land. Here, Mr. Chairman, they distinguish between what they call an improvement, and an obstruction of the navigation, the one they contend they have the right to do; but the other they have no power over. This admission, in my conception, surrenders the question, for if we have the power of legislating on the subject, we can make any regulations we please, and indiscriminately improve, alter, or obstruct. It seems a little remarkable that gentlemen wish to improve a property they have no title to, and it does not appear a conspicuous mark of understanding to begin at the wrong end to improve, and then contend about the right.

Mr. Nelson did not expect that this point would have been brought up again, but since it had so happened, he felt a propriety, not to say a duty in recapitulating also what he had urged before, and adding some further reasons to shew that Congress had the right, and the exclusive right of jurisdiction over all that part of the river Potomac within the district of Columbia. The burthen of the song appears to be this, that because the states of Maryland and Virginia entered into a compact, before the formation of the present constitution, by which it was agreed that the river should be considered a common highway, and as both possessed the right of way, it was a joint right, which as they did not jointly convey the right has never been ceded to the United States. Does the gentleman (Mr. Clarke) mean to say that the states of Virginia and Maryland had not the power of granting this joint right? If he does not assert this, or if he admits they had the power, we shall be able to demonstrate that they have granted it to Congress.—After two states have made a division of a part of each of their particular property, cannot they mutually give to another the property they have thus acquired? surely common sense cannot deny them the right so to do; if you cannot grant away a right, it is no right, for a right cannot be complete, if it cannot be conveyed to another, the very idea of a right implies the power of disposal. They say that Maryland had the exclusive right of navigating the river Potomac, and that she gave by compact a qualified property in that exclusive right to Virginia. Cannot Virginia convey this qualified right? If one holds a right to an estate for life or a term of years, is it not as competent for the party to convey such right, as he would be to convey an estate in fee simple? Whether the right be a special right, or a limited right, or of whatever nature it be, every man has a right to convey it to another, unless there be exceptions or reservations; but in the compact between Maryland and Virginia there are no reservations or stipulations that abridges or precludes a conveyance.—Then he asked them to propound this case. Maryland says a common right with Virginia in the Potomac, & Maryland declares that she gives up all her rights to 10 miles square of her territory; the Potomac is a part: Virginia also says that, so far as she has a right, she gives it up also. Well then, both states have given up their respective rights. Does not the relinquishment of their rights by both states produce the same effect as if it had been done by a joint instrument? Maryland, he asserted, had given up her right; no matter whether it was a real right or qualified right, she gave up all but what she had conveyed to Virginia and Virginia has given up all she possessed.

Mark the reverse, if Virginia has not ceded her right in the Potomac, and Maryland hers, to Congress, then this is not a district of territory within the meaning of the constitution, and if it be not the constitutional district, we have no right to exercise any other jurisdiction here than what we exercise in common for every other part of the United States. For if the district be separated by the Potomac, it is not one district, but two districts, and the constitution does not give Congress power to assume exclusive jurisdiction over two districts. If however the state of Maryland has ceded the Potomac, and it runs up to the Virginia territorial line, then this district is but one district though though it consists of parts taken from two states. He felt a difficulty in defining this idea, because when a thing is self evident, it renders it hard to prove what is so palpable, and a multitude of words rather tend to confuse than clear the point. But what he understood was, that when several tracts of land were joined altogether, they are not separated by the water courses or any thing else crossing or traversing the same; then the jurisdiction of Congress runs as well upon the bed of the river as its banks, and so over the whole 10 miles square: if this idea was correct Congress had assumed the exclusive jurisdiction over no more territory than they had a constitutional right to acquire. He might be mistaken in his opinion; he therefore urged his arguments with great diffidence. He was liable to error, and that very often; and it may be the case in the present instance. But he must acknowledge that he had not as yet heard any thing that satisfied his mind that he had been wrong. He therefore still hoped that the bill might pass into a law, from a conviction that it would be a great benefit to all persons residing upon or near the waters of the Potomac.

Mr. J. Randolph had hoped that the very perspicuous statement of his colleague (Mr. Clark) when the subject was last under consideration had satisfied the most incredulous that Congress were not competent to pass the bill before them. Indeed he had hoped that the bill would have been suffered to sleep through the rest of the session and the House no more troubled on the subject. The reasoning of the gentleman last up was to his mind utterly fallacious and inconclusive. The district was not necessarily divided into two bodies politic because of the intervening jurisdiction of Virginia over the Potomac. Did Massachusetts constitute two states because its parts were completely separated by New-Hampshire through which you must necessarily pass to get into Maine from old Massachusetts, as it was called? For the purpose of division the mathematical line which marked the boundary between the two states of Maryland and Virginia was equivalent to the whole breadth of the Potomac. On the ground of natural right Congress could not obstruct the navigation of the river.—They could not do it without admitting the right of Virginia and Maryland to raise obstructions above and below.—Those states had as good a claim to stop the passage of the ships of the U. States as Congress had to interrupt their batteaux. But gentlemen say they are not stopping the navigation, they are improving it—how? by damming up the best channel. Did not this justify any species of obstruction—it was only to term it an improvement and every objection was silenced. Whatever might be the decision of the House he trusted no member from Virginia would be found to concede her right over the Potomac. He hoped also that the subject would be suffered to remain at rest until the question of recession was decided—but in whatever shape it should appear he should always protest against it as a violation of the rights of the state which he represented.

