

Courts for determining Disputes between States.

Omitting some intermediate entries, it is sufficient to note that on Monday, the 8th October, 1787, Congress resolved as follows :

“Whereas it appears by the Journals of Congress that a Federal Court has been instituted, pursuant to the Articles of Confederation and perpetual union, to hear and determine a controversy respecting territory between the States of Massachusetts and New York; and whereas it appears by the representations of the delegates of the said States in Congress that the said controversy has ceased, and the same has been settled and determined by an agreement entered into on the 16th day of December last, by the agents of the said States, and any further proceedings in or relative to the aforesaid court having become unnecessary :

“*Resolved*, That all further proceedings in and relative to the said Federal Court, as also the commissions of the judges thereof, cease and determine.”

The agreement between the two States was then spread at length upon the Journal of Congress.

SOUTH CAROLINA *v.* GEORGIA.

June 1, 1785, Congress resolved “that the second Monday in May next be assigned for the appearance of the States of South Carolina and Georgia by their lawful agents; and that notice thereof, and of the petition of the legislature of the State of South Carolina, be given by the Secretary of Congress to the legislative authority of the State of Georgia.” The prescribed form of the notice contained a copy of the petition of the State of South Carolina, in which the subject of the controversy (after detailing the nature of the colonial claim of title on each side) was stated as follows: “That South Carolina claims the lands lying between the North Carolina line and a line to be run due west from the mouth of Tugoloo River to the Mississippi, because, as the said State contends, the river Savannah loses that name at the confluence of Tugoloo and Keowee rivers, consequently that spot is the head of Savannah River; the State of Georgia, on the other hand, contends, that the source of Keowee River is to be considered as the head of Savannah River. That the State of South Carolina also claims all the lands lying between a line to be drawn from the head of the river St. Mary, the head of Altamaha, the Mississippi and Florida, being,

Federal Courts before the Constitution.

as the said State contends, within the limits of its charter, and not annexed to Georgia by the said proclamation of 1763 [of the King of Great Britain]; the State of Georgia, on the other hand, contends, that the tract of country last mentioned is a part of that State."

The time for their appearance having been extended, the agents of each State appeared before Congress on Monday, September 4, 1786, and produced their credentials, which were extended at length on the journal. They were then directed "to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question, agreeably to the 9th of the Articles of Confederation and perpetual union."

On the 11th of September the agents for South Carolina reported that they could not agree upon the judges, and prayed Congress to proceed on the following Wednesday "to strike a court agreeable to the Articles of Confederation."

On the following Wednesday (the 13th) the agents of both States attended. On motion of the delegates of Georgia, it was "resolved that Congress proceed to strike a court in the manner pointed out by the Confederation." Three persons were then named from each of the States, and from the list of persons so named each party alternately struck out one until the number was reduced to thirteen. Then, on motion of the delegates from South Carolina, these names were put in a box, and the following nine names were drawn out in the presence of Congress: Alexander Contee Hanson, James Madison, Robert Goldsborough, James Duane, Philemon Dickerson, John Dickinson, Thomas McKean, Egbert Benson and William Pynchon. On the next day, September 14, 1786, the delegates of Georgia moved that this court be held at the city of New York on the first Monday in May then next. The delegates from South Carolina proposed to amend by substituting the third Monday of the next November. This amendment being lost, the original motion was carried.

There is nothing in the published Journals of Congress to show that this court ever sat. The difference was settled by a compact between the two States, the first and second articles of which will be found in 93 U. S. pp. 5, 6, in *South Carolina v. Georgia*.