

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

A. D. 1842.

AUGUSTA:

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1842.

TWENTY-SECOND LEGISLATURE.

NO. 17.]

[SENATE.

REPORT AND RESOLUTIONS

OF THE LEGISLATURE OF

SOUTH CAROLINA.

[Wm. R. SMITH & Co.....Printers to the State.]

To the Senate

and House of Representatives :

Agreeably to the request of the Governor of the State of South Carolina, I herewith lay before you a Report and Resolutions of the Legislature of that State, in relation to the Act of Congress, appropriating the proceeds of the public lands.

JOHN FAIRFIELD.

COUNCIL CHAMBER, }
February 12, 1842. }

REPORT

OF THE

Committee on Federal Relations, on so much of the Governor's Message, as relates to the distribution of the sales of the Public Lands.

The committee on Federal Relations, have received, together with the Governor's message, communications addressed to the Executive of this State, on the subject of the distribution of the proceeds of the sales of the public domain of the United States, from Pennsylvania, Massachusetts, Rhode Island, Kentucky, New York, Delaware, and Indiana.

In all these communications, these States express their approval of the scheme of dividing and paying into the treasuries of the several States the proceeds of the public lands.

The respect we have for the deliberately expressed opinions of our sister States, has induced your committee to give to their communications the most calm and cautious consideration, to weigh their reasons, examine their facts, and form a dispassionate judgment upon them.

Your committee having done so, have come to the conclusion that the facts on which these States rely to support their recommendations, are imperfectly stated, and that the inferences drawn from those which are correctly stated, are not warranted by sound reason.

It is conceded, that the lands now owned by the United States, consist of two great classes. First, the crown lands, rescued from Great Britain by the revolution. Second, the soil of Louisiana and Florida, and all that is included in the treaties ceding those territories. It is also admitted, that the revolution which extinguished the title of Great Britain to

the "back lands," was a struggle in which all the old thirteen States united, with more or less power and effect; and that the funds which paid for Florida and Louisiana, were derived from the ordinary revenue of the United States. Your committee also admit, that the general expressions used in the cessions of the several States, are in part, correctly stated. But still *all* the facts are not brought to bear together upon the point, and the results insisted upon are not fairly deducible. Your committee think it due to the respectful consideration which they entertain towards those States who have communicated with them, as well as to the gravity of the subject itself, to give as full a view of the reasons of their dissent from the bill making distribution of the public lands, as the decisive opposition they propose to its provisions demands. The first subject is the right of property in the crown lands.

Under the old confederation, it was questionable whether Congress was such a distinct body politic as to be able to hold lands. Necessity, however, compelled them to assume the right. All question ceased with the formation of the present Federal Government, which is unquestionably a body corporate, distinct from the States as political bodies, and capable of holding real and personal property. The United States of America is a distinct person or corporation from the States themselves. The vessels of the Navy belong to the United States of America, and although being the National Government, they are used for the common benefit of all the States; still the property in them does not vest in any one, or in all, the individual States for partition.

This principle lies at the root of the whole matter. The confederation, from necessity, usurped the function of a State or Sovereignty. The present form of government established the United States as a Nation, and as such, she is recognized

by all the powers and principalities of the earth. It may be safely stated, that the back lands never, prior to any cession, belonged to any of the individual States, except those few who claimed them as included within their charters. All the right pretended by the other States, arises from the cession by the claiming States. The very dawn of our country was clouded by this question of the western lands. Two years after the revolution began, a proposition was made in the Continental Congress, that it should have power to settle and fix "the limits of such States as claimed to the Mississippi or South Sea," by virtue of their original grants or charters, and that the lands beyond such limits, should enure to the benefit of the "United States," that is, the new government.

This measure was negatived, and it was proposed that Congress should "fix the western bounds of each State, and *lay out the lands beyond such bounds, into new States.*" The historians of that day, say that when the original articles of confederation were proposed in 1778, "one of the objections of Maryland, as well as some of the other States, was, that the Western lands were not secured *for the benefit of the Union,* that is, the new body corporate, substituted for the British Crown, and now the United States of America. One of the best articles of that day, after a full argument, stated, "We are therefore greatly disappointed in finding no provision made in the confederation, empowering Congress to dispose of the crown property rescued from Great Britain, but especially the vacant and unpatented lands, commonly called the crown lands, for defraying the expenses of the war, *and for such other and general purposes.*" Such lands "should belong to the Congress, in trust for the use and benefit of the United States." The jealousies of the States owning no territory, were so strong, that the confederation even would