Mr. Nelson would briefly reply to what had been said in relation to two districts being but one district. The fact was as had been often stated, that two parts of the district had been separately granted by Maryland and Virginia, that if these two parts touched each other and left no interval, they became one district, but if there was an interval between them, such as the river Potomac, they were two districts, and over two districts Congress had no authority to assume exclusive jurisdiction. But he thought the gentleman from Virginia had evaded an answer to the position that Congress cannot exercise powers of exclusive legislation over two districts. What had been said of Massachusetts and Maine being one state, although separated from each other by New Hampshire, did not apply; they might be and in fact were a body politic, notwithstanding the geographical separation of the parts. A nation and its territory, like the United States and Louisiana, were a body politic, but the decision of the present question does not depend on things like these. The jurisdiction given to Congress by the constitution over one district of country can never be considered a jurisdiction over two separate districts. True, if both parts join together they are but one district; yet if they are separate they are two districts.

What has been said of Virginia's holding the right of free navigation under the law of nature and of nations was an opinion different from that he held; but it would take such a length of time to discuss that point, and recite his authorities, that he was induced to give it the go-by, with one single remark. It was not the understanding which the states of Virginia and Maryland had at the time of entering into the compact for the free navigation of the Potomac, Pocomoke, and the mouth of the Chesapeake bay. By that instrument it would appear that their right of navigating these waters was the result of compact and did not grow out of the law of nature, or the code adopted by the nations of Europe.

But suppose his idea to be correct, still he would contend that what was prosed to be done by the inhabitants of George Town was within the power of the United States legislature, inasmuch as it goes to amend and make better the navigation of the Potomac. Indeed any stranger standing by and hearing the debate which had taken place, would suppose that the advocates for the dam were disposed to obstruct the navigation of the river in such a manner that no other vessels than those belonging to George Town should be permitted to pass by Mason's island. This however was by no means the intention. He concluded with observing, that to him and his constituents it was really a matter of great concern; and he believed it to be equally important to all the upper country of Maryland, and part of Virginia and Pennsylvania, all in Pennsylvania within 20 miles of the south line of that state, and all the inhabitants of Virginia between the ridge dividing the head waters of Rappahannock and James rivers from the Potomac. If, by inaction or refusal, the channel to George-Town should be suffered to fill up, he would not give a single farthing for all the improvements made upon the canal navigation. The Potomac company may as well be abolished at once, for there will be an end to all the advantages they have heretofore calculated upon, and which had been the inducement for them to expend so many myriads of dollars on their improvements—He could not restrain himself from expressing his anxiety that the bill should pass, and this he still thought, as he had before declared to be the proper time.

Mr. Lucas. The question is, whether we can authorise the inhabitants of George-Town to improve the river at their own expence; and it appears from the statements made in the course of the argument, that the Potomac was within the charter bounds of Maryland, and not within the charter bounds of Virginia; and unless Maryland had ceded the right of navigation thereon to Virginia by compact, Maryland would yet have been as the sole owner of the soil, also the sole owner of the river. What Maryland gave to Virginia was not a title to admit them to the right of ownership; they only granted a qualified right, and reserved the territorial right, and if so, Virginia has never possessed more than a qualified right. Let it be enquired what right is that? and it will be found to be merely the right of free navigation. That is nothing more than the right of passage over the soil of another, or as it is termed by the civilians, the right of servitude. It is not a right in the territory, but merely a right of usage across the soil. If for example, an alluvion was to form an island in the Potomac, would Virginia claim it as joint owner of the soil. She would not, because she has no other claim than what is declared in the compact; that being only a qualified right, she is not joint owner; of course Maryland being the sole owner of the soil might convey her whole territorial right, subject only to the qualified right of Virginia, viz. the right of navigation. If the right of fishery, or any other territorial right, was contended for on her part, it would not be allowed her. For all territorial rights, as they were in Maryland from the beginning, remained in her till her act of cession.

