NATIONAL INTELLIGENCER,

AND

WASHINGTON ADVERTISER.

VOL. V. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, PENNSYLVANIA AVENUE. NO DCCLXIII.

FIVE DOLLARS PER ANNUM. FRIDAY, AUGUST 30, 1805. PAID IN ADVANCE.

Congressional Register.

HOUSE OF REPRESENTATIVES

SATURDAY, FEBRUARY 1.

DEBATE ON THE YAZOO CLAIMS,
(Continued.)

MR. HOLLAND.—Mr. SPEAKER, When this subject was before the House at the last session, I viewed it with the utmost indignation, from an impression that the act of Georgia of 1795, for the sale of their public lands and under which the petitioners now claim, was an act of the most corrupt legislature on earth; and I am yet far from believing that all the members who voted in favor of that act were influenced from the purest motives. But upon an examination of the subject in a cool and dispassionate manner, I find strong grounds for a removal of many of the prejudices that then existed in my mind. Sometime after the passage of the act of 1795, I happened to be in Georgia, and mixing with those who were unfavorable to it, I adopted a prejudice; and when the subject was brought up at the last session my original prejudice was revived and augmented from a whisper in my ear, or from my seeing it in print, that one of the commissioners of the U. States had an interest in the compromise proposed to be made.—A combination of these circumstances produced on me a hasty determination never to give a vote that by any possible construction should give a sanction to a measure so originating and involved in fraud. But, sir, after having more time to ex mine, and on more mature deliberation, I have relaxed from the hasty determination, and have discovered that it was the result of an honest disgust arising from the circumstances that I have stated. But I have since found that many of the facts that I then relied on did not exist, and consequently that my conclusions were drawn from false premises. I have examined with care, whether the suggestion respecting the commissioner was true. And here I ask pardon of this officer for the unfavorable impression I then entertained of him, having discovered it to be unfounded.—That many of the members of the legislature of the state of Georgia were influenced from improper, impure, and corrupt motives, I have no doubt; but that the conduct of those members, or the act which they passed was a sufficient cause to authorise the succeeding legislature to resort to revolutionary measures is to my mind exceedingly doubtful. There are many causes, however, if we will take the trouble to examine them, which will in a great measure account for the extraordinary proceedings of both those legislatures, and if their acts can be accounted for without attributing fraud to the one or tyranny to the other, that portion of charity that we are bound to extend to all mankind will impose upon us the most favorable construction. In order to understand these transactions it will be necessary to enquire into the estimated value of land, in the state of Georgia to which the Indian claim had been extinguished, and also the estimated value of the lands in question to which the Indian claim had not been extinguished for years antecedent to the disposal of them by the act of '95; and also enquire whether any external causes subsequent to the act of 1795 produced a different conception relative to the value of those lands. A knowledge of these subjects may be useful, and enable us to judge more correctly and more favorably on the motives of either legislature. The people of the state of Georgia as well as the legislature of the state for years previous to the passing of the act of '95 had set a low value upon their vacant lands, lands laying contiguous to the settlements to which the Indian title had been extinguished, lands lying this side of the Oconee. I am credibly informed, and if my information is incorrect, let the gentlemen from that state correct me; lands had been sold in 92-3-4 for a cent an acre, sold for a sum only contemplated to indemnify the state for the expence incidental to making titles. And as to the lands in question, their estimated value will be best known by adverting to their legislative acts; their legislature for years had been attempting to sell these lands; in 1787 a large portion of them was offered to the U. States for 171,428 dollars—and in 1799, about twenty-five millions of acres was actually sold for a little more than 200,000 dollars to two companies, one called the South Carolina, the other the Virginia Yazoo land company; and in this case the land was sold on a credit, and the terms of sale not well understood; the purchasers contended that payments could be made in paper bills; but the state insisted for specie; this not being complied with, the titles were not compleated by the subsequent legislature. In 1795, the quantity of land was estimated at thirty millions of acres, the terms were cash, and the sum five hundred thousand dollars which was paid, and the titles executed, subject to many claims derived from Spain and Great Britain, and subject to the Indian title and to the claim of the U. States, as well as the claim of Spain to a part of this territory, and also subject to the sale previously made by the state in '99 to the Virginia and South Carolina companies. It was under these circumstances and conflicting claims to the lands in question, that the legislature of '95 sold this land. Sir, I shall not justify the conduct of any member that composed this legislature, and I admit that all those members that were partners or took any consideration for their votes acted imprudently and probably corruptly. But it is possible that even Thomas Rayburn, who appears in the most unfavorable point of light, having taken as it is said, 600 dollars for his share of the land or for his vote (for there is no legal proof) might believe that the state was not defrauded; he might believe that 500,000 dollars that the company was giving for the claim of Georgia to the lands in question, was more than the claim was worth, the price for which unappropriated lands had been sold, the price the state had offered to take, and the price for which Georgia had previously sold it for, authorised this belief, and that this was his belief, may be inferred from his taking 600 dollars for 75,000 acres being 1-4 cent less per acre than the state sold it for; for it seems admitted that he had his choice to retain his share or receive the money; his choosing a less sum than the public sold it for, is an evidence of the value he set upon it, and a confirmation that he thought the land well sold. But even admitting that Rayburn with many others, acted from impure and corrupt motives, does it follow that the state has been defrauded to so high a degree as to justify a resort to revolutionary measures. Did the peace and welfare of the state render the proceedings of the legislature of '96 indispensable—what was the property disposed of? was it a country which was needed for the cultivation of her citizens? No, sir, Georgia had independent of this more vacant lands than fell to her share or that she could cultivate for generations to come. It was a tract of country, remote from the citizens, claimed as I have before stated, by Spain, by the U. States, and possessed by powerful nations of Indians, over which Georgia had no control. It was of no use to Georgia only as an estate for sale, and she had nothing to sell but a mere nominal title derived from a dubious construction of her original charter, and for this Georgia received, when in great need of money 500,000 dollars, a much greater sum than it had been previously proposed for or expected to bring. We have now seen the causes that produced this sale under the act of '95; let us examine what probably produced the act of '96—the deprecated act passed Jan. '95, in the same year an office was opened for the sale of the public lands of the U. States, these lands were to be sold for two dollars per acre, and as much more as they would bring. The vast disproportion in the price of these lands, and the price for which the legislature of '95 of the state of Georgia had sold their lands, could not well be accounted for by the people of Georgia other than fraud. Fraud was suggested, a single suggestion in a case of this kind is sufficient. Nothing is so disgusting as for our agents, especially in a legislative capacity, to sacrifice from mercenary motives, our interests, and be guilty of a breach of trust. Suspicions will now be admitted as full proof; the torrent went on, the belief became general, that by fraud the legislature of '95 had bartered off in the most fraudulent manner millions of acres of the realized property of the state. Under this ideal impression, occasioned in a great degree by the causes I have just mentioned, the people of Georgia were misled, and under this impulse the legislature of '96 proceeded, and the honest zeal continued until the subsequent conviction. The people of Georgia were not alone misled by the price of the public lands—It inspired an opinion in the minds of the best informed throughout the Union, that fortunes could instantly be made in purchasing lands from the state for a few cents per acre, and then disposing of them much under the public price. Companies engaged: the land laws of South-Carolina were peculiarly favorable—the adventurers had a year's credit for the payment of the purchase money, which was about 5 cents per acre, and notwithstanding the enthusiasm, the legislature did not alter the terms, nor raise the price. Under these fair appearances, many companies formed, who were stiled land speculators throughout the Union, but the consequence was a general failure, a general bankruptcy. One company I was well acquainted with, being in my district, in the county of Wilkes, embarked under the fairest prospects, they were generally men of reputation, influence and wealth; they entered some millions of acres, but after having spent much time and money they were unable to realise their expectations, and found it adviseable to apply to the general assembly to have leave to surrender their lands as an indemnity for the state demands against them in the Entrytaker's books, and this was granted as a matter of special favor. I have mentioned these circumstances to shew what it was that made the act of Georgia of '95 so obnoxious to the people of that state, and I am strongly induced to believe that had it not been for the price the general government set upon her lands in '95, we should have heard but little concerning the corruption of the legislature of the state of Georgia in 1795, nor ever have heard of the rescinding act of '96, nor should we ever have been called upon to sanction an act produced from an overheated zeal arising from a combination of