

ticle, no inferential power to that extent can be derived from it. And the delegation to Congress, of express powers, to be exercised in particular modes, for providing a fund for the expenses of the general government, is an exclusion of the exercise of such power in any other mode than that prescribed by the terms of the delegation.

We now examine the third section of the IV article of the constitution, as the only portion of that instrument having any reference to the disposition of public lands. That section is in the following terms: The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory, or other property belonging to the United States; and nothing in this article shall be so construed as to prejudice any claims of the United States, or of any particular State.

The language of this authority first arrests our attention: Congress shall have power to dispose of the public territory. The disruption of the confederated States, would of course, destroy whatever power of agency the cessions and acceptances conferred upon them. The cessions in their terms, look to some common agent, to dispose of the territory ceded "to the use and benefit of the States." While the confederation existed, this common agent was found in the Congress of the States. But a constitution was contemplated; which if adopted, necessarily destroyed the active efficiency of any power of the confederation. Had no such provision been made as above quoted, the cessions, though made, would have been inoperative to any beneficial extent, for want of a proper power to carry out these objects.

This power of disposition, adopting the phraseology of the deeds of cession, as we contend was conferred by the cited clause, to supply the deficiency that would otherwise have existed, but that it was also subject, in that "disposal" to any equally obligatory observance of the mode in which the cessions required it to be made for the use and benefit of the States.

To contend that the adoption of the constitution, containing the recited cessions by the States, was a fee simple grant of the territory to the general government, would be to force a construction negated by the terms of the power granted, and history of its insertion in that instrument.

By reference to the second volume of the Madison papers, it will be seen, that in the original draft of the constitution, reported by the committee of eleven, no power over the public territory was given to Congress, except as to the