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HOUSE OF REPRESENTATIVES.

DEBATE ON THE GEORGIA CLAIMS.

[*Continued.*]

MR. ROOT began by observing that he should not undertake a lengthy and elaborate discussion of the merits of this claim. He was not disposed minutely to enquire into the legality or equity of the claims derived under the act of Georgia of 1795. Although he believed that the New-England purchasers were entitled to recover, both in law and in equity—that the fee of the lands in question was vested in them beyond any legislative control, yet as they had offered terms of compromise, and as gentlemen have inclined to put the issue upon the expediency of the measure, he should chiefly confine himself to the answering of such objections as he had heard offered in opposition to the claim. He said that he had listened attentively during this debate, and the first objection which possessed any claim to argument, fell from the first gentleman from Virginia, (Mr. J. Randolph). The objection is this:—that the New-England company were purchasers *with notice*—that is, that they had notice of the fraud before they became purchasers; that they knew the sales by Georgia were void, and purchasing with their eyes open, they must sustain the loss—and how, he inquired, has this notice been shewn? By whom and on whom has it been served? The gentleman from Virginia who first spoke on this question has, to be sure, referred us to the President's message of the 17th of February, 1795, and this he is pleased to denominate a notice. It may be a notice for ought I know, but surely it did not satisfy even Congress, much less the citizens of Boston, that the act of Georgia was passed in fraud, was *ab initio* void, or that a subsequent legislature would annul the grant. That message did notify Congress that Georgia had passed a law for selling a part of her vacant lands, and expressed some apprehensions for the future peace of the United States. [Here Mr. Root read the President's message of the 17th February, 1795, and inferred from the message itself that the President's apprehensions arose from the circumstance of that country's being inhabited by warlike Indians, and that he communicated the information to Congress in order that pacific measures might be adopted.] Is this, continued Mr. R. a notice of fraud? Is this a *caveat* to notify purchasers to beware? But, Mr. Speaker, is this message interpreted into a notice of an adverse claim? If so, in whom did that adverse claim exist? Surely not in Georgia, after she had passed all her right. Did it exist in the United States? Such a claim was not asserted by the President in his message. And indeed it appears from a perusal of the bill reported by the select committee to whom that message was referred, that no assertion of claim to the lands in question was then contemplated. (Mr. Root read the bill alluded to, purporting as follows: "Be it enacted, &c. that the President be authorised to obtain or accept by purchase or donation, from the state of Georgia, a relinquishment and cession of the claim of the said state to the whole or any part of the lands lying within the limits of the same, and without the ordinary jurisdiction thereof.") Georgia owned other vacant lands out of her ordinary jurisdiction, than those sold by her to the several companies of 1795. A cession of these lands to the United States appears to have been the object of that committee—and how could they have acted otherwise? It was known to the gentlemen composing that committee that Congress under the old confederation, and since the adoption of the federal constitution, had repeatedly recognized the right of Georgia to the lands in question. Prior to the year 1798, Congress had, at three several times requested the state of Georgia to cede a portion of her vacant territory to the United States. In that year the state of Georgia by an act of her legislature authorised her delegates in Congress to cede and convey to the United States a portion of her vacant lands including the same tract now claimed by the New-England purchasers. This territory was to have been ceded under certain restrictions and conditions for a certain compensation to be paid by the United States. Congress refused to accept of the cession,—not because the lands were claimed by the United States,—not from any supposed defect of title in Georgia,—but because the terms were thought to be improper and inadmissible. And Congress thereupon by another resolution proposed to accept a cession of the lands in question, on other terms and under other conditions. (Here Mr. Root read copious extracts from the journals of the old Congress, to shew the recognition of the right of Georgia to the lands now in controversy.) By several public acts and documents, continued, Mr. R. have the government of the United States, since that time, acknowledged and maintained the right of Georgia to these lands. The United States have also, by tacit consent, acknowledged the right of Georgia—That state as early as the year 1780, asserted her claim by a public act of her legislature. In 1789, she made a conditional sale of the same lands, and in 1795, by a legislative act sold them to the several companies under which the New-England purchasers claim to hold. No objection on the part of the United States was made to these several public acts—and by a known rule of law, silence and acquiescence in such cases is tantamount to an express consent and confirmation. Under these circumstances I could hardly suppose that the President's message amounted to a notice of an adverse claim.—Another gentleman from Virginia (Mr. Clarke) alledging that "an actual notice is not necessary,"—that "a constructive notice is sufficient," which positions I shall not undertake to deny, has relied with much apparent confidence on the circumstance that the deed to the New-England company was executed on the same day that the rescinding act of Georgia was passed. He infers from this that the citizens of Boston must have known on the 13th of February, 1796, that the legislatures of Georgia were about to annul their grants, and pass their famed rescinding act on that day. We have not yet been told that that celebrated act was long in its passage through the different branches of the legislature, nor have we any evidence to convince us that the effervescence of which the gentleman speaks, flew like an electric shock almost instantaneously from Georgia to Massachusetts. It is fair to presume that the purchasers never conjectured that a rescinding act could be passed till after their contract was completed. The covenant for the purchase was entered into at Boston, in the month of September, 1795 between the agent of the original grantees and the New-England purchasers. In October, 1795, payment in full of the balance of the consideration money was made, and the executive of Georgia made out his order for indorsing satisfaction on the mortgage and for delivering up the same. The act of the legislature of Georgia authorising the grant, the deed executed by the governor according to law, the certificate of the payment in full of the consideration money, and the executive order for indorsing satisfaction on the mortgage, being all shewn to the New-England purchasers, could they believe that the grant was void? Bred to respect the acts of lawful authority, accustomed to repose confidence in the contracts of government, and educated in the belief that private rights and private property would not be wantonly despoiled, they required some further notice of the fraud, at least of such fraud as might avoid the grant, than the mere surmises or whispers of the traveller. Thus, Mr. Speaker, I think this formidable notice results in this;—that the President had been informed of the passage of the act of Georgia of 1795,—he thought, unless pre-cautionary steps were taken, that it might embroil us with the Indians, and deemed it proper to communicate the information to Congress.