hardly have been effected ; and after battling with England during a bloody war, the separate states would have formed petty alliances. These lands were the source of the most inveterate heart-burnings, and to effect the first Union, New York led the way in 1780. As much stress is laid upon the language of these cessions, to prove that they were made in trust, to distribute these lands among the individual States, it must be remarked that at this period, there was no admitted Union, no Body Politic, no United States ; the struggle was to form one, and this state of affairs fully explains the allusion to the States, which meant only that these cessions should enure to the Union composed of such States as might adopt the confederation. Thus, New York, in that part of her cession which includes the habendum and uses, says, the territory thus ceded “should be and enure for the use and benefit of such of the United States as should become members of the federal alliance of the said States, and for no other use and purpose”—thus looking to the future Federal Government, and cutting off such States as did not join the alliance. Not a word indicates partition ; no such words as *severally* and *respectively* : in fact, the contest on the subject was, that these lands belonged to the new government, as the successor of the British Crown. After this act of New York, Congress, on the 6th Sept. 1780, addressed a circular, urging the cession of the claims of the individual States, as “essential to public credit and confidence, to the support of our army, to the vigor of our councils, and success of our measures, to our tranquility at home, and reputation abroad, to our very existence as a free, sovereign, and independent people ; “a subject so interesting to the United States, and so necessary to the happy establishment of the federal Union.” Not a word or hint of partitioning among the

States. Nay, to put the matter beyond dispute, Congress, “to induce the States to make liberal cessions, on 10th October following, declared that the territory which might be thus ceded, should be disposed of for the *common benefit of the Union*, and formed into republican States, with the same rights of sovereignty, freedom and independence, as the other States.” Here no mistake can arise. In the Act of 1780, Congress, then kept together only by the pressure of a common struggle, held out its inducement for a cession of the western lands. It was the common benefit of the *Union*—the National Government, and to form republican States. On this invitation, Virginia, on the 2d January, 1781, passed an act, to cede her lands. All this was in the midst of the revolutionary war. Let us now turn to the language of the deeds of cession themselves; that of Virginia, alluded to, is dated 1784. The commissioners “do, by these presents, convey, transfer, assign, and make over unto *the United States, in Congress assembled*, for the benefit of *said States*, Virginia inclusive, all right, title and claim, as well of *soil as of jurisdiction, &c.*, to and for the uses and purposes, and on the condition of the act of Virginia.” By recurring to that act, we find these purposes declared: these lands were to be conveyed “to the United States, in Congress assembled, for the benefit of the said States; and all right, title and claim, as well of soil as jurisdiction, which this commonwealth hath to the territory or tract of country, within the limits of the Virginia charter, situate, lying and being to the north west of the river Ohio, subject to the terms and conditions, contained in the above recited act of Congress, of 13th September last; that is to say, upon condition that the territory so ceded, shall be laid out and formed into States, containing suitable extent of territory, not less than one hun-

dred nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit ; and that the States so formed, shall be distinct republican States, and admitted members of the federal Union, having the same rights of sovereignty, freedom and independence, as the other States.” We come now to our own State. On 9th August, 1787, South Carolina, in the preamble, speaks of the invitation to cede their claims, “for the benefit of the Union,” and she used these words : “Whereas, this State is willing to adopt every measure, which can tend to promote the honor and dignity of the United States, and to strengthen the federal Union,” &c. Did South Carolina wish or intend not to strengthen the Union, but dole out subsidies to the individual States, from the sales of her lands? It was the Union—the new born sovereign republic, that was to spread its broad wings over the individual States, and give to every citizen a name which will challenge respect in every portion of the civilized world. The deed, executed 9th August, 1787, conveyed its lands “to the United States of America, for their benefit, South Carolina inclusive.” Here the corporate name of the general government is used, and when the very imperfect union then existing is considered, the state of the country, and the object of building up a national government, all idea of a distribution among the States, for State purposes, is absolutely repelled. The cession had no object but “the Union,” the “Confederation,” “the Federal Alliance.” If, then, the intention of the parties, at the time, was to bestow these lands upon the nation for national purposes, any other disposition of them should be looked upon as a misapplication of the fund, contrary to the intent of the donors.