It is evident, therefore, that Maryland as absolute proprietor of the soil could convey the same to Congress without the intervention to Virginia, and if Maryland could do this, she has done it; for by her act of cession she has ceded to Congress all her territorial rights over ten miles square, or less, of her state, but still subject to the qualified right of Virginia. It is urged that such a conveyance cannot be complete, without the consent of Virginia, and as Virginia has not ceded her qualified right derived from Maryland, Congress do not hold the Potomac in full sovereignty.—He granted it, and admitted further that as Virginia had only ceded such of her territory as was within her charter bounds, and as the right she had to the river was not included in her charter, but derived from Maryland by compact, that she had still that right, but that was a right neither more or less than that of the free navigation, to which the gentleman from Virginia (Mr. J. Randolph) had said the state of Virginia was entitled by the law of nature and of nations, inasmuch as she held territory above and below. But if Maryland has conveyed to Congress all her right to that part of the Potomac lying within the boundaries of the district, Congress has the same right which Maryland had. Suppose a case, a person conveys his right of soil to another, but previously he had agreed with his adjoining neighbor to let him have the service of his road. Shall this qualified right in the use of the road across the other's soil prevent the new possessor from repairing or improving such road. Such a position cannot be supported. Because a general right of improvement in the owner of the soil would be counteracted by the special right of way or passage granted to another. Can it be said that Congress, when they wish to improve a road or a river within their exclusive jurisdiction, cannot exercise this right, without the consent of those whom they have allowed to travel along or over the same. Surely this will not be contended for.

The waters of the Potomac are a common high-way. We grant it, but will it cease to be a common high-way, whilst the whole body of the waters are carried through one channel instead of two? Does the contraction of the surface and deepening of the channel render it less a high-way than it was heretofore. Will the river Potomac cease to be the Potomac, when its waters are compressed within narrower bounds? No. What is lost in surface is gained in depth, not a drop is lost to the river, but there is a clear profit in the gain.

Allusion has been made to the navigation of the Mississippi, in which France has a qualified right of navigation. The United States owing the soil on both sides. If the United States should pass a law to remove its obstructions or cut across from point to point, would France interfere, and say you shall not remove a single stick of drift wood, or any of the masses of trees which almost choak up the navigation at certain seasons. It is preposterous to think so; what not remove a bar that shall be formed by the course of nature! It is absurd. But yet there is more ground for this position than the one now advocated for the concurrent jurisdiction of Virginia. It has been contended that the states of Maryland and Virginia were to make the improvements in this river not only by joint consent, but at joint expense. Now would George-town at her own expense offer to lay out such a sum of money, as is likely to be required for the erection of the dam, in order to obstruct the navigation of the river, a river in which she is most deeply concerned? Would they pay the whole expense, if it was to work an injury instead of a benefit? The states of Virginia and Maryland agreed in the opening of the canal, but here George-town bears the whole expense, and let any man say whether they would contrive and pay for their own ruin?

Mr. Sloan would leave the dispute as to the right of jurisdiction over the river to be settled by those who were more competent to investigate law questions than he was himself. But from what he had heard, he had brought his mind to this conclusion, that whatever right Maryland possessed to the jurisdiction of the Potomac, Congress was now entitled to exercise. The gentleman from Virginia (Mr. J. Randolph) has said that Congress has no right to obstruct the navigation. True; but it does not follow that Congress has no right to remove obstructions. He says also that we might stop both branches. Not so, it is intended to stop one only, in order to deepen the other, so as to render the navigation more useful and safe. The case before us has been occasioned by the act of God, or a great movement in nature, a quantity of ice has been lodged, and tore up from the shore and the island the materials that form perhaps the base of this sand bar, by which the navigation has been obstructed. Now, suppose another case, that this ice had pent up the whole body of the river, and compelled the waters to form themselves a channel for escape, through the lower grounds of the Virginia side, and thereby have given a new course to the river, and it would not be the first time that ice had been the cause of changing the bed of a river. He would ask, was there any member of this House but would heartily concur in restoring the inhabitants on this side the river to the use of the river, by erecting proper works to restore the stream to its old bed. He did not believe there would be the slightest objection to such a proposition, especially if it was to be done, like the present measure, at the sole expence of the people of George town. With regard to the doubt which had been entertained whether it would be advantageous or not, he believed that to be perfectly settled, after what had been stated by the gentleman from Virginia, (Mr. Lewis.) He believed it would no more injure Alexandria, or the mouth of the eastern branch, than it would the mouth of the Chesapeak.

