

under the constitution, of “disposing of the territory” except in its capacity as trustee, (as subsequently explained) restricted in its exercise even of that authority, by the invariable declaration of the states, that the fund arising from this property should be *disposed of* for the common benefit and use of the states in just proportion. But admitting that the whole title to public lands, now rests upon cessions from the states,—we still deny the accuracy of his Excellency’s conclusions. At the period of the cessions, each state contributed its quota of expense, in maintaining and defraying the costs of the war.—They were united by articles of confederation, by league between, not a constitution over them; each state using all the powers and rights, not necessarily parted with, to give efficiency to their common agent, the Congress. At this period, no idea of a general government or federal constitution was mooted—and the states looked to the ending of the war as restoring to them many of the rights and authorities, temporarily parted with, from the exigencies of the period. The lands at this time ceded, were unquestionably intended as a fund, primarily, for defraying the common expenses of the war. New York notwithstanding the intimation of his excellency that no deed looked to an exclusive application of the fund, expressly states in her legislative cession, that a portion of the contested territory “ought to be appropriated as a common fund for the expenses of the war.” Virginia requires, as a precedent condition to cession, “that the necessary and reasonable expenses” of the State, in the war within her territory, should be reimbursed; and proceeds then to designate the proportion in which the several States should profit by the fund, “according to the several respective proportions in the *general* charge and expenditure.” What was that *general* charge and expenditure? Not civil expenses, certainly; for at that period, the States bore, each for itself, all such expenditures, even including the pay of its respective Delegates in Congress:—but it was, as is answered even by his Excellency himself, “the charges of war and all other expenses incurred for the common defence and general welfare.” To these charges, the public lands were first to be applied, and the ultimate trusts, after their defrayal, in the same proportions, “to be considered as a common fund for the use and benefit of the *States*, (including the States ceding,) “to be *disposed of* faithfully and bona fide for that purpose, and for no other use or purpose whatsoever.” It