Another objection is made by the gentleman from Virginia (Mr. J. Randolph) who first addressed you, that the claimants will perhaps reject the proffered compromise, and afterwards plead our own statute book as a recognition of their claim. This objection can easily be remedied in the bill to be passed pursuant to the resolution now under consideration. A proviso can, and undoubtedly will, be inserted that in case a compromise shall not be effected, the act shall not be so construed as to impair the rights of the United States, or to strengthen the title of the claimants.

Another objection made by both of the gentlemen from Virginia (Mr. J. Randolph and Mr. Clarke) who have spoken in opposition to the resolution reported by the committee of claims, is, that nothing passed by the act of Georgia of 1795. and this objection is attempted to be supported, first, on the ground that the legislature of Georgia had no authority to grant. I flatter myself, Mr. Speaker, that I have sufficiently shewn that the lands in question were the property of Georgia as a free, sovereign and independent state, and that she, and she alone, had the right of their disposal. But a distinction is taken between the people and their legislature. It is said that the people of Georgia had never delegated to the legislature the right to dispose of her vacant lands. By the constitution of Georgia all legislative powers were delegated to the legislature, unless particularly excepted, and we do not learn that the power of disposing of their vacant territory was excepted or reserved. The disposition of vacant lands has always been considered legislative power, necessarily belonging to the legislature without any express delegation in a constitution. If such delegation of power is necessary, I imagine that but few valid grants can be found in the several states. In support of this objection it is further insisted that the grant of 1795 was fraudulent; of course, that it is void *ab initio*. The abominable fraud, the gross and odious corruption which is said to have been practised by and upon the members of the granting legislature of 1795, have been depicted in the most artful and detestable colours. But even were I to admit for a moment, that the motives of a legislature can be questioned in order to nullify their acts, I should extremely doubt whether that abominable corruption did even exist to the extent alleged. Where, let me ask, is the proof of its existence? I can find it no where except in *ex parte* affidavits taken before—no one knows whom;—and sworn to by persons equally strangers to us. Being voluntary affidavits, the deponents felt perfectly secure from the pains and penalties of wilful and corrupt perjury. If these legislators were so base and impure, why have they not been arraigned to answer for their crimes? We have heard of no prosecution against them for the bribery and corruption. Instead of jails, gibbets and infamy, they have been rewarded by the continued confidence not only of the people, but of the legislature. Several of the members who stand charged with bribery, have since been elected by the people to seats in both branches of their legislature. Several others have since been appointed by the legislature to seats on the bench of justice, and one other has since been appointed, by legislative act a trustee of the University of Georgia. Can we believe, Mr. Speaker, that the people of Georgia are so lost to every principle of virtue as to elect men stained with corruption and stamped with infamy, to fill seats in the legislative body? Can we believe that the legislature are so shameless as to defile the sacred bench of justice with such impurity and fraud? And, last of all, can you believe that she would commit the care of the education of her youth to the very child of corruption? No sir, it cannot be. I cannot believe that this transaction is so vile as it has been represented. This objection is still further supported by another gentleman from Virginia (Mr. Clarke) by a recurrence to that "effervescence," which induced the people to "rise in the majesty of their strength and declare the act null and void." It is true, Sir, that the people or rather their legislature, became so effervescent in 1796, as to rise in the majesty of their strength and kindle a bonfire. Disregarding the sacred nature of contracts, setting at defiance the constitution of the United States, which declares that "no state shall pass any ex post facto law, or law impairing the obligation of contracts," and that "full faith and credit shall be given in each state to the *public acts*, records and judicial proceedings of every other state," and sporting with the rights of innocent individuals, that legislature erected the funeral pyre, bound the helpless victim and laid it upon the altar. Then, not like the patriarchs of old who laid coals upon the altar, they sacrilegiously called down the fire of heaven to aid in the destructive work. This contract was wedded to the constitution of the United States,—and when the latter was about to perish by the hands of Georgia legislators, the former, like a Hindoo spouse, must perish by the same flames, that their ashes might be mingled and gathered in the same urn. But to complete the scene of solemn mockery, a convention was called who engrafted the rescinding act into their constitution.—This effort to give strength to invalidity was equally unavailing. That contract was made under the sanction and authority of the constitution of the United States, and this constitution which forbids a state to impair a contract, also declares that "this constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the *constitution* or laws of any state to the contrary notwithstanding."