Mr. R. Griswold. This question has assumed several important aspects since it has been before the committee. The first, though not the least, has been the denial of the right of Congress to exercise exclusive jurisdiction over this district of 10 miles square. This question however, must be solved by adverting to the constitution of the United States, and the acts of cession of the states of Maryland and Virginia, which were passed for the purpose of carrying into execution that part of the constitution relative to a territory over which the United States were to exercise exclusive legislation. The gentleman from Virginia (Mr. J. Randolph) has stated in fact, though not in words, that Congress have the power of assuming exclusive jurisdiction over more than one district it granted by any of the states. He says that this district of 10 miles square is divided into two districts by the Potomac, or by a mathematical line, therefore they are still two districts, and he does not deny the right of Congress to assume the exclusive legislation over them, but merely they have no right to exercise jurisdiction on the interval between them; this he has illustrated by a reference to old Massachusetts and her province of Maine. He says they are one body politic, and constitute one state of the union. Here that gentleman must surely be mistaken. It is not to be disputed that a state may consist of separated parts, and so might the territory of 10 miles square, if the constitution had not tied it down to one entire and connected district. As well might it be contended that Congress might assume 100 districts, each consisting of one mile square, as that they are authorised to hold two districts within their ten miles square. But the truth is that by the acts of cession of both Maryland and Virginia, the two parts which Congress have assumed are expressly granted, and Congress now stand on their ground, and have all the rights and jurisdiction which either or both states possessed previous to the act of cession, and that right extends over the river included in the ten miles square. He would admit, for argument sake, that those two states have the privilege of free navigation, or the right of high way; but he would ask if there was any thing contained in the bill that infringed that right? And he knew the answer must be that there was nothing in the bill likely to work an injury to any person.

Mr. *Alston* did not intend to consume much time of the committee in delivering his sentiments, as the discussion had already been protracted to a much greater length, than he at first view of the subject supposed it merited. It has been contended by several gentlemen that Congress have no power to legislate at all upon the subject of the navigation of the river Potomac. This really to him appeared to be a very extraordinary doctrine indeed. That because Virginia and Maryland had not jointly conveyed a common property, their conveyances separate, although including this very common property, was not obligatory, and did not convey to Congress exclusive legislation and jurisdiction over such part of the river as lay within the district of Columbia. He admitted that the river Potomac was a common high way, and ought for ever to remain so, for the benefit, not only of the people of Virginia and Maryland, but likewise for all the citizens of the United States, chosing to navigate the same, and to do any act whereby the navigation would in the smallest degree whatever be obstructed, was more than we had a right or ought to do; but would it follow in consequence that we had no right to improve or benefit the navigation of the river; most indubitably not. It was in his mind clear from the information he had received, that unless something was done for the benefit of the navigation of the river, that an end would soon be put to George-town as a commercial spot. He believed it to be universally the case that, the uniting of any two streams of nearly equal size produced a bar or shallow place just below their junction. If then the bar complained of just below Mason's island, has been produced in consequence of the uniting of the two arms of the river, it seemed to him, as an inevitable consequence, that if one of them was dammed up, the channel would return to its former depth.

Mr. Alston could not see the force of an argument made use of by his colleague, the honorable Speaker, if he understood him correctly, to say that if the dam contemplated should be effected, it would tend to injure the ferries established on the river. In what manner the erecting of the dam from Mason's island to the Virginia shore could affect them, he was not able to discover, as the land on the Virginia shore, opposite the ferries, and the island belong to the same person. He entertained no doubt but that the same privileges would extend to the island as were now enjoyed at the landing on the Virginia shore.

It therefore appeared to him that the propriety or impropriety of the measure contemplated by the bill upon the table, turned wholly upon the question, whether thereby the navigation of the river Potomac would be obstructed or benefited. For his part he had no doubt but that it would greatly tend to the improvement of the navigation of the river; he should therefore give it his decided support, and hoped the bill would pass into a law.

Mr. *Claiborne* asked if the ten miles square located and surveyed to the United States included the river; he rather suspected that they had laid off ten miles square exclusive of the river. If this was the case, Congress had assumed jurisdiction over more territory than they were constitutionally entitled to.

Mr. J. Randolph had really hoped that after this question had been so long before the committee it would have been better understood than it appeared to be. He regretted his incompetency to make himself intelligible. He had not meant to convey the idea attributed to him by Mr. R. Griswold. What he had said in relation to the two districts was offered as a solution of the difficulties which the gentleman from Maryland (Mr. Nelson) seemed to labour under. He never did contend, that because Congress had the power of exercising exclusive jurisdiction over a district of ten miles square, they had therefore the right to exercise similar authority over one hundred districts of one mile square. The same gentleman seemed to labour under another error in supposing that he contended that Congress, because they had no right to legislate over the river, had no right to legislate here. The right of jurisdiction over the territory is not impugned by a denial of the right over the river. It is a little remarkable that the gentleman from Connecticut (Mr. R. Griswold) and the gentleman from Pennsylvania (Mr. Lucas) draw the same conclusion from different premises; but it never was contended by him, that Virginia had a territorial right over this river. What she had was a stipulated right, and Maryland had conceded that no obstruction should be made in the river, but by the joint consent of the two states. It is however said that the dam will not be an obstruction, and the gentleman from