circumstances as above stated, to sanction an act that would establish a precedent of a most dangerous nature. Sir, if the doctrine was once recognized, that a subsequent could examine the motives of an antecedent legislature, there would be no security for the rights of persons or the rights of property. I do not pretend to say, that there is no case that would not justify a recurrence to revolutionary measures; all that I contend for is that this is not a case of that kind; the manner of the sale and the property sold were not so materially connected with the interest of the state as to require a revolution, and I have endeavoured to account for the sale of '95, and the unprecedented and extraordinary act of '96 from other causes than attributing universal depravity in the one, and absolute tyranny in the other legislature. There might be other causes in addition to those I have mentioned that led to and produced those measures which I shall not notice. But it was declared by the legislature of Georgia of '96, that the legislature of '95 had no constitutional power to dispose of those lands, and the same doctrine seems to be advocated by gentlemen on this occasion. It is true that there is no specific power given by the constitution of Georgia to their legislature, enabling them to make a sale of these lands, nor is there such specification of power in any of the state constitutions, nor in the constitution of the general government, yet all the states as well as the general government have been in the constant exercise of this power. The state of Georgia had previously exercised it, indeed this power is incidental to the legislative authority of every free government. I therefore consider all objections on the ground of the legislature of Georgia not having a constitutional authority to dispose of the lands in question of little validity. And I know of no legitimate power that has a right to examine into the motives of the legislative authority of a country, their motives are only to be known by their public acts, and the meaning of those acts so far as they relate to property acquired under them, are not to be expounded by a subsequent legislature, but by the judicial authority of the country. Thus, sir, I have shewn the original value of the land in the state of Georgia, anterior to the act of '95, and have demonstrated that the sale under that act was for a much higher price than had been previously asked by the state for those lands, and have endeavored to account for the change of opinion as to the value of lands generally, and the causes that produced so great fermentation and disgust in the people, that the injury was more ideal than real, that the state of Georgia had nothing but a nominal title to the lands in question, and that by the constitution she had a right to dispose of this nominal title in the manner it was disposed of, and that no subsequent legislature had a right to judge of the motives of an antecedent legislature, or to impair the rights assumed under a legislative act. I have admitted that there might be a possible case that might justify a recourse to revolutionary measures. But I have shewn that the interest of the state did not require it in the present case. And although it may be possible that neither the original grantees nor the sub-purchasers could have any legal remedy in or by the laws of the state of Georgia by the act of '96, judicial remedy seems to be forbidden. Yet, sir, in a court possessed of ample judicial power, I have no doubt but that an equitable and just remedy would be obtained, if not to the original grantees, to all innocent purchasers at least, and here let me observe that it seems to be admitted by gentlemen that innocent purchasers are entitled to an equitable consideration; but they have endeavored to prove that there is none of this description, and that all the petitioners had notice of the original fraud. To prove this notice two cases are relied on.—Two gentlemen (Messrs. Clark and Randolph) from Virginia contend, that the President's message to Congress on the 17th February, 1795, is full proof of a notice of fraud. Sir, I consider this communication in a very different point of view. In this message the President states, that Georgia had passed an act for the disposal of some of their back lands; this communication was evidently intended to excite Congress to adopt measures to induce the state of Georgia to cede to the United States a part of her territory; it is an admission of title in the state, and consequently an admission of a right to sell, so far as this goes (and it is of high authority) it is to my mind a notice of a good title in Georgia, and an inducement to purchase. At all events it could not by any possibility be construed into a notice of fraud, either in the legislature or the patentees of the state of Georgia. The other ground of notice is relied on by a gentleman from Pennsylvania, (Mr. Gregg,) this honorable member states that the deeds obtained from the original patentees are to his mind an evidence and notice of fraud, for that these deeds only convey and guarantee against the state of Georgia. These deeds, like others to lands similarly circumstanced were not a general but a special warranty; the patentees would have involved themselves extremely had they given any other kind of deed. The lands in question were known to be subject to sundry