This subject of the public lands, is presented at a period

inauspicious to that calm and dispassionate judgment, with which alone an interest so grave should be decided upon. The States, individually, are in debt, and the division of the sales of the public lands will afford a fund to pay them, and thus relieve the States from the wholesome and appropriate rebuke for improvidence—the obligation to provide the means of paying from their own funds, debts contracted without regard to a prudent foresight. It may be, that enlightened and high-minded statesmen are not sensible of any such sinister influences, but human infirmity renders us so prone to believe what our interests are concerned should be true, that great caution is required to avoid the fatal error of bending the constitution and the truth to the urgency of pressing necessities. Such is the state of public matters, when the holders of the securities of the individual States have evinced a strong desire that these securities should be in some form strengthened from the resources of the federal government. A proposition to pay, or secure the payment of the debts of the States by the federal government, would be so clearly in violation of the whole spirit and nature of our complex system, that few would venture to encounter the rebuke with which it would be met by all parties in the Union. But, where the same object can be obtained by indirection, the insatiable love of interest will urge the adoption of any means by which it can be accomplished. That the indebted States are stimulated by the pressure of heavy liabilities, to get possession of this means of relief, is not denied. There is also another existing state of things adverse to a dispassionate consideration of this subject. The sales of the public lands, constitute a large item in the revenue of the United States, which, if abstracted, will necessarily require that its place be substituted by revenue derived from the only remaining

source—duties on imports. Apart from the collateral advantages, expected to accrue by an increase of the duties on imports, there is no motive to diminish the public income, by a distribution of any part of it among those who are to contribute to supply its place. If the contribution is believed to be equal, the absence of all reason or sense, in first abstracting what is there, dividing it equally, and then contributing equally to restore it, is conclusive, that those who urge it, do not believe that the contribution from the customs of the amount abstracted from the federal revenue, by a division of the sales of the public lands, is in the same ratio as the distribution, and illustrates most painfully the want of a due sense of equal justice, in urging such distribution at the present time. If Congress should lay a direct tax upon the States, to be contributed in the same ratio as the distribution, it is clear that economy would dictate, that the whole scheme of distribution should end in crediting each State with its share of the sales of the public lands, and charging it with its quota of direct tax, as all the expenses of the separate operations would be saved. But it is in vain to disguise the fact, that the mode of raising revenue by customs, by affording an occasion for imposing a tariff to protect the local industry of one portion of the Union at the expense of the rest, is to employ the legislation of Congress for purposes foreign to the Union, and consequently in violation of the good faith in which it was adopted. Even when duties are imposed, solely with a view to revenue, it is believed that they are peculiarly onerous to those States, whose staples constitute the exports of the country. Yet, so far as that inequality is inevitable, under a purely revenue tariff, it may fairly be considered as the price of those advantages, which spring in such abundance from our national Union. But to

increase this inequality, by a distribution of an established revenue, and supply its place, by duties thus bearing unequally, is in bad faith, and has no redeeming quality to rescue it from our indignant condemnation. If the revenue laws are as equal as direct taxation, it is a mathematical truth, that a distribution and collection of the same amount in equal proportions is purely nugatory, except to incur, without motive, the expenses of collection and distribution. If the contribution is believed by those who urge it, and is, in fact, in a different ratio, then the declared terms of the constitution, that all taxes should be equal, are designedly violated.

Your committee thus arrive at the conclusion, that the distribution of the sales of the public lands among the States, is a contrivance to diminish the public revenue, by abstracting from it a fund, which, if it belongs to the States, is at least an equal contribution to the revenue of the Union, and render it necessary to supply its place, by raising from the customs an equal amount, burthened by the expenses of collection, and contributed in an unequal, and therefore unjust proportion, by the States who furnish the material for exportation. But your committee do not admit, that the proceeds of the sales of the public lands do belong to the States, in the proportion to their federal numbers, as State funds, applicable to State purposes. They belong to another and distinct political body—the United States of America, and are applicable only to national objects. To render this proposition clear, it is only necessary to go back to the history of the public lands; to show how they were acquired; whose money has been expended, in rendering them available, and the ultimate objects to which they are destined.

Indeed, when the very terms of the deeds of cession in-

clude both "the soil and jurisdiction," the individual States may claim a distribution of the latter, by the same title they set up to the former.

The States furnishing the materials of foreign commerce, believe that duties on imports, from the nature of the case, fall unequally upon them ; and this position they maintain openly, by argument. The manufacturing States, while they argue against this position, uniformly vote against every other means of raising revenue, and are especially clamorous against direct taxation. As no one denies to them a full share of the sagacity of self-interest, it is difficult to escape the conclusion, that they feel the advantages of that mode of raising revenue, to which their brethren of the staple States are so strenuously opposed, except so far as it is unavoidable.