Another objection made by a gentleman from Virginia (Mr. Clarke) is that the price was so inadequate as to evidence the invalidity of the title. The price, Mr. Speaker, although apparently inadequate was, under all circumstances, equal or nearly equal to what had been paid for large tracts sold by other states.

This country was remote and then owned and inhabited by warlike tribes of Indians. The Spaniards were on its border, and a part of it was actually occupied by settlers under Spanish and British grants. Yet the New England purchasers paid nearly double the price for which the delightful country of the Tennessee was sold. And by a known rule in chancery, if a contract equal at its creation, afterwards becomes unequal, still execution will be decreed.—I perfectly agree with the gentleman that persons ought to come "with clean hands and pure hearts," to seek for justice:—and I also agree in another maxim, that the hands of the claimants are presumed to be clean and their hearts presumed to be pure until the contrary be shewn. They alledge to be innocent purchasers—show that they are otherwise before you brand them with infamy.

The gentleman from Pennsylvania (Mr. Lucas) has objected that the legislature of Georgia were deceived in the quantity of land by them sold and refers to the commissioners' report, by which it appears that the country sold contains nearly double the amount of acres which it was supposed to contain at the time of the sale. Shall this pretence vitiate the contract? Are we to suppose that men selected from all parts of the state possessed less knowledge of her vacant territory than purchasers at a distance? Shall the merchant absolve himself from his contract by saying that he was cheated in the bale of goods which he had sold, and which for a long time he had had under his eye? Will it avail the vendor to say, Sir, you have cheated me in the worth of the horse I sold you, and which I had used for a long time? The lands in question were unascertained. The quantity was equally unknown to the vendors and to the vendees—of course no fraud can be imputed to the transaction on that score.

The same gentleman from Pennsylvania, and he is joined by his colleague (Mr. Gregg), and by a gentleman from Virginia (Mr. Clark) object to this claim on the ground that the deed to the New England purchasers contains a covenant of special and not of general warranty. Thence they infer, that these purchasers might presume that the act was fraudulent and would be rescinded. In my opinion that inference cannot fairly be derived from the premises. The granting legislature of Georgia, being ignorant of the extent of former grants as well as of the quantity of acres in that tract of country, very properly provided that the state should not be subject to any suit, claim or pretension on account of any deduction in the quantity of said territory. The limits between the United States and the king of Spain, were not at that time definitively settled. Hence the propriety of the special covenant that the Georgia companies should not be liable to refund to the New England purchasers any money in consequence of any defect in their title from the state of Georgia. They knew, and were willing to encounter these hazards, but they had been too much accustomed to yield confidence in legislative contracts to believe that they would be wantonly violated.