claims, and actually incumbered with the Indian title. I was a patentee for a grant of 5000 acres of land derived from an entry made at Hillsboro being the great office in N. Carolina for her western lands, now within the state of Tennesse; soon after I obtained this grant I sold the land, and from an apprehension that by some arrangement this tract might be subject to the Indian title, I had a similar limitation or provision in the deed. A deed of this kind is evidence of an encumbered estate, but can be no evidence of a fraudulent title—the same gentleman is apprehensive that the sole object of the memorialists is to procure a legislative proposition for the purpose of giving it in evidence in a judicial trial that is intended to be instituted for the recovery of their whole demand of fifty millions of acres. Had the gentleman paid a little more attention to this point he would have dismissed his fears, it being a settled principle that any propositions that are made for the settling disputes or to avoid a law suit cannot be admitted as evidence to substantiate a disputed or invalid title. A gentleman up early in this debate, (Mr. Lucas) denounced the policy of granting large tracts or monopolies. With whatever force his arguments would have applied had he been in the Georgia legislature of 1795, when these monopolies were granted, they most certainly can have no application here; the question here is not for granting a monopoly of fifty millions of acres, it is the reverse, it is the destroying a monopoly by frittering down fifty to less than five millions of acres. And in this lies the policy. It is policy in the general government to quiet the claimants that possess titles to so vast a tract of country; it is policy to avoid it possible, a judicial decision on this question by a compromise; and it is also justice to do so; the measures that have been adopted by Georgia as well as by the general government demand this justice at our hands; an examination of the course that has been taken will demonstrate that we have given them ground to expect an equitable compensation for their claims. The state of Georgia has relaxed from their rigorous act of 1796. In their convention with the United States they have set apart the residue of five millions of acres for the purpose of quieting all claims derived from any act or pretended act of the state of Georgia. Can any gentleman say that these claims were not included? The state of Georgia by their legislature ratified this provision; Congress by their act did the same thing; they did more, they appointed three commissioners to receive propositions of compromise, and further directed all claimants to record the evidence of their claims within a fixed and limited period, and this has been done at the expence of the claimants; and can we now without a dereliction of principle, retract and say that no compromise shall be? Would this be a conduct consistent with justice or policy? So far as I am able to comprehend it, I think it would not. I think we should proceed and put an end to this business and at all events grant some indemnification to innocent purchasers. The gentleman from Virg. (Mr Clark) has admitted that innocent purchasers should be indemnified, and were they to apply individually he would make them compensation, and the cases cited from Powell on contracts recognises the principle, that fraudulent contracts are valid as to the originals in fraud, but are voidable in favor of innocent persons But the cases read only apply to individual contracts, and never can be supposed to extend to a fraud supposed to be committed by a legislature; it is believed that no precedent can be found under the sun in which the judiciary can purge a fraud supposed to be committed by a sovereign legislative body. Under these considerations I think that it would be more consistent with justice and sound policy to go on and not disappoint a reasonable expectation that our public acts have justly excited in the memorialists, and prevent the danger of a judicial decision on the validity of their titles by the compromise proposed by the report of the committee of claims. Let us constitute a board of commissioners to make the enquiry, and if there are but three innocent sufferers who became such by placing such a faith upon the records of the state of Georgia, as by the constitution and laws of the United States they were bound to do, these three persons agreeably to a correct opinion given by the chairman of the committee of claims who made this report, are entitled to indemnification. Thus, Mr. Speaker, I have in as concise and intelligible a manner as I have been able, given to the House some of the reasons that will influence me on this occasion, and I entertain a hope that if they are not satisfactory to gentlemen who think differently, that at least I shall be rescued in the mind of those gentlemen who have supposed that many of those who are in favor of this measure are under the influence of speculators, or men in office; but if I am so unfortunate as to be suspected by any as acting under this influence, I have the consolation to know that the suspision is the production of a heart susceptible of this kind of influence and not attached to me. I shall however in the meantime vote for the resolution, holding myself at liberty to vote for or against the bill as I shall approve or disapprove of its details.