If then they claim that the public domain is a common fund, of right belonging to all the States, with what show of reason can they object to its application to the common uses of the nation. This contribution, at least, is equal, and to abstract it, and supply its place by funds raised in a way obnoxious to the settled convictions of a part of the Union, is at least unsocial, and we must conclude, eminently selfish. As long ago as the time when the present constitution was under consideration, Alexander Hamilton, the great apostle of federalism, said : "The maxim, that the consumer is the payer, is so much oftener true than the reverse of the proposition, that it is far more equitable that duties on imports should go into a common fund, than that they should redound to the exclusive benefit of the importing States. But it is not so generally true as to render it equitable, that those duties should form the *only national fund*. When they are paid by the merchant, they operate as an additional tax upon the importing States, whose citizens pay their proportion of them in the character of consumers."

“In this view, they are productive of *inequality* among the States, which inequality would be increased with the increased extent of the duties. The confinement of the national revenue to this species of imposts, would be attended with inequality from a different cause, between the *manufacturing* and the *non-manufacturing* States. The States which go farthest towards the supply of their own wants by their own manufactures, will not, according to their numbers or wealth, consume so great a proportion of imported articles as those States which are not in the same favorable situation. They would not, therefore, in this mode alone, contribute to the public treasury in the ratio of their abilities. To make them do this, it is necessary that recourse be had to *excises*, the proper objects of which are *particular kinds of manufactures.*” Now excises, by raising the price of domestic manufactures, would increase the competition of imported articles, and thus compel the manufacturer to curtail his profits to maintain the market. Retributive justice demands this sacrifice, and the selfishness that would deny to the common treasury a fund claimed to be the common property, and therefore an equal contribution, would fairly require that this abstraction of the sales of the public domain should be supplied by an excise duty on domestic manufactures.

The history of the “back lands,” is conclusive to prove—first, that the title of the States making the cession, was by no means admitted, even in the very dawn of our national existence. Those lands belonging to the British nation called the “crown lands,” although they were in the original and loose charters at first granted, included in the description of their boundaries extending to the Pacific Ocean, yet, long before the revolution, by subsequent arrangements with the Crown, it was claimed that the lands laying beyond the ordi-

nary limits of the colonies had been reconveyed and retaken by the Crown, and it was among the vexed questions which retarded the formation of the Union, whether these lands of right belong to the individual States within whose original chartered limits they were included, or, being rescued by the common blood and common treasure, from the British Crown, belonged of right, to all the States who participated in the war of the revolution; and to settle this fruitful source of heart-burning among the other States, these finally consented to surrender them to the Union.

The true difficulty was, those few States who claimed this vast domain, would have had every temptation and excuse to maintain armies, control the Indian occupiers of the soil, regulate trade with them, and finally acquire both wealth and power, inconsistent with the just equality which alone could render a Union desirable; and this surrender became indispensable to its formation, and was made to the Union, and for the Union. All pretence that these lands were to form a fund for distribution for State purposes, is of modern origin. The States making the cession, had no motive in giving away their lands to be sold and distributed again back to themselves, in common with the other States, whose claim they did not admit. The obvious, clear design, was to part with them as States, and bestow them upon the Union.

In urging the adoption of the federal constitution, as a more perfect Union, and more efficient government, there is no expression used by the fathers of the confederacy and Union, intimating any such expectation. On the contrary, Mr. Madison, in urging the advantages of the present constitution, said: "It is now no longer a point of speculation and hope, that the western territory is a mine of vast wealth to *the United States*, (not the individual States,) and although

it is not of such a nature as to extricate them from their present distresses, or for a time to come, to yield any *regular supplies for the public expenses*, yet must it hereafter be able, under proper management, both to effect a gradual discharge of the domestic debt, and to furnish, for a certain period, *liberal tributes to the federal treasury*. A very large portion of this fund has been already surrendered by the *individual States*, and it may with reason, be expected that the remaining States will not long persist in withholding similar proofs of their equity and generosity. We may calculate, therefore, that a rich and fertile country, of an area equal to the inhabited extent of the United States, will soon become a national stock. Congress have assumed the administration of this stock: they have begun to render it productive. Congress has undertaken to do more: they have proceeded to form new States," &c. He then urges the adoption of the present constitution, in which these lands would be vested, as a means of furnishing "liberal tributes to the federal treasury," and constituting a "national stock"—not one word of subsidizing the individual States. No such means of subduing their independence, by paying the debts of the individual States, ever suggested themselves to the unsullied patriots of that day. The huckstering spirit of modern financiering, and political intrigue, is father to that thought. The very suggestion would have crimsoned the cheeks of the sterling American statesmen of that day with hot indignation; it would have effectually strangled, like a foul serpent, the new born nation in its infancy. Indeed, the power given to Congress "to dispose of and make all needful rules and regulations respecting the territory, or other property belonging to the United States," the same statesman declares, had regard to the western lands. The idea that Congress is

