and perpetuating the blessings of liberty—they must bring into jeopardy these precious benefits, whenever they weaken the fabrick on which they rest. And as every state in the union would have an equal right to do the same, they would add the contagion of example, to the gross measure of guilt, which they would incur.

4. Supposing all these powerful incentives to be of no avail (and the supposition is an extravagant one) the probability that the state would comply, results strongly from this—that there resides in the union an ultimate

power,

power, which will be prompted by an irreſiſtible duty, to compel it. Government is founded on the weakneſs and the wickedneſs of men. Mutual protection is derived from mutual ſtrength. The laws are the ſafeguard of the good againſt the bad. When principle is loſt in ſelfiſhneſs, ſentiment in vice, and public ſpirit in avarice, the laws will then act on the fears of the debaſed individual; and their apprehended terrors will ſtimulate the obedience of him, whom no morals can bind, nor ſenſe of duty prompt. That legiſlature, therefore, which ſhould be ſo loſt to private virtue and public ſpirit, would ſtill be apt to yield to fear, that compliance, which no principle could procure. Terrified by the ſolemn account to which their conſtituents would ſummon them—ſhould they, by their delinquency, call down the ſtrong arm of the union to execute the decrees of juſtice, they would not dare the conſequences. Abandoned as they might be themſelves, they would not be ſo hardy as to diſcard from their deliberations the honour of the ſtate, and conſign to chance the repoſe of her citizens.

But it may be aſked, ſuppoſing the worſt—by what power and in what mode, would the general government inforce the decree? I am not bound to anſwer this queſtion, in order to ſupport any of the principles I have been contending for—the mode, which prudence would point out for the exercise of a power, muſt even be diſtinct from the queſtion, whether the power exiſts. Yet a few thoughts on this ſubject may be indulged. I have already ſhown, that Congreſs probably will not, and perhaps ought not, paſs any law on this ſubject, until the caſe occurs. If however, contrary to all the calculations of probability, and to all the principles above urged, a ſtate ſhould think proper to diſregard the judgments or decrees of the federal judiciary: the occaſion would call loudly for the interpoſition of the general government. An act of Congreſs would probably

bably be paſſed for enforcing the decree. If a ſum of money were awarded, it might ſequeſter the revenues of the ſtate, and enjoin the collectors to pay them into the hands of commiſſioners. This law they could not diſobey; for it would be "the ſupreme law of the land." Or they might provide for levying a tax upon the citizens of the ſtate, according to the ſtate aſſeſſment—or they might order vacant lands of the ſtate to be publicly ſold. In theſe, or ſome other way, and far be it for me to preſcribe, Congreſs might perhaps effectuate the decrees of juſtice. As the laws ſo paſſed would be the ſupreme law of the land, oppoſition from any number of citizens, or from any citizens, would incur criminal proſecution.

If the rights of territory ſhould paſs into judgment—laws might, in like manner, be framed for quieting the poſſeſſors from all impoſitions by the evicted ſtate, and from all interferences on the behalf of its citizens. Theſe hints, however, are only thrown out, in order to ſhew that ſome mode might be adopted, without preſuming to preſcribe to the wiſdom of the general government. Indeed I paſs haſtily over them; for my mind dwells with reluctance upon caſes ſo extravagant in the ſuppoſition, and ſo painful in the detail. I cheriſh too much veneration for the good ſenſe of my country, and too much love for its repoſe, to entertain, in imagination, a ſcene ſo derogatory to both. I am perſuaded, indeed, that the inſtance will ſeldom occur, of a ſtate refuſing to do juſtice, and being called on that account into the ſupreme court; but I will never believe, until I ſee it, that after that court has paſſed a decree, ſhe will obſtinately perſiſt.

Our author goes on to ſhew the impoſſibility of a kingdom, or ſtate, being ſued in its own courts; and applying the reaſoning to the United States, repreſents it as aukward and abſurd, that a precept ſhould go forth in the name of the preſident, who is a citizen of

Virginia,

Virginia, and ſervant of the United States, to call the general government to anſwer before the ſupreme court. His principle requires no demonſtration; and the impoſſibility of the United States being ſued, is equally palpable. It is true, that no ſuit can be brought againſt a nation—and ſuch are the United States of America. But as the ſimilitude does not hold between the United States, in their national capacity, and any one of the ſtates in its individual, the concluſion that therefore the latter cannot be ſued, is utterly unwarranted by the premiſes.

I agree indeed with our author, that a ſtate cannot be called to anſwer *criminaliter*; no doubt they are conſtitutionally out of the reach of criminal proceſs, becauſe the nature of the compact does not countenance the ſuppoſition, that any ſtate, as ſuch, can commit a crime,

Should any ſtate paſs a law, contrary to any conſtitutional law of the United States; her executive and judicial are bound by their oaths not to carry it into effect. Should ſhe combine her powers, in oppoſition to the general government, her citizens would be reduced to obedience, or a revolution would enſue. A ſtate, however, withdrawing herſelf from the union, is a caſe not contemplated by the conſtitution. Every thing which ſuppoſes *a diſſolution of the compact itſelf*, cannot be aptly conſidered as a queſtion *ariſing under the compact*. Innumerable caſes of this kind may be feigned for the ſake of indulging ſpeculation, or of exerciſing ingenuity; but after all they ſerve only to embarraſs thoſe who would candidly and ingenuouſly diſcuſs conſtitutional queſtions, and to alarm the fears of the weak or the uninformed. It is equally inadmiſſible to introduce into the diſcuſſion and lay any conſiderable ſtreſs upon the notions, entertained amongſt ancient confederacies, the rules of modern corporations, the technical nicety of common law doctrines, or the

ſubtil

ſubtil refinements of political theories. Ours is a government *ſui generis*; though in its parts it embraces the principles of many, as a whole it is exampled by none. Some of its traits are peculiar to itſelf, ſome are borrowed—but they are for the moſt part combined in a manner ſo original, that their progreſſive operation only can fully inſtruct us in the relative momentum of each. Like a number of unequal bodies put into motion, which muſt be left to find their common centre; which they would do of themſelves in a ſhort time, with more accuracy than any calculation could attain to. The government will ſoon aſſume its level and unfold its operation.

The proſperous omens already unfolded, excite in the breaſt of the patriot, the moſt joyful hopes, and inſpire the moſt implicit confidence, that the ſequel of our government will be flouriſhing and happy. The view preſents a clear and gilded horizon, in which the ſun of American greatneſs is riſing with ineffable ſplendor, and bids fair, in its meridian power, to bury the twinkling planets of the old world. May no vapours thicken, nor ſtorms ariſe, to cloud or agitate the peaceful proſpect! The event depends much upon ourſelves; *we* are the arbiters of our own fate. That ſame ſpirit of mutual conceſſion, that ſame patriotiſm, that ſame wiſdom, which planned and adopted our conſtitution, being protracted and kept alive by exerciſe, will infallibly realiſe all our proſpects. While the fountains of opinion are kept pure, our elections free, and our repreſentation uncontaminated—while faction is diſcountenanced, ſpeculation diſcouraged, knowledge diſſeminated, induſtry promoted, and the arts of peace cultivated—while in one word, the laws are planned in wiſdom, executed in mercy, and obeyed through principle, the people of America have every thing to hope, and but little to fear.

HORTENSIUS.

CHARLESTON, APRIL 12, 1792.