Mr. DAWSON. Mr. Speaker, I am among those who have never considered this as a very important question, at least not so much so as some gentlemen wish to represent it. I believe that neither the peace or safety of the United States, or the cause of republicanism depend on the adoption or rejection of that resolution, or of its proposed substitute. I believe they rest on a better foundation—the virtue and good sense of the American people. I do also believe, that, if there ever was a question which could be considered as not a party one, *this* is *that* question; notwithstanding the efforts of gentlemen to make it so—some local considerations may attach themselves to it; for the truth is, that the knowing ones of the East have been taken in by some corrupt ones from the South; and thus far it may be said to possess locality. The case is, that some years ago the government of the United States purchased from our sister state of Georgia, then sovereign and independent, her right to certain lands claimed by her, and lying within her limits. A convention was formed between the United States and the State of Georgia.

By that convention, five millions of acres of the said land were set apart to satisfy *just* claims, derived either from the state of Georgia itself, or from the power having a right to sell, previous to her becoming a state.

To ascertain which of the claims were just, and ought to be admitted agreeably to the intention of the contracting parties, and the spirit of the convention, the President of the United States was authorised to appoint commissioners: By virtue of this power an appointment was made. Three persons were selected, pre-eminent for their virtues and their talents. *The Secretary of State, the Secretary of the Treasury, and the Attorney General of the United States*; men, not only pre-eminent for their virtues and their talents, but holding the highest responsible offices under the government. Men, not only fitted for the appointment by these considerations, but from one other; *they were the very persons* who formed the convention with the state of Georgia, and must be supposed to know the intention of the contracting parties, and the spirit of the instrument.

These gentlemen, after much investigation, submitted to us the result of their labors, accompanied by an opinion, that justice and the interest of the United States, required that some compensation should be made to the persons, who are now the immediate applicants. This report was not acted upon during the last session, and the petitioners now pray that we will either confirm that report; that we will permit them to go into a court to support their claim, according to law, or that we will establish a tribunal ourselves, to determine on it, according to justice. The committee of claims has recommended the latter. To their proposition an amendment has been offered, (and which in my judgment, according to order, is the only subject now under consideration) which goes not only to a rejection of the report of the commissioners; not only to a rejection of the claim of the applicants, but to a denial to them to go either into a court of law, or before a tribunal of justice, to support their claims either at law, or according to justice. And to this amendment I am most decidedly opposed, whatever my vote may be on the resolution, or rather upon the bill which shall grow out of that resolution. That, sir, will depend on the provisions of the bill; my object is justice, agreeably to the intention of the contracting parties. If a bill can be formed which shall give relief to innocent and distressed purchasers, if any such there are, it shall have my hearty support; if it shall cover fraud, or encourage speculation, it shall receive my negative. Mr. Speaker, I have not been induced to make this avowal of my sentiments, and of the line of conduct which I mean to pursue, in consequence of any of the extraordinary observations which I have heard during this tedious debate, more extraordinary indeed than any which I ever heard, even during the height of federal intemperance! I was grieved to hear them. Sir! during this discussion—this hall, into which it is presumed that no