Mr. Speaker, I have attempted as far as my feeble abilities would permit, to answer all the objections I recollect to have heard against this claim, and which appear to possess the merit of argument. If I have been successful, I trust the House will pardon me in declaring, that I believe the claimants are not only equitably but legally entitled to that relief which they ask. That Georgia had the right to convey I think cannot be doubted. And even admitting for argument's sake, that the original sale was fraudulent and void, and that it is competent to a legislative or a judiciary tribunal to enquire into the motives which influenced a prior legislature in making a contract, still the purchase is good in the hands of subsequent purchasers who come in for valuable consideration and without notice of the fraud; and the subsequent purchasers would more especially be protected against an after purchaser, who purchased from the first grantor and with notice of the prior grant. The United States have purchased of Georgia, with notice that that state had years before sold the same lands to certain companies, and that these companies had sold to the present claimants—and shall the United States avoid the first contract as fraudulent? The law books contain no such doctrine.

But suppose, sir, that the act of Georgia of 1795 was stamped with infamy, was generated in corruption so that no subsequent transfer could cleanse it of the foul stain, still let me ask would it not be wise would it not be prudent to effect a compromise with these claimants? This tract of country is now estimated at about 50,000,000 of acres. It is not proposed, and indeed we are not permitted by the convention with Georgia, to allow more than five millions of acres to all the different claimants, in consideration of their relinquishment of claim to the forty five millions of acres. If their claim is a bad one it would be for the advantage of the U. States to give 10 per cent. for its extinction. Suppose the Indian title to that country was extinguished and land office was opened—would the industrious settler pay you as much for that land with this claim impending over it, as he would for the same land if it were free from all conflicting claims? If he would in the latter case pay you two dollars an acre, which is the medium price for which the U. States lands are sold, would he give you one dollar and eighty cents an acre, knowing that he must encounter a law suit? No, sir, industrious farmers are unwilling to purchase a law suit. That country will never be sold to actual settlers until these claims shall be extinguished or confirmed.

Having offered my sentiments in opposition to the amendment, and in favor of the resolution reported by the committee of claims, I confess, Mr. Speaker, that I feel myself not a little embarrassed. I feel myself in an awful dilemma. I feel that I am reduced to a sad, a desperate alternative. I must either acknowledge that I have been bribed, that I am base and corrupt, or what is almost equally terrible to my feelings, that I have leagued in sentiment with the gentlemen on this side of the House. (pointing to the federal gentlemen) Unwilling to acknowledge myself corrupt, or that I have been influenced by any circumstance without these walls, I think it justice to myself to declare that neither myself, nor any of my connections, nor any of my constituents within my knowledge, ever claimed a single foot of this land—If therefore, I am influenced on this occasion by any impure or unworthy motives it must be by a direct bribe. Unwilling to acknowledge this, I am driven to the other alternative, however painful that election may be, and must acknowledge myself a federalist. The gentleman from Virginia (Mr. J. Randolph) does not hesitate to denounce to the people all those republican members who dare to think differently from him on this question, as having been bribed or as having gone over to the federalists. This denunciation is just cause of alarm to all those, who, like myself, give their votes according to their own judgment, on the best reflection and most mature deliberation. Coming from that gentleman it almost astonishes me. To me it appears terrible as the thunders of Olympus. I fear I shall sink under its weight.

Mr. Speaker, I still entertain a gleam of hope that my constituents will pardon my presumption in daring to differ from that gentleman in sentiment on this occasion. That they may yet think that I may still be a republican, although I decline to follow in the servile track of any particular popular leader. This denunciation and proscription of republican members on this floor, I repeat, is truly alarming. It is equally alarming to reflect that those gentlemen who have shared the public confidence in the republican districts of the Union are now declared to be polluted by the embrace of speculators, and are henceforth to be considered as destitute of every moral virtue. If this be true, if the eighth Congress of the United States have such men among them, if corruption already proceeds from your executive departments, then indeed have we arrived to an awful crisis. If this monstrous enormity is practised upon the republican members of this House then the whole republican system of our government