bound to distribute these lands, or the sales, is absolutely inconsistent with the notion, that they "belong to the United States." None but a trustee is bound to distribute. His interest is not beneficial, but fiduciary; and the same claim to the proceeds of the sales, would be good to the lands themselves, in specie: if the proceeds of the gradual sales belong of right to the individual States, so does the domain itself; and thus the individual States may claim territories within the limits of other States, and produce inextricable confusion. But if the United States is but a trustee, no principle is clearer, than that a trustee is entitled to be refunded the expenses of management before distribution, and all the expenses of extinguishing the Indian title and surveys must be first deducted, as these funds were raised by taxation, which is paid in a ratio, as before shown, different from the proposed distribution. But the late act contains within itself, its own condemnation. The distribution is to cease when the tariff exceeds a specified limit. Where is that condition to be found in the terms of the cession? If not, and the States have any right at all, that limitation is a clear usurpation. Can the obligation of a trustee be limited by his own convenience of payment? The very fact of the limitation is conclusive of the unlimited property of the United States, as a body politic, in these lands; and the distribution of the proceeds of their sale, is as destitute of any sound moral principle, as would be the sale and distribution of the old frigate Constitution, which has endeared herself to the nation by being the instrument of its frequent triumphs. It is only because the public domain is a larger fund, that cupidity has pitched upon it as a more abundant source for rapacity to seize upon. If this be true of that portion derived from cessions from the States, it is still more pre-eminently so in

respect to the territories purchased of France and Spain, with money raised from taxes on imports. It will be time enough when the Union is dissolved, and the national copartnership broken up, to distribute its assets. At present, it is a gross violation of filial reverence, thus to partition the effects of the Union, when in the vigor of its existence and the meridian of its glory. It speaks a mercenary spirit, which demonstrates the demoralizing influences of the recent career of speculation in stock-jobbing, money-changing and banking, from whose pestilential operation the finances of the nation have been rescued by the stern virtue of the democracy of the Union.

Your committee have accordingly formed the opinion, that the late act of Congress was an instance of hasty and ill-considered legislation, passed under the sinister influences of an unusual political excitement, and urged by the clamors of those who, having without due caution, incurred heavy debts, are willing to resort to any means of payment less obnoxious than the direct taxation of those whose faith is plighted to redeem them, mingled with a design thus covertly to fasten upon the nation a system of taxation unnecessary for revenue, and designed to foster sectional interests, and wholly derogatory to the permanent prosperity and adequate defences of the Republic, for which the public lands were ceded, and to which they should be sacredly applied; thus violating public faith, and weakening the bonds of union.

In accordance with the foregoing, your committee recommend the following resolutions :

Resolved, That Congress have no *constitutional* authority to dispose of all or any of the revenues or property of the federal government, *for any other than national purposes*, for which alone they were vested in that government.

Resolved, That the late act of Congress, called an act to appropriate the sales of the public lands and to grant pre-emption rights, is a *violation of the trust*, created by the cession of the public domain.

Resolved, That this Legislature will not appoint, (and that the Governor be requested and enjoined not to appoint,) any agent to receive such portion of the proceeds of the public lands as may be appropriated to this State, under the late act of Congress.

Resolved, That the Governor be requested to transmit copies of this report, and these resolutions, to the President of the United States, the Governors of the several States, requesting them to lay the same before their several Legislatures; and solicit their co-operation, in annulling and repealing the late act of Congress above mentioned: also, to our Senators and Representatives in Congress, urging them to use their best efforts to procure the repeal of the said law, and to prevent the abstraction of any portion of the national revenue, under color of its provisions.

*In the House of Representatives, }
December 14, 1841. }*

Resolved, That the House do agree to the Report. *Ordered*, That it be sent to the Senate for concurrence.

By order,

T. W. GLOVER, C. H. R.

In the Senate, December 17, 1841.

Resolved, That the Senate do concur in the Report. *Ordered*, that it be returned to the House of Representatives.

By order,

W. E. MARTIN, C. S.

STATE OF MAINE.

IN SENATE, February 10, 1842.

ORDERED, That 300 copies of the foregoing Report and Resolutions be printed for the use of the Senate.

[Extract from the Journal.]

Attest,

JERE HASKELL, *Secretary*.